

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 49/Rjt/2014
Assessment Year 2010-11**

Shri Ramniklal Gordandas Kotecha Steel Forge Pvt. Ltd. Plot No. 239/4, GIDC, Aji-II, Rajkot360003 PAN No: AESPK8341L (Appellant)	Vs	The ACIT, Circle-2, Rajkot (Respondent)
--	----	---

**Appellant by : Shri Chetan Agarwal, A.R.
Respondent by : Shri James Kurian, CIT/DR**

Date of hearing : 02-03-2022
Date of pronouncement : 01-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax-II, Rajkot, (in short referred to as CIT) dated 03-12-2013 in exercise of his revisionary power u/s. 263 of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2010-11.

2. Briefly stated the Id. CIT noted from the records that the assessee had claimed deduction of its profits derived from exports with respect to its

unit set up in Special Economic Zone (SEZ) u/s. 10AA of the Act ,, which deduction he noted had not been examined and verified by the A.O. during assessment proceedings who had not raised any queries with respect to the said claim except for asking for a calculation of the quantum of deduction and accepting the revised calculation furnished by the assessee to it. The Ld. CIT further noted that from the records that on account of the same the assessee was erroneously granted deduction u/s. 10AA on account of:

(a) export incentive of Rs. 34,50,931/- which as per the decision of the Hon'ble Apex Court in Liberty India Ltd. 317 ITR 218 (SC) did not constitute income derived from export so as to be eligible to deduction u/s. 10AA of the Act.

(b) on domestic sales made by the assessee within SEZ of Rs. 396.22 lakhs which was not eligible to deduction since as per law, the assessee was eligible to deduction only on profit earned from export sales.

3. Accordingly show cause notice was issued to the assessee who filed detailed submissions contending that its claim was in accordance with law with respect to both the issues, since the export incentive was not an incentive given to the assessee but was incentive by way of Excise Duty Refund to the party from whom goods had been purchased by the assessee who in turn had passed on the incentive to the assessee. That therefore it merely tantamounted to reduction in purchase price of goods and therefore there was no reason for treating the same as export incentive of the assessee so as to disentitle it to deduction u/s. 10AA of the Act. As for

the domestic sales made to a unit in SEZ, the assessee contended that the goods had been exported through a third party which was permissible under the SEZ policy and Convertible Foreign Exchange had also been received. Thus the assessee, it was contended, had fulfilled all conditions so as to be eligible to deduction u/s. 10AA of the Act in respect of profits made from domestic sales also.

4. The Id. CIT however dismissed both the contentions of the assessee and held that the order of the A.O. was erroneous on account of having granted deduction to the assessee on the aforesaid two counts. He thereafter computed the correct deduction u/s. 10AA and directed the A.O. to give effect to his order.

5. Aggrieved by the same, the assessee has come up in appeal before us raising the following grounds:

- 1] The grounds raised in this appeal are without prejudice to one another.*
- 2] The learned CIT, Rajkot-II, erred in law and on facts in initiating proceedings, u/s.263 when the same was not warranted on the facts of the case and was not in accordance with law and he further erred in passing the order u/s.263 dtd.3-12-2013. The same is objected to.*
- 3] The order u/s.263 is bad in law and without jurisdiction.*
- 4] Without prejudice, it is contended that the deduction u/s.10AA, as allowed in the original assessment order dated 15-3-2013 ought to be held as properly allowed.*
- 5] The learned CIT, Rajkot-II, erred in law and on facts in holding that, the amount received on account of excise refund of Rs.3450931/- was not entitled to deduction u/s.10AA.*
- 6] The learned CIT, Rajkot-II, further erred in law and on facts in calculating the deduction u/s.10AA at Rs.112135/- instead of Rs.3606214/-as allowed in the assessment order dated 15-3-2013.*

7] The learned AO, the ACIT, Cir.2, Rajkot, erred in law and on facts in passing the order which is the demand notice, stating "order giving effect to CIT-II, Rajkot, u/s.263" along with the Income tax computation Form. The same is bad in law and without jurisdiction.

8] That the assessment order dated 15-3-2013 was not erroneous and prejudicial to the interest of the Revenue and the same be ordered to be upheld.

6. Ground no. 1 is general in nature hence not being adjudicated by us.
7. Ground no. 2 & 3 are legal grounds challenging the proceedings initiated u/s. 263 of the Act. The said grounds were not pressed before us and hence are dismissed as not pressed.
8. Ground no. 4 to 8 have been raised on the merits of the case and arguments with respect to the same were made during the course of hearing before us.
9. Taking up the first aspect considered by the Ld. PCIT in his order, i.e relating to the deduction claimed by the assessee on export incentives. The contention of the ld.counsel for the assessee before us was that it had been explained to the Ld. PCIT that the export incentive was not of the assessee but related to a vendor of the assessee who had passed on the benefit to the assessee. That the export incentive related to Excise Duty Refund granted and received by one of the vendors of the assessee, M/s. Gangaram R.K. Industries Pvt. Ltd. on account of sale of goods to a unit in SEZ (the assessee), which refund had been passed by the vendor to the assessee. That the same merely tantamounted to reduction in purchase

price of the goods purchased by the assessee from the said vendor and by no stretch of logic was export incentive of the assessee. Our attention was drawn to Para 4.1.5 of the order where the Id. CIT acknowledged this fact.

4.1.5 Now coming to the facts of the case of assessee it is evident that, the so called refund of duty has been received by M/s. Gangaram R.K. Industries Pvt. Ltd. on account of sale of goods to a unit in SEZ. Sale to a unit in SEZ amounts to a deemed export and as per the export promotion policy it is entitled to exemption from levy of excise. In case excise is paid, a refund/adjustment is permitted. This refund on sale of goods to assessee has been passed on to the assessee by the vendor. It may be mentioned that the vendor is person covered under section 40A(2) and the benefit of refund could have been passed on even to avoid taxes in the hands of vendor himself. In the present case, therefore the assessee did not deserve any exemption alike the case relied upon by the assessee.

It is not a case that assessee had paid excise duty on the products manufactured in its own industrial unit which has been refunded. The refund from the Excise department came on account of an export promotion policy of Government of India whereby the excise duty charged in respect of goods supplied to SEZ is refunded simply because the goods products from same are meant for export. In fact this benefit of refund is available even to those traders, who do .not have any industrial undertaking. The nature of exemption provided in respect of export of goods can be illustrated from the following examples:-

(a) "if a unit set up in Meghalaya, then irrespective of the fact that the goods are sold in India or outside India, excise duty will be charged and subsequently entire duty will be refunded in view of notification 33/99 of Excise Department.

(b) In case of a unit situated in Gujarat, if it sells 1/3rd of its production in local market, 1/3rd is exported out of India and balance is supplied to a unit in SEZ , the unit will be paying entire excise duty but the duty in respect of 213rd sales shall be refunded in view of the fact that assessee has exported/ deemed exported

goods out of India. The refund of duty is on account of the export promotion policy of Government of India.

In the case under consideration, the assessee had not even manufactured the goods. He had purchase goods from M/s. Gangaram R.K.. Industries Pvt. Ltd. who has paid the excise duty on the same. The refund of Excise duty received by the assessee is purely on account of export promotion policy similar to a case of Duty Drawback., The case laws relied upon by the assessee do not help him and the auditors have correctly classified the refund of excise duty as incentive. This action of the auditors is also supported by the decision of Supreme Court in the case of Liberty India Ltd. 317 ITR 218(SC).

11. Ld. Counsel for the assessee pointed out that the Id. CIT despite acknowledging the fact that the excise duty refund was not of the assessee still went on to hold that the same was export incentive earned by the assessee and applying the decision of the Hon'ble Apex Court in the case of Liberty India Ltd. 317 ITR 218 held that the assessee was not entitled to deduction u/s. 10AA of the Act. Ld. Counsel for the assessee pointed out that the said decision was not applicable to the facts of the present case since the export incentive was not of the assessee.

12. Ld. D.R. however supported the order of the Ld. CIT and contended that the decision of the Hon'ble Apex Court in the case of Liberty India Ltd. (supra) squarely applied to the present case and the Ld. CIT had rightly held therefore that the assessee was not entitled to deduction u/s. 10AA of the export incentive of Rs. 34,50,931/-.

13. We have heard both the parties and we have merit in the contention of the Id. Counsel for the assessee that the Ld. CIT had erred in treating the export incentives as not being eligible to claim of deduction u/s. 10AA of the Act. The fact that the said export incentive related to excise duty refund which were received by a vendor of the assessee company M/s. Gangaram R.K. Industries Pvt. Ltd. who in turn had passed it on to the assessee is not disputed. In fact as pointed out by the Id. Counsel for the assessee, the Id. CIT has acknowledged this fact at para 4.1.5 of his order. Considering this undisputed fact we agree with the Id. Counsel for the assessee that these incentives merely tantamounted to reduction in purchase cost of the assessee and were in no way earned on account of the manufacturing activity carried on by the assessee. The decision of the Hon'ble Apex Court in the case of Liberty India Ltd. holds export incentives of assessee's earned on account of the policy of the Government in the course of carrying out its business activities as not being eligible to deduction as not being derived by the undertaking of the assessee but being earned on account of policy of the government. In the present case, since these export incentives have admittedly not been earned by the assessee, the decision of the Hon'ble Apex Court in the case of Liberty India Ltd. does not apply to the facts of the present case. In fact we agree with the Id. Counsel for the assessee that this excise duty refund earned by the vendor of the assessee company and passed on to the assessee merely resulted in reduction in purchase cost of the assessee and higher profits on account of the same were therefore eligible to deduction u/s. 10AA of the

Act. The order of the Ld. CIT denying the assessee deduction u/s. 10AA on the export incentive of Rs. 34,50,931/- is therefore set aside.

15. The next error noted by the Ld. CIT with respect to the assessee's claim of deduction u/s. 10AA of the Act on domestic sales undertaken within SEZ. The contention of the Id. Counsel for the assessee before us was that these export had been undertaken through a third party i.e. M/s. Glonet Marketing Pvt. Ltd., Mumbai and this export was permissible under the SEZ policy. That except for the fact that the assessee had not directly exported the goods, all other conditions prescribed u/s. 10AA were fulfilled, with the goods having been exported outside India and convertible Foreign Exchange also having been received. Ld. Counsel for the assessee contended that the Ld. CIT had denied deduction on these export which amounted to Rs. 396.22 lakhs solely for the reason that as per him the indirect exports were not eligible for deduction u/s. 10AA of the Act. Our attention was drawn to the findings of the Id. PCIT in this regard at para 4.2 to 4.2.5 of the order.

4.2 Export-Sales :

The assessee has explained that the goods of the value of Rs.396.22 lakhs had been physically exported outside India and convertible foreign exchange was also duly received in respect of the aforesaid sale. He has attached a copy of invoice & shipping bills in support of the said export. However it is again reiterated that the goods were exported through Glonet Marketing Pvt. Ltd., which the assessee admitted that was permitted under the SEZ Policy. The assessee states that the requirements under section 10AA are only for the manufacturing of goods in SEZ and the export thereof.

4.2.1 have gone through the submission of the assessee. It is an undisputed fact that Section 10AA of the IT Act 1961 relates to "Unit" situated in the SEZ.

Therefore, every activity in relation to manufacture and export thereof has to be related to the "Unit."

Export turnover has been defined under the section to mean " the consideration in respect of export by the undertaking, being the unit of articles or things or services received in or brought into, in India y the assessee....."

The,above expression clearly shows that the consideration should be in respect of the exports made by the undertaking .This means that the export has to be made by the Unit of the Undertaking and not through or on behalf of other person, because in that case, the consideration would flow from the other person and not from direct exports.

4.2.2 The shipping bill attached by the assessee shows that the name of the exporter is M/s. Glonet Marketing Pvt. Ltd., S/l-5 Surabhi, Jankalyan Nagar, Malad (W),Mumbai. The name of the assessee is mentioned only as supplier /manufacturer. Even on packing list the assessee's name is mentioned as manufacturer. The exporter is M/s. Glonet Marketing Pvt. Ltd. The same is the case on the invoice which shows that the export in this case had been undertaken by M/s. Glonet Marketing Pvt. Ltd, Mumbai.

This shows that the order was procured by Glonet Marketing Pvt .Ltd, and the consideration was also received by them. The goods were procured through the assessee, who also shipped the goods on their behalf. Although the same were shipped by the assessee, such exports, cannot be considered as export by the assessee. for availing benefit under 10AA.

4.2.3 Section 10AA is a code in itself and to avail the benefits under this section all the terms and conditions have to be fulfilled literally. Section 10AA does not deal with the case of Merchant Exporter or Exports through a Export House. If the legislature intended an exemption to be given under 10AA even in respect of export through export houses or merchant exporters, then the same, would have been specifically provided in the Section just like it has been provided in sub section(l) of Section 80HHC. The absence of such clause clearly illustrate the intention of the Act, that such a benefit is not available to an assessee while claiming deduction under section 10AA of the IT Act.

4.2.4 in this respect I would like to clarify that the IT Act is not governed by the SEZ policy. Under the SEZ policy, any sales made to a Unit in SEZ is also considered as an export. However, recently, the Rajkot ITAT in the case of Monarch Overseas vide 1TA No. 253/Rjt/2011 and in the case of M/s. Sameer Industries vide ITA No.397/Rjt/2006 have held that inspite of the fact that the sales in SEZ are treated as deemed export yet they are not considered as export for the purposes of section 10A. Recently the Hon'ble Kerala High Court also had

an occasion to consider the application of SEZ Rules to the Income Tax Act in the case of CIT vs. Electronic Controls & Discharge Systems Pvt.Ltd. 245 CTR 465(Ker) by holding as under:

"the concept of deemed export under the Special Economic Zones Act is not incorporated in the scheme of exemption under section 10A of the Income-tax Act and it is the settled position that the Income-tax Act is a self-contained code and the validity or correctness of the assessment has to be considered with reference to statutory provisions. It is not as if the Special Economic Zones Act, 2005 or the Foreign Exchange Regulation Act or the Foreign Exchange Management Act are not referred to in the Income-tax Act. The Income-tax Act refers to several statutes in different places and wherever required, provisions of such statutes are incorporated in the Act through reference or by incorporation. It is not as if the Parliament is unaware of other statutes which have specific purposes. Inter-unit transfers in Economic Zones are treated as exports for the purpose of Customs Act and the Central Excise Act. However, when section 10A, provides for exemption only on profits derived on export proceeds received in convertible foreign exchange, the Legislature never intended the benefit to be extended to local sales made by the units in the Special Economic Zone, whether as part of Domestic Tariff Area sales or inter-unit sales within the Zone or units in other Zones "

4.2.5 As far as the case in hand is concerned, as per commercial terminology, the exports were made by Glonet Marketing Pvt. Ltd., the assessee manufactured and sold the goods to them, and apparently as an agent, to avoid the cost of transshipment has also shipped the goods on their behalf to their client. Such sales would therefore not have the character of Export for the purposes of Section 10AA.

17. Ld. Counsel for the assessee contended that the Hon'ble Apex Court in the case of DCIT, Circle-12(1), Bangalore vs. Metal Closures (P.) Ltd. reported in (2019) 261 taxmann.com 161 (SC) has categorically held that deemed exports of goods made through third parties qualified as export for the purpose of deduction 10B of the Act. Copy of the order was placed before us.

18. Ld. D.R. though was unable to distinguish the decision of the Hon'ble Apex Court cited by the Id. Counsel for the assessee before us however relied on the order of the Ld. CIT.

19. We have heard contentions of the both the parties. The assessee had claimed deduction of profits earned from sales made to one M/s Glonet Marketing Pvt. Ltd. , which sales was in accordance with the SEZ laws, who in turn had exported these goods. In short the assessee had claimed deduction on indirect exports. These facts are not disputed. As per the Ld.CIT the assessee is not entitled as per law to claim deduction of profits earned from indirect exports, u/s 10AA of the Act. But in view of the decision of the Hon'ble Apex Court in the case of Metal Closures (P.) Ltd. (supra), there is no iota of doubt that the finding of the Id. CIT on this aspect is not in accordance with law. The Hon'ble Apex Court having clearly and categorically held that deemed export made through third parties also qualified as export for the purposes of deduction u/s. 10B of the Act, the assessee in the present case being placed in identical set of facts was entitled to and had rightly claimed deduction on the indirect exports made by it amounting to Rs. 396.22 lakhs. The order of the Ld. CIT denying the assessee deduction on the same u/s. 10AA of the Act is therefore held to be not in accordance with law and set aside.

21. In view of the above, we hold that the assessee's claim of deduction u/s. 10AA on both the export incentives of Rs.34,50,931/- and profits earned from indirect exports of Rs. 396.22 lakhs was in accordance with

law. The order of the Id. CIT passed u/s. 263 holding that the assessment order allowing deduction on these two counts to be erroneous and thereafter denying the assessee deduction on the same is directed to be set aside.

22. The appeal filed by the assessee is allowed in above terms.

Order pronounced in the open court on 01-06-2022

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 01/06/2022

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट