IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 1615/Ahd/2019
Assessment Year 2010-11

Asahi Songwon Colors Ltd. 36, Vakil Chambers, Khanpur Road, Nr. Nehru Bridge Corner, Ahmedabad PAN No: AAACA9713D (Appellant)	Vs	The DCIT, Circle-1(1)(1), Ahmedabad (Respondent)

Appellant by : Shri Sunil Talati, A.R.
Respondent by : Shri V.K. Singh, Sr.D.R.

Date of hearing : 18-07-2022
Date of pronouncement : 22-07-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 23.08.2019 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad, as against the Assessment order passed under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. Brief facts of the case is that the assessee is company engaged in the manufacturing of dyes and pigments. For the Assessment Year 2010-11, the assessee filed its return of income on 28.09.2010 declaring total income NIL after adjusting brought forward loss of Rs. 77,69,022/-. The original Assessment order u/s. 143(3) was made on 09.01.2013 determining total assessed loss of NIL after adjusting brought forward depreciation for Assessment Year 2008-09 & 2009-10 wherein disallowances u/s. 14A, 10B and 80IA were made. The A.O. following the Hon'ble Supreme Court judgment in the case of Liberty India Ltd. vs. CIT 317 ITR 218 (SC) held that the profits eligible for deduction u/s. 10B should be derived by the undertaking from 'exports' of articles or things and should not be incidental to it thereby the claim of deduction u/s. 10B on sale of scraps from EOU unit of Rs. 1,06,232/- was denied. Similarly, rate fluctuation of Rs. 36,16,223/- on the foreign currency loan availed exclusively for the business of CPC Blue Division (100% EOU) and Rs. 30,27,488/- claimed under 80IA on Wind Mill Unit was also denied by the Assessing Officer.

3. Aggrieved against the same, the matter travelled up to the Tribunal. The Co-ordinate Bench of this Tribunal in ITA No. 471/Ahd/2015 dated 10.08.2017 set aside the matter back to the Assessing Officer as follows:

> *12. While scrutinizing the claim of deduction u/s. 10B of the Act, the A.O. noticed that the assessee has claimed exemption in respect of income from sale of scraps. The A.O. was of the opinion that the assessee is not entitled for exemption for such income and accordingly denied the claim. The Id. CIT(A) confirmed the findings of the A.O*

13. Before us, the Id. counsel for the assessee drew our attention to die copy of the ledger account. It is the say of the Id. counsel that such scraps sale is out of the scrap generated from the manufacturing activities of the assessee. However, we find that no supporting evidence has been filed in support of the claim. In the interest of justice, we restore this issue to the files of the A.O. The A.O is directed to verify whether the scrap is generated out of die manufacturing activities of the assessee and if found so, then the income generated from the sale of scraps should be treated as eligible for the claim of exemption u/s. 10B of the Act. The assessee is directed to furnish necessary documentary evidences in support of its claim. For this limited purpose of verification, ground no. 3 is treated as allowed for statistical purpose.

14. Ground nos. 4 & 5 relates to denial of the claim of exemption u/s. 10B deduction u/s. 80IA to the income on account of foreign exchange rate fluctuation.

15. Once again the Ld. the Id. counsel stated that a similar issue was considered by the Tribunal in ITA Nos. 775 & 2633/Ahd/2013 for A.Y. 2008-09 and has decided this issue in favour of the assessee and against the revenue.

16. I have carefully considered the orders of the authorities below qua the issue. It is true that the assessee has borrowed money in foreign currency. It is equally true that the assessee has made gains during the year under consideration. However, it is not coming out from the record whether foreign currency loan has been taken in revenue account or capital account. Nor the assessee could adduce any evidence before us. Therefore, in our considered opinion, the issue needs, verification and is therefore restored to the files of the A.O. The A.O. is directed to verify the purpose of foreign currency loan and if found to be on account of revenue then the gains should be treated as eligible for the claim of exemption u/s. 10B deduction u/s. 80IA of the Act. The assessee is directed to furnish necessary evidences. Ground nos. 4 & 5 are treated as allowed for statistical purpose.

4. During the set aside proceedings, before the Assessing Officer, the assessee claimed deduction u/s. 10B of the Act on other income, out of the said income of Rs. 1,06,232/- amount of Rs.

1,01,840/- was received as proceeds on sale of scrap which pertained to Machinery installed at assessee's EOU unit. The assessee also submitted the ledger account of the sales of scrap of CPC Blue division and invoice dated 24.07.2009 whereby the said scrap was sold to M/s. Hanuman Traders having TIN No. 24210901626. However, the A.O. has not accepted the above facts and held that the scrap pertained to Machinery installed at EOU unit but not proved that the income generated out of manufacturing activity. Further, the assessee did not furnish any concrete evidences which show that the scrap was generated out of manufacturing activity. Accordingly, the claim of deduction of Rs. 1,06,232/- claimed u/s. 10B was denied by the Assessing Officer.

4.1. Regarding disallowance of deduction of Rs. 36,16,223/- u/s. 10B, the assessee claimed that it availed the loan was taken from State Bank of India in the Financial Year 2006-07 for purchasing Fixed Asset. The said loan was converted into foreign currency loan exclusively for the business of CPC Blue division which is 100% EOU and the foreign exchange rate fluctuation incurred by the assessee for the business purpose, the same is eligible for deduction u/s. 10B of the Act. The Assessing Officer held that the foreign currency loan was taken for acquiring capital goods and therefore the assessee is not eligible for deduction u/s. 10B and thereby confirmed the disallowance. Similarly, the claim of deduction under 80IA of Rs. 13,27,488/-, the assessing officer confirmed the disallowance.

5. Aggrieved against the same, the assessee filed an appeal before the CIT(A), who also confirmed all the disallowances made by the Assessing Officer.

5.1. Aggrieved against the same, the assessee is before us raising the following Grounds of Appeal:

1. The Ld. CIT(A) has erred in confirming the order of A.O. in disallowing the exemption u/s. 10B of the Act amounting to Rs. 36,16,223/- being foreign exchange fluctuation by stating that foreign currency loan was taken for capital purpose, exemption u/s. 10B of the Act is not entitled. It is submitted that, Ld. CIT(A) has erred in interpreting the facts of the case as the said expenditure is revenue in nature. The same be held now.

2. Without prejudice to above, it is submitted that, notional foreign exchange fluctuation Income amounting to Rs. 36,16,223/- was intrinsic part of the Export Income and allowable u/s. 10B of the Act and therefore the disallowance so made by the learned Assessing Officer and confirmed by Ld. CIT(A) by treating the same of Capital Nature be deleted now.

3. Without prejudice to above, alternatively, if Ld. CIT(A) is confirming the Income of capital nature, than simultaneously he has erred in excluding / not allowing such Capital Receipt on account of foreign exchange fluctuation from the chargeability of Income Tax. It is submitted that same should be held not chargeable to tax.

4. The Ld. CIT(A) has erred in confirming the order of A.O. in not granting the exemption u/s. 10B of the Act amounting to Rs. 1, 06,232/- in respect of Sale of Scrap inspite of direction of Hon'ble ITAT vide ITA No. 471 & 687/Ahd/2015 to grant the exemption after verification of documentary evidences. It is submitted that other income earned on sale of scrap was intrinsic part of the Business activity/Export income and allowable u/s. 10B and the same be allowed now.

5. The Ld. CIT(A) has erred in disallowing the deduction u/s. 80IA of the Act by holding that other Income representing Exchange Rate Fluctuation of Rs. 13,27,488/- is not entitled for deduction u/s. 80IA of the Act without any specific finding / justification for the disallowance. It is submitted that Exchange Rate Fluctuation earned from the Wind Mill Unit was intrinsic part of the business Income and allowable u/s. 80IA of the Act and same be allowed now.

6. The order passed by the Ld. CIT(A) is bad in law and contrary to the provisions of law and facts to the extent of above grounds of Appeal. It is submitted that the same be held so now.

7. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal.

6. The Ld. Counsel Mr. Sunil Talati submitted that both the Assessing Officer and ld. CIT(A) erred in denying the amount of Rs. 36,16,223/- being Foreign Exchange Fluctuation on foreign currency loan for the purpose of deduction u/s. 10B and Rs. 30,27,488/- being foreign exchange fluctuation rate on the Wind Mill unit and claim of deduction u/s. 80IA of the Act. The ld. Counsel further submitted that the issue of Foreign exchange fluctuation rate and the claim of deduction under 10B is being settled by the jurisdictional High Court in assessee's own case reported in (2018) 400 ITR 138 (Guj.). Therefore the lower authorities are not correct in denying the benefit of u/s. 10B of the Act held as follows:

5. In the opinion of this court, the controversy involved in the present case is no longer res Integra inasmuch as this court in Commissioner of Income-tax v. Priyanka Gems, [2014] 367 ITR 575 (Guj), has, in the context of the provisions of section 80HHC of the Act, held that the foreign exchange gain arising out of fluctuation in the rate of foreign exchange cannot be divested from the export business of the assessee. Once export is made, due to a variety of reasons, the remission of the export sale consideration may not be made immediately. Under accounting principles, therefore, the assessee, on the basis of accrual, would record sale consideration at the prevailing exchange rate on the quoted price for the exported goods in the foreign currency rates. If during the year of the export, the remission is made, the difference in the rate recorded in the accounts of the assessee and that eventually received by way of remission either positive or negative, would be duly adjusted. May be the accounting standards require that the same may be recorded in separate, foreign exchange fluctuation account.

Nevertheless, any deviation either positive or negative must have direct relation to the export actually made. Payment would be due to the assessee due to the factum of export. Current price of the goods so exported would also be predecided in the foreign exchange currency. The exact remittance in Indian rupees would depend on the precise exchange rate at the time when the amount is remitted. The court was of the opinion that this fluctuation and possibility of increase or decrease can have no bearing on the source of such receipt. Primarily and essentially, the receipt would be on account of the export made. If that be so, any fluctuation thereof must also be said to have arisen out of the export business. Mere period of time and the vagaries of rate fluctuation in international currencies cannot divest the income from the character of the income from the assessee's export business. The court, accordingly, turned down the revenue's contention that the income cannot be said to be derived from the export business.

6. Thus, what is held in the above decision is that the income or loss in case of fluctuation in the exchange rate of foreign currency arises out of the export business of the assessee and does not change the character of the income from the assessee's export business.

7. The above view of the court finds support in the decision of the Supreme Court in Oil and Natural Gas Corporation Ltd. v. Commissioner of Income-tax, [2010] 322 ITR 180 (SC), wherein the court held that the loss suffered by the assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance sheet was an item of expenditure under section 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred.

8. Section 10B of the Act provides for deduction of such profits and gains as are derived by a hundred per cent export- oriented undertaking from the export of articles or things or computer software for the period and subject to the conditions stipulated there under. Therefore, the deduction is permissible if such profits and gains as are derived from the export of articles and things. As held in the above decision, the exact remittance in connection with such export would depend on the precise exchange rate at the time when the amount is remitted.

> *The receipt would be on account of the export made and therefore, the fluctuation thereof must also be said to arise out of the export business. Merely because of fluctuation in the international currencies, the income does not get divested of the character of income from export business. The Tribunal, therefore, did not commit any error in deleting the addition made on account of fluctuation in foreign exchange rates from the deduction under section 10B of the Act.*
>
> *9. In the light of the above discussion, it is not possible to state that there is any legal infirmity in the impugned order passed by the Tribunal so as to give rise to any question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is summarily dismissed.*

6.1. The Ld. Counsel further submitted that the Hon'ble High Court of Madras in the case of CIT vs. M/s. Pentasoft Technologies Ltd. reported in [2012] 342 ITR 578 held as follows:

> *4. In order to allow a claim under Section 10A of the Act, what all is to be seen is whether such benefit earned by the assessee was derived by virtue of export made by the assessee. The exchange value based on upward or downward of the Rupee value is not in the hands of the assessee. In other words, the assessee does not determine the exchange value of the Indian Rupee. It has to be remembered but for the fact that the assessee is an export house, there was no question of earning any foreign exchange. Therefore, when the fluctuation in foreign exchange rate was solely relatable to the export business of the assessee and the higher Rupee value was earned by virtue of such exports carried out by the assessee, there is no reason why the benefit not be allowed to the assessee.*

6.2. On the issue of sale of scrap sales, Ld. Counsel taken us to Page No. 95 & 96 of the Paper Book wherein ledger account of the transactions was placed as well as copy of the invoice on sale of MS Scrape. The Ld. Counsel submitted that the assessee made sale MS Scrape Heavy of 4890 Kgs at a rate of 20.83 per Kg and rised an amount of Rs. 1,01,840/-. This invoice is also carrying despatch

through as Local Truck and Vehicle No. GJ-16X-8441. That apart appropriate VAT tax, Additional VAT tax were collected on the above sale of MS Scrape. Further this invoice also carries the buyers TIN Number. Thus the Assessing Officer without considering any of this fact simply held that the scrap pertained to Machinery installed at EOU unit and not generated out of manufacturing activity and thereby confirmed the addition. This clear cut fact that the above scraps have been generated out of the EOU unit and usage of Dies and Chemicals for a longer period. As it can be seen from the invoice, 4890 Kg MS Scrape Heavy were being disposed by the assessee, which is a normal thing in the manufacturing activity of dies and chemicals. Without appreciating the same, the A.O. is not correct in disallowing the claim made by the assessee. Therefore the same should be allowed for the purpose of claiming non deduction u/s. 10B of the Act.

7. Per contra, the ld. D.R. Mr. V.K. Singh appearing for the Revenue supported the order of the lower authorities however could not produce any contra judgment in support of its claim.

8. We have given our thoughtful consideration and perused the materials available on record. As far as foreign exchange fluctuation rate is concerned, this issue has been settled by the jurisdictional High Court in the assessee's own case (cited supra) for the Assessment Year 2008-09 and also the Hon'ble High Court of Madras in the case of CIT vs. M/s. Pentasoft Technologies Ltd. (cited supra). Respectfully following the above judicial precedents,

we have no hesitation in holding that fluctuation in the rate of foreign exchange as on the date of balance sheet is an item of expenditure allowable u/s. 37(1) of the Act and the assessee is eligible for deduction under 10B as well as u/s. 80IA of the Act respectively.

8.1. Regarding the scrap sales and claim of deduction u/s. 10B of the Act, as has been rightly argued by the ld. A.R., the assessee being engaged in the business of dies and chemicals, normal wear and tear used to happen on the machineries used for its manufacturing activities, which requires regular replacement. As it can been seen from the invoice, the purchaser's TIN Number. is reflected and mode of transport is also said to be through Local Truck and the Vehicle No. is also reflected in the invoice for removing of 4890 KG of loose Heavy MS Scrape. The Assessing Officer simply rejected the invoice on the ground that the scrap is not generated from the EOU unit. The Assessing Officer has not made any attempt to verify the buyer of the scrap namely M/s. Hanuman Traders, whose full address is being given in the invoice with TIN Number and proper VAT tax and Additional VAT taxes were collected on the above sales. Thus, the Assessing Officer without making proper enquiry simply denied the claim of scrap sales eligible for deduction u/s. 10B of the Act, which is in our considered view is not proper in law and unjustified. Therefore, the A.O. is directed to grant the claim of deduction under 10B of the Act on the sale of scraps.

9. In the result, the grounds raised by the Assessee are hereby allowed and the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 22-07-2022

Sd/- **Sd/-**
(WASEEM AHMED) **(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER True Copy JUDICIAL MEMBER
Ahmedabad : Dated 22/07/2022

आदेश की प्रतिलिपि अग्रेषित / 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,
अहमदाबाद