

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकर अपील सं./ITA No.713/SRT/2018**

**Assessment Year: (2013-14)**

**(Virtual Court Hearing)**

The ACIT, Circle-1(2), Surat.	<b>Vs.</b>	M/s. Nya International, Unit No. 360, Plot No. 239, SEZ, GIDC, Sachin, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFN1681M</b>		
<b>(Revenue)/(Assessee)</b>		<b>(Assessee)/(Respondent)</b>

**आयकर अपील सं./ITA No.534/SRT/2019**

**Assessment Year: (2014-15)**

The ACIT, Circle-1(2), Surat.	<b>Vs.</b>	M/s. Nya International, Unit No. 360, Plot No. 239, SEZ, GIDC, Sachin, Surat.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHFN1681M</b>		
<b>(Revenue)/(Assessee)</b>		<b>(Assessee)/(Respondent)</b>

<b>Assessee by</b>	Shri Rasesh shah, CA
<b>Respondent by</b>	Shri H. P. Meena, CIT(DR)
<b>Date of Hearing</b>	30/12/2022
<b>Date of Pronouncement</b>	22/02/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned two appeals filed by the Revenue, pertaining to the Assessment Years (AYs) 2013-14 to 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing Officer under section 144/143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since these two appeals filed by the Revenue pertaining to same assessee and identical and common issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Grounds of appeal raised by the Revenue (in ITA No.713/SRT/2018, for AY.2013-14) are as follows:

*“1. Whether on the facts and circumstances of the case and in law, the CIT(A) has justified in deleting the addition made by the assessing officer on account of trading addition in context with fall in G.P. of Rs.1,02,65,58,335/- ?*

*2. Whether on the facts and Circumstances of the case and in law, the CIT(A) has justified in deleting the addition of Rs.7,30,70,996/- made by the assessing officer on account of unexplained unsecured loan u/s. 68 of the IT. Act ?*

*3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the addition of Rs.1,40,131/- made by the assessing officer on account of non-payment of TDS liability with the limitation date ?*

*4. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the addition of Rs.10,30,000/- made by the assessing officer on account of disallowance of expenses in absence of evidence ?*

*5. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the disallowance of deduction u/s. 10AA of the Act of Rs.30,61,025/- made by the assessing officer on the basis of existing provision that the deduction u/s. 10AA is not allowable for trading activity ?*

*6. It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that of Assessing Officer may be restored to the above extent.*

*7. The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

4. We shall take these grounds one by one. The ground no.1, relates to trading addition in the context with fall in Gross Profit of Rs.1,02,65,58,335/-.

5. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a Firm and derives income from export of gold and silver jewelry, studded diamond during the year under consideration and claimed deduction u/s 10AA of the Income Tax Act 1961 at Rs.30,61,025/-. During the year the assessee has declared gross profit at Rs.1,49,05,707/- on the total sale of Rs.1098,59,07,624/- giving Gross Profit @ 0.13%, as against declared Gross Profit @ 18.83% in the immediately preceding year. Comparative figures of Gross Profit (GP) are as under:

A.Y.	Total turnover	Gross profit shown	GP rate shown
2012-13	401,97,55,479/-	75,72,99,497/-	18.83%

2013-14	1098,59,07,624/-	1,49,05,707/-	00.13%
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The assessing officer noted that Gross profit (in brief "GP") rate of this year under consideration is much lower side in comparison to immediately preceding year. But no reason for low GP rate offered by the assessee. Accordingly shown GP rate is not verifiable from the records. Hence, a notice u/s 142(1) was issued to the assessee on 14.08.2015, 19.10.2015, 27.10.2015, 18.12.2015, 28.12.2015 to file required details. But no details were filed by the assessee. Hence a show cause is issued to the assessee on 15.01.2016, as to why should not be appropriate G.P rate is applied on the declared sales and trading addition is made. Vide above referred show cause notice following details are called for from the assessee firm to justify GP rate, shown by the assessee:

- (i) Purchase and sale bills
- (ii) Stock Register
- (iii) Justification of valuation of closing stock with supporting evidence.
- (iv) Month wise details of raw material purchased with supporting purchase bills
- (v) Month wise details of raw material consumed in manufacturing activity.
- (vi) Worker's Attendance register and wage payment record.
- (vii) Evidence of import of goods
- (viii) Evidence of export of goods.
- (ix) Details of power expenses and copy of electric bills.
- (x) Produce books of accounts along with relevant record. In response to said show cause notice, no reply was filed by the assessee. Later on another opportunity was provided to the assessee vide notice u/s 142(1) dated 18.02.2016 and same was also remained uncompiled. The assessing officer noted that ample opportunities have been provided to the assessee to justify declared GP rate vide notice u/s 142(1) dated 14.08.2015, 19.10.2015, 27.10.2015, 18.12.2015, 15.01.2016 & 18.02.2016 but no explanation was filed by the assessee on this issue. In absence of complete details / evidences, GP rate shown by the assessee is not verifiable from the records. Under these circumstances, the assessing officer estimated the G.P. rate declared by the assessee. Hence, GP rate was applied on the sales declared by the assessee. The assessee has declared G.P. rate 00.13%, 18.83% for the AY 2013-14, 2012-13 respectively. Average of G.P. rate comes to 9.48%. Therefore, assessing officer applied G.P. @ 9.48% on the total sales of Rs.1098,59,07,624/- and gross profit

comes to Rs.104,14,64,042/- as against declared Rs.1,49,05,707/-. Therefore, assessing officer made addition of Rs.102,65,58,335/-(104,14,64,042 -1,49,05,707) and same was added in the total income of the assessee.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the Assessing Officer. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

7. Learned Departmental Representative (Id. DR) for the Revenue, argued that assessing officer has correctly made disallowance on account of trading addition as the assessee had failed to furnish the details for huge fall in Gross Profit declared in return of income (ROI). In the remand report, the assessing officer has pointed out that the value of closing stock of the silver for the A.Y. 2012-13 did not match with the value of opening stock of silver in the A.Y. 2013-14. Further, the assessee had not submitted the stock register, salary register, power consumption details etc. The assessee had not submitted the complete details during the assessment proceedings as well as in the remand proceedings. In absence of these details, the GP rate shown by the assessee was not verifiable, therefore, addition made by the assessing officer may be upheld.

8. On the other hand, Shri Rasesh Shah, Ld. Counsel for the assessee, pleaded that AO has not taken into account the fact that there was change in the nature of activities of the assessee in comparison to the earlier years which resulted in the low GP. During the year assessee has carried out trading activities as against the manufacturing activities carried out in earlier years and there was a substantial and manifold increase in the turnover during the relevant assessment year. Hence, the addition made by the AO without pointing out any defects and discrepancies in the sales, purchases etc. and without rejecting of books of accounts. Therefore, Id Counsel contended that order passed by the Id CIT(A) may be confirmed.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the

case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. This ground raised by the Revenue pertains to making estimated gross profit of INR 102,65,58,355/- by rejecting the gross profit as shown by the assessee. The assessing officer found that assessee has claimed deduction u/s 10AA at Rs.30,61,025/- and has declared a gross profit at Rs. 1,49,05,707/- on the total sale of Rs. 10,98,59,07,624/- at the GP rate of 0.13% as against the declared GP @ 18.83% in the immediately preceding year. The assessing officer held that no details were provided hence he applied the average GP rate of two assessment years i.e. AY 2012-13 and 2013-14 and calculated the GP @9.48% on the total sales and calculated the gross profit of Rs.104,14,64,042/- and made the addition of Rs.102,65,58,335/-.

10. The learned Counsel submitted before us that assessee submitted that gross profit addition has been made without rejecting the books results u/s 145 of the Act. It was contended by Id Counsel that complete quantitative details were maintained and all the transactions of import and export were carried through the custom authority and no defects have been pointed out by the assessing officer in the books of accounts. The profit margin has gone down substantially as the assessee had carried out exclusively trading activities in form of the export of imported goods during the year and while in the earlier assessment years the assessee was engaged in manufacturing and trading activities. The turnover has increased three times in comparison to the earlier assessment year while the profit has gone down. The complete details from the party wise sales and purchases were submitted before the assessing officer. However, Id DR submitted that even if the assessee started trading business then also the net profit margin, in this business, should be around 5%, therefore gross profit may be estimated at the rate of 5%.

10. We note that during the appellate proceedings, assessing officer was directed to submit a remand report regarding the additional evidences, filed by the

assessee. Accordingly, the assessing officer, vide his letter dated 09.03.2018, submitted his report wherein assessing officer stated as following:

*"On perusal of the assessment Order it is seen that the Assessing Officer had called for various details such as:*

- (i) Purchase and sale bills.*
- (ii) Stock Register*
- (iii) justification of valuation of closing stock with supporting evidence.*
- (iv) Month wise details of raw material purchased with supporting purchase bills*
- (v) Month wise details of raw material consumed in manufacturing activity.*
- (vi) Worker's Attendance register and wage payment record.*
- (vii) Evidence of import of goods.*
- (viii) Evidence of export of goods.*
- (ix) Details of power expenses and copy of electric record.*
- (x) Produce of books of accounts along with relevant record.*

*On perusal of the submissions filed by assessee as additional evidence following anomalies have been noticed.*

*(A) The value of closing stock of the silver for the AY 2012-13 doesn't match with the value of opening stock of silver in the AY 2013-14. The value of closing stock of silver for AY 2012-13 is mentioned in the audit report as Rs. 11,74,321/- whereas the value of opening stock of silver for AY 2013-14 Rs. 1,45,830/-.*

*(B) The assessee has not submitted any details with regards to the salary paid apart from the ledger account of salary expenses for AY 2013-14. The assessee was asked to furnish salary / wage register and ID Cards of employees working in the unit (with SEZ Stamping). However, the assessee was unable to produce these details.*

*(C) The assessee was asked to give stock register highlighting month wise and quantity wise details. However, the assessee submitted that the opening and closing stock of silver was same. The assessee has given inadequate details as per the query raised during the remand proceedings.*

*(D) The assessee was asked to give details of power expenses and copy of electricity bills so as to justify the power consumption made during the AY 2013-14. The assessee has not submitted any details with regards to this query. The observation made above clearly highlight that the assessee has not submitted the complete details even during the remand proceedings, which in a way, supports the observation made by the Assessing Officer in the Assessments order that is, .i.e. in absence of complete details / evidences, GP rate shown by the assessee is not verifiable from the records. Therefore, the issue dealt with in ground no. 2 can be decided on merits. "*

11. During the appellate proceedings, the copy of the remand report was provided to the assessee. The assessee, in response to the remand report, submitted his reply dated 21.03.2018 wherein it was stated as follows:

"In para 4.2, the learned assessing officer observed some anomaly in the submission filed by the assessee as additional evidences as well as further details during remand proceedings. The AR of the assessee, during remand proceedings, has fully explained these issues along with supporting evidences. The para-wise justification and explanation with regard to the observation of the assessing officer are discussed hereunder.

A. The learned assessing officer stated that the value of closing stock of Silver for A. Y. 2012-13 does not match with the value of opening stock of Silver in A. Y. 2013-14. He further stated that the value of closing stock of silver as reported in A. Y. 2012-13 in the Audit Report shows it at Rs. 11,74,321/- whereas the value of opening stock of silver for A.Y. 2013-14 is at Rs. 1,45,830/-.

In this regard, it is submitted that it was an inadvertent typographical mistake in the report of A.Y. 2012-13 where the value of Gold and Silver was merged and reported at Rs. 11,74,321/-. For more clarity, we have given a comparative chart of value for your kind perusal.

Particulars	Closing stock as per Audit Report for the year ended 31.03.2012		Opening stock as per Audit Report for the year ended 31.03.2013	
Precious stones	7,44,312.94		7,44,312.94	
Silver	11,74,321.00		1,45,830.60	
Cold	---		10,28,490.40	
Total		19,18,633.94		19,18,633.9

Thus, your honour will appreciate that in the audit report of earlier year, there was an inadvertent typographical mistake where the value of gold and silver was merged and total figure of Rs.11,74,321/- was reported against the item of Silver whereas, the closing stock as on 31.03.2012 was comprising of Silver value of Rs.1,45,830.60 and Gold value of Rs.10,28,490.40. It is respectfully submitted that this was purely a case of inadvertent mistake in the Audit Report of A.Y.2012-13. Infact, the assessment for A.Y. 2012-13 was finalized u/s 143(3) of the Act where full details of closing stock were submitted before the assessing officer and the issue was explained and clarified. Your Honour will appreciate that the total value of closing and opening stock was Rs. 19,18,633.94 ps. and there was no anomaly as such and the assessee has submitted all the details like copies of purchase bills, sales bills etc. Moreover, all the gold imported by the assessee during the year have been completely exported and at the end of the year i.e. on 31.03.2013, there was only closing stock of Silver of Rs.1,45,830.60 ps. The AR of the assessee had fully explained the matter with details during remand proceedings. Thus, your Honour will appreciate that it was purely a case of inadvertent mistake and as such, there was no anomaly in the value of opening and closing stock in the year under consideration.

B,C&D: The learned assessing officer stated that the assessee could not produce the salary and wages register along with ID cards of the employees, stock register and copy of power bills etc.

*In this connection, it is submitted that the assessee firm's business was closed down and even the accountant had left the job and there was no operations being carried out at the factory premises and therefore, it was practically difficult for the partners of the assessee firm to trace out the old records and the registers and hence the same could not be produced. It is further submitted that the assessee had submitted party wise details of purchases and sales along with all the supporting evidences and no discrepancies were found. Moreover, the total quantity of goods as imported were exported by the assessee firm and only the stock of silver which was lying as an opening stock remained as a closing stock at the end of the year and therefore, the assessee has indirectly furnished all the details related to movement of stock. It is further submitted that the details related to salary and power expenses are not affecting the gross profit margin in as much as in the year under consideration, the assessee firm had carried out only trading activities and the salary and power expenses were related to office administration expenses only.*

*Without prejudice to what is stated hereinabove, it is respectfully submitted that the we have elaborately explained the reason for fall in Gross Profit ratio in the year under consideration in our original submission wherein we had explained that the main reason for fall in gross profit ratio was due to the fact that the assessee exclusively carried out trading activities in the form of re-export of imported goods in the year under consideration and hence the gross profit ratio had fallen down to 0.14%.*

*We further submit that the assessee had also carried out trading activities in the next year also i.e. in A.Y. 2014-15 where book results of the assessee was accepted by the department.*

*In the relevant financial year i.e. F.Y.2013-14 relevant to A.Y. 2014-15, the assessee had shown turnover of Rs. 1703,31,68,213/- and earned a profit of Rs.2,93,50,422/- with G.P. ratio at 0.17%. The same is evident from the copy of audit report attached herewith. Therefore, since in both the years, the business activities remained the same and when the gross profit ratio of 0.17% is accepted for A.Y. 2014-15, then the gross profit ratio of current year shown at 0.14% is quite reasonable and justifiable. Therefore, we request your honour to delete the addition of Rs.102,65,58,335/- made after estimating the gross profit ratio at 9.48%."*

12. After going through the remand report and considering the reply of the assessee on remand report, the Id CIT(A) observed that assessing officer has made the addition mainly on the ground that there is a sharp decrease in the gross profit in comparison to the earlier year and he has not pointed out any defects in the books of accounts. The main reason as stated by the assessee, for the drop in the gross profit is due to the increase in turnover to Rs.1115,86,54,472/- in AY 2013-14 as against Rs.401,97,55,479/- in AY 2012-13. The observation of the assessing officer in the remand report that the value of closing stock of silver for A.Y. 2012-13 does not match with the value of opening stock of silver in A.Y. 2013-14 was examined. It was observed that the contention of the assessee, that it was an

inadvertent typographical mistake in the report of A.Y. 2012-13 where the value of Gold and Silver was merged and reported at Rs.11,74,321/- was found to be correct. In fact, the assessment for A.Y. 2012-13 was finalized u/s 143(3) of the Act where full details of closing stock were submitted before the assessing officer and the issue was explained and clarified. The total value of closing and opening stock was Rs. 19,18,633/- and there was no anomaly as such and the assessee had submitted all the details like copies of purchase bills, sales bills etc. Moreover, all the gold imported by the assessee during the year have been completely exported and at the end of the year i.e. on 31.03.2013, there was only closing stock of silver of Rs.1,45,830/-. The assessee had submitted party wise details of purchases and sales along with all the supporting evidences and no discrepancies were found. The contention of the assessee that the details related to salary and power expenses are not affecting the gross profit margin in as much as in the year under consideration, the assessee firm had carried out only trading activities and the salary and power expenses were related to office administration expenses only, was also found to be a valid explanation. The details submitted shows that the assessee had also carried out the same trading activities in the next year also i.e. in A.Y. 2014-15 where book results of the assessee was accepted by the assessing officer in the scrutiny assessment proceedings. In the relevant financial year i.e. F.Y. 2013-14 relevant to A.Y. 2014-15, the assessee had shown turnover of Rs. 1703,31,68,213/- and earned a profit of Rs.2,93,50,422/-with G.P. ratio at 0.17%. The gross profit ratio of 0.17% was accepted by the assessing officer for A.Y. 2014-15 in his assessment order dated 30.12.2016 u/s 143(3) of the Act. Therefore, Id CIT(A) noted that in view of the above facts and circumstances, it is evident that the assessing officer has not taken into account the fact that there was change in the nature of activities of the assessee in comparison to the earlier years which resulted in the low GP. During the year it has carried out trading activities as against the manufacturing activities carried out in earlier years and there was substantial and manifold increase in the turnover during the relevant assessment year. Hence, the addition made by the assessing officer without pointing out any defects and discrepancies in the sales, purchases etc. and without rejection of

books of accounts is erroneous and therefore the addition made by the assessing officer of Rs. 102,65,58,335/- was deleted by Id CIT(A). We note that above conclusion reached by Id CIT(A) does not contain any error. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

13. In the result, ground No.1 raised by the Revenue is dismissed.

14. Ground no.2 raised by the assessee relates to deletion of addition of Rs.7,30,70,996/- made on account of unexplained unsecured loan under section 68 of the Income Tax Act.

15. Brief facts *qua* the issue are that during the assessment proceedings, the assessing officer noticed that assessee has introduced fresh unsecured loans of Rs.7,30,70,996/- during the year. Therefore, assessing officer issued several notices u/s 142(1) of the Act on 14.08.2015, 19.10.2015, 27.10.2015 and 18.12.2015, wherein the assessee was asked to file following information to establish identity, genuineness and creditworthiness of the creditors:

- (i) PAN
- (ii) Complete name and address of the creditors
- (iii) Confirmed copy of the ledger account
- (iv) Copy of income tax return and Balance sheet,
- (v) Copy of bank account from which loan was advanced by the creditors

However, no details were filed by the assessee. Hence a show cause notice u/s 142(1) was issued to the assessee on 15.01.2016 as to why should not be an addition of Rs.7,30,70,996/- is made u/s 68 of the I T Act 1961 on account of unexplained loans. But no compliance was made by the assessee. Again one more opportunity was provided to the assessee, vide notice u/s 142(1) dated 18.02.2016. In response thereto, no compliance was made by the assessee and again said notice was remained uncompiled. In absence of complete details, evidences, sources of the unsecured loans cannot be examined. Hence, sources of loans of

Rs.7,30,70,996/- was remained unexplained. Therefore, assessing officer made an addition of Rs.7,30,70,996/- on account of unexplained cash credit u/s 68 of the IT Act, 1961.

16. On appeal, the Id. CIT(A), has deleted the addition. Aggrieved by the order of the Id. CIT(A), the Revenue is in further appeal before us.

17. On the other hand, the Ld. DR for the Revenue, argued that in the remand report, the AO has rightly pointed out that the loan given by the Dia jewel of Rs.1,00,00,000/-, the name of Nya International, does not figure in the schedule of loan and advances given. Further, Sangeeta Tosawad has filed the return of income of Rs.2,90,610/- only and financial statements submitted are not audited and therefore the creditworthiness of the loan giver is under shadow of doubt. Therefore, Id DR contended that order of assessing officer may be upheld.

18. The Ld. Counsel for the assessee, submitted that assessee had obtained new loans amounting to Rs.1,40,00,000/- and the other amounts of Rs. 5,91,66,064/- was the amount of capital balances of the retiring partners which was converted into loan account. The assessee had obtained the loan of Rs1,40,00,000/- during the year from two concerns namely Dia Jewels of Rs.1,00,00,000/- and Sangeeta Tosawad of Rs.40,00,000/- on which TDS had been deducted on the interest payments. The other amounts have been received from the five retiring partners and the capital balance as on 01.04.2012 were transferred to loan accounts and hence, their names were appearing under the head unsecured loans in the balance sheet and this amount is not a new loan. The assessee in support filed the copy of the confirmations bank statements, return of income, ( ROI), etc. from the two lenders who had given the amount of Rs. 1,40,00,000/-. Therefore, Id Counsel contended that assessee has proved the genuineness, identity and creditworthiness of the parties, hence, Id CIT(A) has rightly deleted the addition.

19. We have heard the rival parties and have gone through the material placed on record. We note that during the assessment proceedings, the assessing officer found that assessee has taken unsecured loans during the year of Rs.7,30,70,996/-.

The assessee was asked to submit the evidences to prove the identity and creditworthiness of the lenders during the assessment proceedings but in spite of several opportunities no details were furnished and therefore the assessing officer made the addition of Rs.7,30,70,996/-. During the appellate proceedings, the assessee submitted additional evidences, under Rule 46A of the IT Rules, before the Id CIT(A). Therefore, Id CIT(A) remitted these additional evidences to the assessing officer for verification and examination and assessing officer was directed to submit a remand report regarding the additional evidences filed by the assessee.

20. The assessing officer, vide his letter dated 09.03.2018 submitted his report wherein he stated as following:

*"The assessing officer has made addition of Rs.7,30,70,996/- on account of unsecured loans treated as unexplained cash credit u/s 68 of the Act. The assessee has said in the additional evidence filed that assessee had obtained loans of Rs.1,40,00,000/- during the year under consideration. Further the capital balances of the partners, who retired, were transferred to the loan account. The assessee has mentioned the names of retiring partners viz. Abhay Pinakin Shah, Amit Kirtilal Shah, Chintan Chowdhary, Chirag Shantilal Shah, Vallabh A. Shah. The sum total of the amount of their capital balances comes out to be Rs.5,91,66,064.14/-. The names of the retiring partners appears in the annexure to the details of unsecured loans. In light of these facts the case can be decided on merits. During the financial year Chirag Shantilal Shah has introduced a capital of Rs.1,00,00,000/-, however the assessee didn't submit the details regarding the same (the assessee only submitted the ledger account of Chirag Shantilal Shah without any confirmation from him).*

*However, the assessee has said that during the year loan has been taken from Dia Jewel and Sangeeta Rajendra Tosawad. The assessee has submitted various details to corroborate its contention. Dia Jewel has given loan of amount Rs.1,00,00,000/- to the assessee during the assessment year 2013-14. On perusal of the balance sheet of Dia Jewel it is found that a capital balance of Rs.12,06,21,205.54/- is appearing in the balance sheet. However, if we look at Schedule of loan and advances the bifurcation of the parties, to whom loan has been given, has not been provided. The assessee has submitted the contra confirmation of Dia Jewel and the Bank account detail highlighting the loan transaction with the assessee. Therefore, this issue can be decided on merits.*

*With regards to the loan taken from Sangeeta Tosawad the assessee has submitted the various details to corroborate its contention. Sangeeta Tosawad has filed the return of income disclosing the total income of Rs.2,90,610/-. However, she has given loan of Rs.40,00,000/-. Though the financial statements of Sangeeta Tosawad have been submitted but they are not the audited financial statements. Further, the assessee has not submitted the computation of Income of Sangeeta*

*Tosawad. In light of these facts, the credit worthiness of Sangeeta Tosawad appears to be doubtful. Therefore, this issue can be decided on merits."*

21. The copy of the said remand report was provided to the assessee. The assessee, in response to the remand report, submitted his reply dated 21.03.2018 wherein the assessee stated as follows:

*"In para 4.3.1, the learned assessing officer has accepted the fact that out of the addition of Rs.7,30,70,996/- on account of unsecured loans, there was a capital balance of Rs.5,91,66,064.14 ps. which was the capital balance of the partners who retired from the firm and their closing balance were transferred to loan account. Thus, the learned assessing officer accepted that the assessee firm had obtained a loan of Rs.1,40,00,000/- only during the year under consideration. With regard to the closing capital balance of Rs.5,91,66,064,14 ps., as transferred to loan account in the current year, the learned assessing officer did not give any adverse comment or any observation and hence we have nothing more to submit in this regard and our original submission filed before your honour may please be considered along with the evidences submitted in different paper books and we request your honour to accept the same as genuine and the addition made u/s 68 of the Act may please be deleted. In para 4.3.2, the learned assessing officer observed that the assessee had taken loan of Rs.1,00,00,000/- from M/s Dia Jewels. He also observed that the capital balance of the said concern was found to be Rs. 12,06,21,205/- and the assessee has submitted contra confirmation of M/s. Dia Jewels along with bank account details highlighting the loan transactions. The learned assessing officer did not give any adverse comment or observation with regard to this loan and therefore, considering the evidences submitted and also considering the genuineness of transaction and credit worthiness of the depositor, we request your honour to accept the same as genuine and the addition made u/s 68 of the Act may please be deleted.*

*In Para 4.3.3., the learned assessing officer observed that the assessee firm had taken loan of Rs.40,00,000/- from Sangeeta Tosawad and the return of income of the said person shows the total income of Rs.2,90,610/- and she had not submitted audited financial statements and her computation of income. In this regard, it is submitted that the assessee had fled her personal balance sheet along with the letter dated 16.02.2018 during remand proceedings. From the said balance sheet, your honour will appreciate that the said depositor is having her own capital of Rs. 5,16,58,895/- and the loan given by her to the assessee firm is also reflected in the said balance sheet. From the said balance sheet, your Honour will appreciate that the said depositor is having total assets of Rs. 5,25,14,894/- and against the same, her personal liability is only Rs. 8,56,000/- and thus, her net capital is worth Rs. 5,16,58,895/-. Thus, the credit worthiness of the said depositor is not at all doubtful and therefore, in view of the confirmation given by the depositor and transactions through banking channel made by the assessee and also considering other evidences submitted, we request your honour to accept the loan transaction as genuine and delete the addition made u/s 68 of the Act."*

22. After going through the remand report of the assessing officer and reply of the assessee, the Id CIT(A) observed that out of the unsecured loans of

Rs.7,30,70,996/- there was capital balance of Rs. 5,91,66,064/- of the 5 partners who had retired from the firm and their closing balance was transferred to the loan account. This fact was verified during the remand report proceedings by the assessing officer. The assessee had obtained loan of Rs.1,40,00,000/- only during the year which included amount from Shantilal Shah (Dia Jewel) of Rs.1,00,00,000/- and Rs.40,00,000/- from Sangeeta Tosawad. During the remand report proceedings the assessee had submitted contra confirmation of M/s Dia Jewels alongwith the bank account details which showed that the capital balance with M/s Dia jewels of Rs.12,06,21,205/-. In regards, to Sangeeta Tosawad the assessee had filed the contra confirmation from the lender along with her personal balance sheet before the assessing officer vide letter dated 16.02.2018. The balance sheet shows that she was having an own capital of Rs. 5,16,58,895/- and the loan amount reflected in her balance sheet. These facts shows that the unsecured loans taken by the assessee of Rs.7,30,70,996/- included capital balance of the 5 retiring partners and 2 from the lenders who had creditworthiness to provide the unsecured loans to the assessee. Hence, Id CIT(A) deleted the addition of Rs.7,30,70,996/-.The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the ground raised by the Revenue.

23. In the result, ground No.2 raised by the Revenue is dismissed.

24. Ground No.3 raised by the Revenue relates to deletion of the addition of Rs.1,40,131/- made by the Assessing Officer on account of non-payment of TDS.

25. Succinct facts qua the issue are that this ground pertains to making addition of Rs.1,40,131/- on account of non-payment of outstanding TDS liability. The assessing officer, during the scrutiny proceedings noticed that assessee had shown outstanding TDS liability in the balance sheet to the tune of Rs.1,40,131/-. During the assessment proceedings, no details were furnished before the assessing officer, by the assessee, regarding the evidence of payment of TDS liability and therefore the assessing officer made the addition of Rs.1,40,131/-.

26. On appeal, Id CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us. We have heard both the parties. Learned DR for the Revenue, relied on the findings of assessing officer. Whereas Id Counsel submitted that assessee had already made the payment of TDS liability before filing the return of income and the assessing officer has made the addition without verifying the facts from the TRACES PORTAL, which shows the receipts of the TDS return filed, copy of challan, etc. During the appellate proceedings, Id CIT(A) called the remand report from the assessing officer regarding the additional evidences filed by the assessee. The assessing officer, vide his letter dated 09.03.2018, submitted his report. The copy of the said remand report was provided to the assessee. The Id CIT(A) after going through the contents of the remand report and assessee's reply on the remand report, noted that details pertaining to the payment of TDS which includes quarterly statement, challans of payment and form No. 27A along with FVU file generated, which shows the contention of the assessee to be correct. The assessing officer has not made any comments in the remand report on these facts submitted during the remand report proceedings. Therefore, Id CIT(A) deleted the of Rs.1,40,131/-. Based on this factual position, we do not find any infirmity in the order of Id CIT(A), hence we concur the findings of Id CIT(A).

27. Ground No. 3 raised by the Revenue is dismissed.

28. Ground no.4 relates to deletion of addition of Rs.10,30,000/- made by the assessing officer on account of disallowance of expenses.

29. Succinct facts qua the issue are that this ground raised by the Revenue pertains to making ad hoc disallowance of 10% of local purchase, export charge, import charges, salary expenses, traveling expense, transportation charges amounting to Rs. 10,30,000/-. The assessing officer, during the assessment proceedings noticed that assessee had debited various expenses of Rs.1.03 crore in the Profit and Loss account under the head local purchase, export charges, import charges, salary expenses etc. The assessing officer held that the assessee did not file any details or evidence during the assessment proceedings and therefore he

disallowed 10% of these expenses and made the addition of Rs.10,30,000/- to the income of the assessee.

30. On appeal, Id CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us. We have heard both the parties. Learned DR for the Revenue, relied on the findings of assessing officer. Whereas Id Counsel submitted that export and import charges have increased substantially due to the increase in the turnover from Rs.401.97 crore to Rs.1098.59 crore. Also, the increase in salary expenses there has been increased under the head salary expenses due to trading activities while the expenses under the labour and wages expenses which was paid earlier due to manufacturing activities has gone down substantially. The assessee submitted that the books of accounts are audited, and the assessing officer has made *ad-hoc* disallowances without pointing out any defects in the books of accounts.

We note that during the appellate proceedings, Id CIT(A) called the remand report from the assessing officer regarding the additional evidences filed by the assessee. The assessing officer, submitted his report. The copy of the said remand report was provided to the assessee. The Id CIT(A) after going through the contents of the remand report and assessee`s reply on the remand report, noted that the major increase in the expenses in the relevant assessment year is on account of export charges and import charges, salary expenses and transport charges. The assessing officer had made the addition as the assessee had not produced the details before the assessing officer but during the appellate proceedings the details pertaining to these expenses were submitted which was forwarded to the assessing officer also but no comments has been received. The assessing officer has not made any comments in the remand report on these facts submitted during the remand report proceedings. The assessing officer has not pointed out any discrepancies or defects in the claim of the assessee and therefore the addition of Rs.10,30,000/-made by the assessing officer on ad hoc basis was deleted by Id CIT(A). We do not find any infirmity in the conclusion reached by Id CIT(A), therefore, we agree with the conclusion so reached by Id CIT(A) and dismiss the ground raised by the Revenue.

31. Ground No. 4 raised by the Revenue is dismissed.

32. Ground no.5 raised by the Revenue relates to deletion of the disallowance of deduction, under section 10AA of the Act of Rs.30,61,025/- made by the assessing officer.

33. Succinct facts qua the issue are that ground no.5 raised by the Revenue pertains to disallowance of deduction of Rs. 30,61,025/- u/s 10AA of the Act. During the assessment proceeding, the assessing officer noticed that assessee has claimed deduction u/s 10AA of the Act, at Rs.30,61,025/- in the computation of income and since no details were furnished before the assessing officer, therefore, the assessing officer held that the assessee has not fulfilled the conditions for claiming deduction u/s 10AA of the Act, as no evidences, such as import and export bills was filled and therefore the assessing officer disallowed the deduction u/s 10AA of the Act and made addition of Rs. 30,61,025/-.

34. On appeal, Id CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us. We have heard both the parties. Learned DR for the Revenue, relied on the findings of assessing officer. Whereas Id Counsel submitted that assessee is in the business of manufacturing, processing and import and export of goods in a unit established in SEZ. In the earlier year assessee had carried out manufacturing activities but in the relevant assessment year assessee was mainly engaged in trading activity in the nature of re-export of imported goods. The Id Counsel contended that during the assessment proceedings, assessee had filed the documents pertaining to its eligibility for deduction u/s 10AA of the Act which the assessing officer has not considered while framing the assessment order. The documents and evidences submitted by the assessee were as follows:

- a. Copy of Partnership Deed
- b. Copy of Lease Agreement with Diamond and Gem Development Corporation Ltd.  
(D.G.D.C)
- c. Copy of Bond Cum Legal Undertaking

- d. Copy of Letter of Allotment of ready building
- e. Copy of Letter of allotment
- f. Copy of Letter of approval
- g. Copy of Broad Banding
- h. Copy of setting up a unit in Surat SEZ.
- i. Copy of Annual Performance Report (APR) for A.Y. 2013-14

The Id Counsel contended that assessing officer has failed to take into consideration that the benefit of section 10AA is available to the units engaged in trading activities with respect of export and import goods and in case of conflict between the provision of the Income Tax Act and the SEZ Act the provision of SEZ Act shall prevail.

35. We note that during the appellate proceedings, the assessing officer was directed to submit a remand report regarding the additional evidences filed by the assessee. The assessing officer vide his letter dated 09.03.2018 submitted his report before Id CIT(A), which is reproduced below:

*"The assessee submitted details in order to prove the eligibility of claim of deduction under section 10AA. On perusal of the original assessment records it is seen that the assessee has submitted almost all the documents during the time of assessment so this part of additional submissions does not come within the ambit of additional evidence. The assessee has also said in para 2.2 of ground no. 7 pressed before Id. CIT(A) that the assessee had submitted the details required to be eligible for claiming deduction u/s 10AA and the same has been submitted by the assessee before Id. CIT(A).*

*The assessee has also submitted the bills pertaining to import, local purchase & exports. They were verified on, test check basis. As far as the local purchase is concerned, the assessee has purchased Gold from Parasmani Diamonds Pvt. Ltd. A summons u/s 131 of the Act was issued to the address mentioned in the copy of sales bill submitted by the assessee during remand proceedings so that this can verify the claim of purchase made by the assessee. The summons was served through affixture as the premise was found to be closed. On local inquiry by the inspector, it was found that the premise is closed since long time. Neither anybody attended nor any reply received on the stipulated date & time. Therefore, the claim of local purchase made by the assessee remains questionable.*

*The assessee has also submitted the details of imports. The same was verified on test check basis. On perusal of the submissions it is found that some of the information was not available. Though assessee has claimed to have made purchase from M/s Euro Distributers Diamonds BVBA (Belgium) but no any*

*purchase invoice, bill of entry, airway bill etc. was submitted during the remand proceedings. The assessee claims to have made a purchase of Rs.13,94,25,503/-. This raises question on the admissibility of claim of deduction u/s 10AA of the Act. The debit advice for import payments for the purchases made from M/s East West Traders (Hong Kong) was also not submitted during the remand proceedings. The assessee has also submitted the bills pertaining to exports. They were verified on test check basis. The Export bill realization for some of the sales made to M/s East West Traders (Hong Kong) & M/s Elegant Palace Ltd (Hong Kong) was also not submitted during the remand proceedings.*

*This raises question on the admissibility of claim of deduction u/s 10AA of the Act in the light of facts mentioned above. However, without any prejudice, the issues of claim of deduction u/s 10AA of the Act can be decided on merits."*

36. The copy of the said remand report was provided to the assessee. The assessee in response, submitted his reply dated 21.03.2018 wherein it was contended as following:

*"In Point No. 4.7of Ground No. 7, related to eligibility of claim of deduction, the assessing officer stated that the assessee has submitted almost all the documents at the time of assessment proceedings and therefore, there are no additional submission / evidences and hence he did not give any comment with regard to the same.*

*However, the assessing officer has stated further that assessee has submitted the bills pertaining to import, local purchase and exports and they were verified by him on test check basis. Regarding local purchase from Parasmani Diamonds Pvt. Ltd., the assessing officer stated that the said party was called by issuing summons but the business premises was found to be closed and on local inquiry by the Inspector also it was found that the premises was closed since long time. Since nobody attended, the assessing officer stated that the local purchases remained questionable. In this connection, it is respectfully submitted that the assessee had made local purchases of Rs.3,25,563/- only through one bill from the said party. The assessee had also made inquiry about the said party but since he had closed down his business, the assessee could not trace out them. However, as the assessee had submitted all the details of purchases and sales and there was no quantity remaining in the closing stock except the stock of silver which remained as it is from the beginning which can be seen from the value of the opening stock. Since the assessing officer has not doubted the sales made by the assessee firm, the question of raising doubt on local purchases does not arise. The learned assessing officer further observed that the assessee has submitted the details of Imports and the same were verified on test check basis. The assessing officer stated that the assessee could not furnish the purchase invoice and bill of entry of purchases from M/s Euro Distributors Diamonds BVBA (Belgium) having purchase value of Rs. 13,94,25,503/-. In this connection, it is submitted that the assessee had made purchases from nine different parties out of which the documents related to one party could not be submitted for the reason that the assessee had maintained party wise files related to all documents for purchases made through these parties. Since the business of the assessee was closed down and there were no operational activities in the business premises and since the*

*accounts staff had also- left, the partners of the assessee firm could not trace out the documents filed related to the transactions with the party. However, your Honour will appreciate that the assessee had carried out Import and export activities with all statutory compliance under the respective laws. Therefore, considering the fact that the assessee had produced almost full details in respect of imports, there should not be any doubt about only one missing bill and there should not be any question on the admissibility of deduction u/s 10AA of the Act as the assessee has fully complied with all the conditions laid down under the provisions of law.*

*The learned assessing officer also stated that the assessee has not produced the Debit Advice for Import payment of purchase made from M/s East West Traders (Hong Kong). In this connection it is respectfully submitted that the assessee firm has submitted all the relevant documents including purchase bills, bill of entry and only the payment advice was not traceable. Therefore, when all material evidences suggesting genuine imports were submitted, there is no question about the admissibility of claim of deduction U/s 10 AA of the Act. The learned assessing officer also accepted that the assessee has submitted bills pertaining to exports which were verified by him test check basis. Only in case of M/s East West Traders (Hong Kong) an M/s Elegant Palace Ltd. (Hong Kong), the Export Bill Realization advice could not be submitted as the same were not traceable. However, the assessee has submitted all the documentary evidences related to export sales and which were verified by the assessing officer also. Therefore, there should not be any question about admissibility of deduction u/s. 10 AA of the Act".*

37. The Id CIT(A) observed that during the course of the assessment proceedings, the assessing officer found that the assessee had undertaken trading of goods of Rs.30,61,025/- and this trading turnover has been reported as export which is not in accordance with provision of section 10AA of the Act. The assessing officer held that the deduction u/s 10AA of the Act is available for export of manufactured goods and for export of services only and not trading of goods. It was held that the export of trader goods cannot be regarded as 'export of services' as the term 'services' which is not defined in Income Tax Act but has been defined in section 2(z) of SEZ Act 2005 which define services as 'tradable services'. The SEZ Act restricted the tradable services to only those that are covered under the General Agreement on Trade in Services as defined by World Trade Organization. The assessing officer held that the diamond trading activity of the assessee does not figure in the list of services and sectors listed in the Annexure IB to the agreement establishing the World Trade Organization and also is does not figure in the schedule of commitments given by India to WTO. The

assessing officer held that the explanation given by the assessee is not satisfactory that the trading is covered by the definition of the services as laid out in SEZ Act and since section 10AA has been inserted in the Act by the SEZ Act it does not define the word 'Services' the meaning ascribed to it in SEZ Act 2005 has to be applied for the purpose of administration of IT Act with reference to section 10AA of the Act. The assessing officer relied on the notification No. 11521 [SO 890(E)(F. No. 142/49/2000-TPL)] dated 26.09.2000 and Circular No. 1/2013 (F. No. 178/84/2012-ITA.I) dated 17.01.2013 to hold that the trading activity was never included in the services for taking the benefits u/s 10AA of the Act. Therefore, assessing officer disallowed the claim of the assessee u/s 10AA of the Act.

38. Before Id CIT(A), the assessee submitted that manufacturing unit was setup in SEZ for processing and manufacture of cut and polished diamonds and diamond studded jewellery. It was stated that under the SEZ Act the section 2(z) define services to included tradable services as may be prescribed by the Central Government for the purpose of this Act and the Central Government has included trading as one of the services. In the SEZ Rules 2006, the Rule 76 list the services for the purpose of section 2(z) as 'trading', 'warehousing', 'R&D Services' etc. The section 51 of the SEZ Act provides that the provisions of SEZ Act and the Rules will have the overriding effect over the provisions contained in any other Act. The SEZ Act was promulgated first and the Income Tax deduction is just consequential as the provisions of SEZ Act has overrides the Income Tax Act. It was further submitted that Form No. 56F as prescribed under section 10AA (8) of the IT Act does not provide for deducting trading turnover from the total turnover. The assessee also relied on the Instruction No. 4/2006 dated 24.05.2006 issued by the Ministry of Commerce & Industry regarding grant of deduction u/s 10AA to the units carrying on trading in the nature of re-export of imported goods. The assessee also relied on the judgment in the case of Gitanjali Exports Corporation Ltd. Vs. DCIT ITA No. 6947 & 6948/Mum/2011 dated 08.05.2013 (Mum ITAT) and Goenka Diamonds and Jewellery Limited (2012) 19 taxmann.com 91 (Jaipur).

39. The Id CIT(A), on the perusal of the details, observed that provisions of section 10AA of the IT Act provide a deduction of 100% profit and gains from the export of such articles or things from services. The Second Schedule to the SEZ Act includes 'trading' as services. The trading for the purpose of the Second Schedule of the SEZ Act means import for the purpose of re-export as per the SEZ (Amendment) Rules 2006 vide notification no. GSR/470 (E) dated 10.08.2006. The provisions of section 51 of SEZ Act lays down that the SEZ Act and Rules will have an overriding effect over the provisions contained any other Act including Income Tax Act. The Instruction No. 4/2006 dated 24.05.2006 issued by the Ministry of Commerce & Industry regarding grant of deduction u/s 10AA to the units carrying on trading in the nature of re-export of imported goods. The definition of services as per SEZ Rules 2006 at Rule 76 includes 'trading' as services for the purpose of sub-clause Z of section 2 of the SEZ Act. The Circular 17 of 29.05.2006 issued by the Export Promotion Council for EOUs & SEZ Unit (Ministry of Commerce & Industry, Government of India) para 2 of which reads:

*"In the meantime, sourcing from domestic area may be permitted by units in the SEZs which are allowed to do trading subject to this circular being cited on prescription of an undertaking by the concerned unit that no income tax benefit will be availed by the Unit for trading except in the nature of re-export of imported goods".*

The assessee has filed a schedule to SEZ which clears the case with modification to the Income Tax Act, 1961 for inserting Sec. 10AA of the Act. Instruction No. 4/200 also clears the claim of deduction u/s 10AA of the Act to the units carried out for trading in the nature of re-export from the SEZ Act. So it is very clear from the SEZ Act that services includes trading also and assessee has done trading from SEZ Act of the imported goods which have been re-exported after processing.

40. The Id CIT(A) noted that under section 51(1) of the SEZ Act, lays down that the provision of this Act has overriding effect in case of contradiction between the SEZ Act and other Act. In the SEZ Act under Section 51, it has been clearly provided that the provision of SEZ Act will override the provision of any other Act, meaning thereby the provisions provided under the SEZ Act has to override on the provision of section 10AA of the Income Tax Act. Hence, by virtue of

section 51 of the SEZ Act, the provision of SEZ Act and Rules, the Circular issued by Government of India and the provision of Section 51 of the SEZ Act it is evident that trading done by the assessee is a service and, therefore, deduction under section 10AA is allowable on trading activities.

41. The Id CIT(A) observed that in the remand report, the assessing officer reported that assessee had submitted the bills pertaining to import, local purchase and exports and they were verified by him on test check basis. Regarding local purchase from Parasmani Diamonds Pvt. Ltd., the assessing officer stated that the said party was called by issuing summons but the business premises was found to be closed and on local inquiry by the Inspector also it was found that the premises was closed since long time. Since nobody attended, the assessing officer stated that the local purchases remained questionable. It is seen that the assessee had made local purchases of Rs.3,25,563/- only through one bill from the said party and party did not attend as it had closed down his business. However, the assessee had submitted all the details of purchases and sales and there was no quantity remaining in the closing stock except the stock of silver which remained as it is from the beginning which can be seen from the value of the opening stock. Since the assessing officer has not doubted the sales made by the assessee firm, the question of raising doubt on local purchases does not arise. The assessing officer further observed in the remand report that the assessee had submitted the details of imports and the same were verified on test check basis. The assessing officer stated that the assessee could not furnish the purchase invoice and bill of entry of purchases from M/s Euro Distributors Diamonds BVBA (Belgium) having purchase value of Rs. 13,94,25,503/-. The assessing officer also stated that the assessee has not produced the Debit Advice for Import payment of purchase made from M/s East West Traders (Hong Kong). During the remand report proceedings, the assessee had submitted all the documentary evidences related to export sales including purchase bills, bill of entry, etc. which were verified by assessing officer on test check basis.

42. The Id CIT(A) after considering the above facts, noted that section 51 of SEZ Act has clearly provided that the provisions of SEZ Act will override the provisions of any other Act meaning thereby that the provisions provided under the SEZ Act overrides the provisions of Sec. 10AA of the Act and the SEZ Rules includes trading to be services. Therefore, Id CIT(A) held that the assessee is entitled to claim the deduction u/s 10AA of the Act and the addition made by the assessing officer by disallowance u/s 10AA was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that conclusion reached by Id CIT(A) is correct therefore does not require interference by us. Consequently, we dismiss the ground raised by the Revenue.

43. Ground No. 5 raised by the Revenue is dismissed.

44. Now, we shall take Revenue's appeal in ITA No.534/SRT/2019, for assessment year 2014-15, wherein the grounds raised by Revenue are as follows:

*“1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the disallowance of deduction u/s 10AA of the Act of Rs.1,46,61,290/- made by the assessing officer ignoring that provision of section 10AA is not allowable for trading activity?”*

*2. Whether on the facts and circumstances of the case and in law, the CIT(A) has Justified in deleting the addition of Rs.5,38,00,000/- made by the assessing officer on account of unsecured loan u/s 68 of the I.T. Act ignoring that no satisfactory details are given by the assessee in respect of the amounts credited in the books of the assessee?”*

*3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the addition of Rs.1,58,00,000/- made by the assessing officer on account of unexplained cash credit u/s 68 of the Act, ignoring that no satisfactory details are given by the assessee in respect of the amounts credited in the books of the assessee?”*

*4 Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has justified in deleting the addition of Rs. 83,52,000/- made by the assessing officer on account of disallowance of interest on unsecured loans since the entire unsecured loan of Rs.6,96,00,000/- were treated as unexplained cash credits U/s 68 of the act.*

*5. It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that of Assessing Officer may be restored to the above extent.*

6. *The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.*”

45. Ground no.1 relates to deletion of disallowance of deduction u/s 10AA of the Act of Rs.1,46,61,290/-.

46. Brief facts *qua* the issue are that the assessee derives income from business of wholesale trading export of diamonds, precious stones, etc. and has claimed deduction u/s 10AA of I.T Act, 1961 of Rs.1,46,61,290/-. As the Id CIT(A) deleted the disallowance of deduction under section 10AA of the Act, therefore the Revenue has challenged the deletion of addition of Rs.1,46,61,290/- made by the assessing officer on account of disallowance of exemption u/s 10AA of the I.T. Act. In the assessment order, the assessing officer noted that the assessee claimed exemption u/s 10AA of the Act, at Rs.1,46,61,290/- from trading of export of diamond, precious stones etc. The assessee's business operation was located in SEZ and it was claimed that profit from trading activities was eligible for deduction u/s 10AA of the Act. The assessing officer discussed in details the profits eligible for deduction u/s 10AA pertaining to SEZ units and concluded that the profits earned from trading activities by SEZ units was not eligible for deduction u/s 10AA of the Act, therefore assessing officer disallowed the deduction claimed by the assessee to the tune of Rs.1,46,61,290/-

47. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the Assessing Officer observing as follows:

**“6. Decision:**

*After considering the findings of the assessing officer and submissions of the assessee, I find that the assessee, vide ground no. 1, has challenged the addition of Rs.1,46,61,290/- made by the assessing officer on account of disallowance of exemption u/s 10AA of the IT. Act. In the assessment order, the assessing officer noted that the assessee claimed exemption u/s 10AA of the Act at Rs.1,46,61,290/- from trading of export of diamond, precious stones etc. The assessee's business operation was located in SEZ and it was claimed that profit from trading activities was eligible for deduction u/s 10AA of the Act. The assessing officer discussed in details the profits eligible for deduction u/s 10AA pertaining to SEZ units and concluded that the profits earned from trading activities by SEZ units was not eligible for deduction u/s 10AA of the Act. On the other hand, the AR has contended that the assessee was engaged in business of manufacturing,*

*processing, import & re-export of goods in the SEZ and had carried out manufacturing activities in the earlier years upto A.Y. 2012-13. From A.Y. 2012-13 onwards, the assessee claimed to be engaged mainly in trading activity in the nature of re-export imported goods. It was also stated that for A.Y. 2012-13 finalized u/s 143(3) of the Act, deduction u/s 10AA was fully allowed. The AR has referred to the decision of Hon'ble ITAT Jaipur in the case of Goenka Diamond Jewellers (146 TTJ 68) wherein it was held that the provision of SEZ Act 2005 would override the provisions of Income Tax Act and the assessee's claim of deduction of u/s 10AA in respect of trading from SEZ units of imported goods re-exported was allowed. The AR has also referred to the decision of Hon'ble ITAT Surat Bench in the case of ACTT v/s Shiv Krishna Exports (ITA no. 3220/A/2015/SRT) wherein the issue of 10AA deduction was allowed in favour of assessee and facts of that case squarely applies to the current case of the assessee.*

*In view of the above facts and legal position, it is apparent that the jurisdictional ITAT Surat bench has decided the issue of deduction u/s 10AA pertaining to trading from SEZ units as eligible deduction. Hence, the addition of Rs.1,46,61,290/- by way of disallowance of deduction u/s. 10AA is not sustainable and the same is hereby deleted.”*

48. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us. The Ld. DR for the Revenue stated that decision of the Id. CIT(A) is not acceptable. The Id DR pointed out that assessing officer has held that the exemption claimed u/s 10AA of the Act is applicable only for manufacturing unit whereas in this case assessee has been involved only in trading activities. The assessee has not rendered any service but involved fully in sales and purchases. Hence, deduction cannot be allowed to the assessee.

49. On the other hand, the Ld. Counsel for the assessee defended the order passed by the Id. CIT(A).

50. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. While adjudicating the Revenue's appeal in ITA No.713/SRT/2018 for assessment year 2013-14, we have discussed the issue in detail in above para nos. 34 to 42 of this order. The facts and law remains the same therefore we do not repeat them again. We have gone through the above findings of Id CIT(A) and noted that there is no any infirmity in

the conclusion reached by Id CIT(A). Therefore, we approve and confirm the findings of Id CIT(A) and dismiss the ground raised by the Revenue.

51. In the result, ground No.1 raised by the Revenue is dismissed.

52. Ground nos.2 to 4 raised by the Revenue are interconnected and mix, therefore we take them together. These grounds relate to deletion of addition of Rs.6,96,00,000/- and deletion of interest expenses of Rs. 83,52,000/-.

53. Succinct facts qua the issue are that Revenue has challenged addition of Rs.5,38,00,000/-pertaining to unsecured loans received from seven parties as unexplained cash credit u/s 68 of the Act and the Revenue also has challenged the addition of Rs.1,58,00,000/- pertaining to capital introduced by the three partners as unexplained cash credit u/s 68 of the Act, as these additions were deleted by Id CIT(A). In the assessment order, the assessing officer noted following unsecured loans received by the assessee.

<i>Sr.no.</i>	<i>Name of the lender</i>	<i>Amount (Rs).</i>
1	<i>Sangeeta Tosawad</i>	<i>10,00,000</i>
2	<i>Chirag Shantilal Shah</i>	<i>50,00,000</i>
3	<i>Rajendra Tosawad</i>	<i>2,80,00,000</i>
4	<i>Kalpesh Harilal Choudhary</i>	<i>53,00,000</i>
5	<i>Ketan Kirital Shah</i>	<i>59,00,000</i>
6	<i>Narsh Sureshmal Shah</i>	<i>32,00,000</i>
7	<i>Hemant Shah</i>	<i>54,00,000</i>
	<i>Total</i>	<i>5,38,00,000</i>

54. The assessing officer also noted amounts received from following three parties as under:

<i>S.NO.</i>	<i>Name of the partner</i>	<i>Capital Introduced Rs.</i>
8	<i>Dhaval Suresh Shah</i>	<i>54,00,000</i>
9	<i>Mihir Suresh shah</i>	<i>54,00,000</i>
10	<i>Pratik Haresh Harde</i>	<i>50,00,000</i>
	<i>Total</i>	<i>1,58,00,000</i>

55. The details pertaining to unsecured loans were called for by the assessing officer and after verifying the details, the assessing officer observed that the assessee did not give any credible evidence to prove the genuineness of the

unsecured loans. Hence, Rs.6,96,00,000/-(Rs.5,38,00,000 + Rs,1,58,00,000) was added as unexplained cash credit.

56. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deled the addition made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

57. Learned DR for the Revenue submitted that decision of the Id. CIT(A) is not acceptable, he pointed out that during the assessment proceedings, ample opportunities were provided to assessee but the assessee has failed to produce the required details. Hence, the assessing officer has rightly made the addition. assessing officer Placed reliance on the decision of Hon'ble Apex Court in the case of Sumati Dayal Vs CIT wherein the Apex Court has held that "In all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if the receipt is in the nature of income, the burden of proving that it is not taxable because it falls within the exemption provided by the Act, lies upon the assessee. Since the assessee has not proved the bona fide of the transaction therefore addition made by the assessing officer may be confirmed.

58. The Ld. Counsel for the assessee defended the order passed by the Id. CIT(A).

59. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that in the appellate proceedings, assessee furnished additional evidences pertaining to unsecured loans which was forwarded to the assessing officer for remand report. The assessing officer furnished remand report dated 09.03.2018 which was forwarded to the assessee for rejoinder report. In the reply to remand report, the assessee has controverted the findings/observations of the assessing officer in the Remand

report. Further, the assessee also filed the details of ITR acknowledgement, confirmations, etc. of loan of Rs. 54 lacs from Hemant which were left to be filed in the remand proceedings. Based on the detailed explanations filed in the remand as well as appellate proceedings, the assessee contended that the addition of unsecured loans of Rs.6,96,00,000/- could not be treated as unexplained credits u/s 68 of the Act.

60. After considering the findings of the assessing officer in the remand report and assessment order as well as submissions of the assessee in the appellate proceedings including reply to remand report, the issues of unsecured loans, was discussed by the Id CIT(A), party- wise as follows:

**(i) Sangita Tosawad**

*The assessing officer noted that the assessee had shown receipt of loan of Rs.10 lacs from Sangita Tosawad. In the assessment order, the said amount was treated as unexplained cash credit by the assessing officer. In the remand report dated 09.03.2018, the assessing officer reported that the capital balance of Sangita Tosawad as per Financial statements as on 01.04.2013 was shown at Rs.52,21,025/- and total income for the current A.Y. 2014-15 was declared at Rs.6,26,420/-. In the A.Y. 2013-14, Sangita Tosawad had declared total income at Rs. 2,90,610/- and gave loan of Rs.40 lacs to the assessee. Thus, the assessing officer observed that creditworthiness this lender remained doubtful. After going through the personal balance sheet of Sangita Tosawad as on 31.03.2014, I find that her opening capital balance as on 01.04.2013 was Rs.5,22,10,025/- as against the assessing officer's incorrect observations of capital balance of Rs.52,21,025/-. Further, the bank statement indicate loan of Rs. 10 lacs given to the assessee through bank account and in her bank account there is no indication of any cash deposits prior to such loan. Further, this lender had already advanced Rs. 40 lacs in earlier A.Y. and Rs. 10 lacs new loan was received in current A.Y. The assessing officer has not stated that the earlier A.Y. loan was also treated as unexplained cash credit in the A.Y. 2013-14. Thus, the requirement of sec. 68 of the Act for identity, creditworthiness and genuineness of the loan from Sangita Tosawad is found to be discharged by the assessee and the assessing officer has not controverted this fact evidenced from documentary submissions.*

**(II) Chirag S. Shah**

*The assessing officer noted an unsecured loan of Rs. 50 lacs was shown by the assessee in the current A.Y. and the same was treated as unexplained cash credit in the assessment order. In the remand report dated 09.03.2018, the assessing officer observed that no loan was received from Chirag S. Shah (ex-partner of the firm) and in reality, Chirag S. Shah was paid Rs. 50 lacs by the assessee firm through RTGS. Thus, there is no reason to treat Rs. 50 lacs pertaining to Chirag S. Shah as unexplained cash credits.*

**(iii) Rajendra Tosawad**

Unsecured loan of Rs.2,80,00,000/- was stated to have been received and the said amount was added by the assessing officer as unexplained cash credit in the assessment order. In the remand report dated 09.03.2018, the assessing officer has accepted the discrepancy in credit and debit entry in the books of account whereby it was noted that Rs. 2.80 Cr was not received from Rajendra Tosawad (ex-partner) but in reality, Rajendra Tosawad was paid Rs. 2.80 Cr. by the assessee firm. The said payment of Rs.2.80 Cr. was shown to have been made on behalf of Ramesh Kadel (partner of the firm). The assessing officer also noted that before payment of Rs.2.80 Cr. by the assessee firm, deposit from Ramesh Kadel was received. The AR has filed a copy of assessment order u/s 143(3) of A.Y. 2014-15 in the case Ramesh Kadel whereby returned income of Rs. 69,16,360/- was accepted as assessed income. Thus, it was contended that there was no case for any doubt regarding funds received from Ramesh Kadel. Considering this fact, it is apparent that the unsecured loan of Rs.2.80 Cr. has not received from Rajendra Tosawad and hence, the same cannot be treated as unexplained cash credit.

**(iv) Kalpesh H. Chaudhary**

Unsecured loan of Rs.53 lacs was treated as unexplained cash credit by the assessing officer. In the remand report dated 09.03.2018, the assessing officer noted that as per ITR of Shri Kalpesh Chaudhary, total income of Rs.12,27,780/- was shown and loan of Rs.53,50,000/- was given to the assessee. The assessing officer also noted that the said loan was visible in the bank passbook of Shri Kalpesh Chaudhary. The assessing officer concluded in the remand report that credit worthiness of Kalpesh Chaudhary remained doubtful as financial statement of A.Y.2014-15 was not submitted. In the reply to remand report, the AR has contended that Shri Kalpesh Chaudhary having salary income was not supposed to maintain his books of account. Therefore, financial statements were not available for furnishing in the remand proceedings. The AR reiterated that bank transactions of Kalpesh Chaudhary clearly reflected that amounts received from some other parties were utilized for giving loan to the assessee firm. The AR also stated that there was no cash deposit as per bank statements of Kalpesh Chaudhary. I have verified the bank statement of Kalpesh S. Chaudhary and find that there was no cash deposit prior to loan cheques issued to the assessee. Hence, there is no case for doubting the creditworthiness of this lender.

**(v) Ketan K. Shah**

Unsecured loan of Rs.59 lacs was treated as unexplained cash credit u/s 68 of the Act. In the remand report, the assessing officer noted that Shri Ketan K. Shah had shown his total income at Rs.7,18,380/- in the ROI filed and the entries of loans of Rs.59 lacs was reflected in his passbook. Based on the total income, the assessing officer concluded that the creditworthiness of Shri Ketan K, Shah remained doubtful. In the reply to remand report, the AR of the assessee has stated that Shri Kalpesh Shah had gross total income of Rs.19,13,353/- which included exempt income in the form of share of profit u/s 10(2)(A) of Rs.10,76,212/- which was not considered by the assessing officer. The AR also stated that Ketan K. Shah was earning income from salary as well as business income u/s 44AD and share of profit from partnership firm and was not supposed to mentioned books of account. Thus, there was no question of furnishing financial statement before the assessing officer in the remand proceedings. I have verified the copy of bank statement of Shri Ketan Shah and found that the fund of Rs.59 lacs was transferred from his

partnership firm M/s Hardik Gems and loan of Rs.59 lacs was advanced to the assessee. Considering this fact, there is no case for treating the said unsecured loan as unexplained cash credit.

**(vi) Naresh S. Shah**

Unsecured loan of Rs. 32 lacs was treated as unexplained cash credit u/s 68 of the Act. In the remand report, the assessing officer noted that the return of income disclosing total income of Rs.40,79,720/- was shown by Shri Naresh Shah and the loan given to the assessee was also reflected in his bank statements. Thus, the assessing officer has not given any adverse findings of this loan and hence the same cannot be treated as unexplained cash credit.

**(vii) Hemant Shah**

Unsecured loan of Rs.54 lacs was treated as unexplained cash credit u/s 68 of the Act. In the remand report, the assessing officer noted that only confirmation of letter of Hemant shah was filed during the remand proceedings and copy of bank statement, ITR was not filed. In the reply to remand report, the AR contended that the said loan was received through banking channel and necessary documentary evidences could not be filed as the said person was not available. Vide submission dated 23.07.2019 the AR has filed the copy of ITR acknowledgment for A.Y. 2014-15 of Shri Hemant Shah which indicate total income for Rs.40,57,540/-. Copy of ITR being corroborative evidence, it was not treated as new evidence. Considering the fact that the loan was received through bank and the assessee had substantial total income shown in the ROI filed for current A.Y., the said loan cannot be treated as unexplained cash credit in the case of assessee.

**(viii) Dhaval S. Shah**

Capital introduction of Rs.54 lacs was treated as unexplained u/s 68 of the Act. In the remand report, the assessing officer noted that Shri Dhaval Shah had shown total income at Rs.15,83,480/- for current A.Y.2014-15 and bank statement was also furnished. However, the assessing officer commented that the creditworthiness of this lender remained doubtful because the said loan was not reported properly in the books of account of the assessee. In the reply to remand report, the AR has stated that gross total income of Shri Dhaval Shah was Rs.41,72,119/- after considering share of profit from the firm which was exempt u/s 10(2)(A) of the Act. The AR also contended that the capital introduced by Shri Dhaval Shah was through cheque and duly reflected in the bank statement wherein there was no cash deposit. Considering these facts, the capital introduction of Rs. 54 lacs by Shri Dhaval Shah cannot be treated as unexplained cash credit.

**(ix) Mihir S. Shah**

Capital introduction of Rs.54 lacs was treated as unexplained u/s 68 of the Act. In the remand report, the assessing officer noted that Shri Dhaval Shah had shown total income at Rs.15,83,480/- for current A.Y.2014-15 and bank statement was also furnished. However, the assessing officer commented that the creditworthiness of this lender remained doubtful because the said loan was not reported properly in the books of account of the assessee. In the reply

*to remand report the AR has stated that gross total income of Shri Mihir Shah was Rs.41,54,769/- after considering share of profit from the firm which was exempt u/s 10(2)(A) of the Act. The AR also contended that the capital introduced by Shri Mihir Shah was through cheque and duly reflected in the bank statement wherein there was no cash deposit. Considering these facts, the capital introduction of Rs.54 lacs by Shri Mihir Shah cannot be treated as unexplained cash credit.*

**(x) Pratik H. Harde**

*Capital introduction of Rs.53 lacs was treated as unexplained u/s 68 of the Act. In the remand report, the assessing officer noted that Shri Pratik Harde had shown total income at Rs.15,83,480/- for current A.Y. 2014-15 and bank statement was also furnished. However, the assessing officer commented that the creditworthiness of this lender remained doubtful because the said loan was not reported properly in the books of account of the assessee. In the reply to remand report, the AR has stated that Shri Pratik Harde had received fund through RTGS to the tune of Rs.54 lacs from another firm and that fund was utilized to advance Rs.53 lacs to the assessee firm. Considering these facts, the capital introduction of Rs.53 lacs by Shri Pratik Harde cannot be treated as unexplained cash credit.*

61. Therefore, Id CIT(A), in view of the above factual findings noted from the remand report, as well as submission of the assessee in reply to remand report, observed that the unsecured loan of Rs.6,96,00,000/- as unexplained cash credit is not sustainable. In the remand report, the assessee had filed documentary evidences along with bank statements of all the above persons (except Hemant Shah) which proved the creditworthiness of the lenders to advance loan. In the case of Hemant Shah also, ITR acknowledgement and confirmation indicating payment through bank was filed and the copy of ITR indicated total income of Rs.40,57,540/- for current A.Y. Considering the substantial total income of Rs.40,57,540/-, there is no other adverse findings to reject the genuineness of this loan. Thus, the assessing officer's comment in the remand report mentioning doubtful creditworthiness in most of the case of lenders is devoid of any merits. Further, if the assessing officer is merely doubtful of creditworthiness without any concrete facts, the loans cannot be treated as unexplained. Hence, the addition of Rs.6,96,00,000/- as unexplained cash credit was deleted by Id CIT(A). We note that conclusion reached by Id CIT(A) is correct and admit no interference by us, therefore we dismiss the ground raised by the Revenue.

62. Since, we have confirmed the findings of Id CIT(A), in deleting the addition of Rs.6,96,00,000/-, hence there is no reason for interest disallowance of Rs.83,52,000/-.

63. In the result, ground nos. 2 to 4 raised by the revenue is dismissed.

64. Ground nos. 5 and 6 are general in nature hence do not require adjudication.

65. In the combined result, both appeals filed by the Revenue in ITA No.713/SRT/2018, and in ITA No.534/SRT/2019 are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 22/02/2023 by placing the result on the Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 22/02/2023

*SAMANTA*

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat