IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E",MUMBAI

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
Ms. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2050/Mum/2023
(Assessment year : 2012-13)

The ACIT-24(1), Mumbai Room No.601, Piramal Chambers Jeejeebhoy Lane, Lalbaug, Parel, Mumbai-400 012	vs	M/s H.K. Designs (India) LLP Unit 113, SDF IV, SEEPS-SEZ, Andheri (East), Mumbai-400 096 **PAN : AAEFH0962N**
APPELLANT		**RESPONDENT**

Present for the Assessee	Shri Nitesh Joshi z/w Shri Ashwin Kashinath
Present for the Department	Shri Biswanath Das – CIT DR

Date of hearing	20/09/2023
Date of pronouncement	09/10/2023

O R D E R

Per Padmavathy S (AM):

This appeal by the revenue is against the order of the Commissioner of Income-tax, National Faceless Appeal Centre, Delhi [in short, 'the CIT(A)] dated 01/04/2023 for A.Y. 2012-13.

2. The Revenue raised various grounds pertaining to the following issues:-

(1) Exemption under section10AA – Ground Nos.1 to 5

(2) Interest income considered for exemption under section 10AA – Ground No. 6

(3) Income from sale of gold dust considered for exemption under section 10AA – Ground No.7

3. The assessee is engaged in the business of manufacturing and exporting of studded jewellery from the unit located in Santacruz Electronic Processing Zone (SEEPZ) Special Economic Zone Andheri (SEZ). The assessee filed the return of income for A.Y. 2012-13 on 27/09/2012 declaring total income of Rs.11,19,31,441/-. The case was selected for scrutiny under CASS and the statutory notices were duly served on the assessee. In the return of income, the assessee had claimed deduction under section 10AA of the Income-tax Act (in short, 'the Act') to the tune of Rs.11,15,94,212/-. The Assessing Officer completed the assessment denying the benefit of section 10AA for the reason that the assessee has failed to fulfill the conditions specified in section 10AA of the Act. The Assessing Officer also held that interest from fixed deposits and receipts from sale of gold dust are not to be included while claiming the deduction under section 10AA. On appeal, the CIT(A) allowed the appeal in favour of the assessee by following the decision of the co-ordinate bench of the Tribunal in assessee's own case for A.YS 2007-08 to 2009-10. The Revenue is in appeal against the order of the CIT(A).

Deduction claimed under section 10AA

4. The assessee first claimed the deduction under section 10AA in AY 2007-08. The assessing officer denied the deduction in the said assessment year for the reason that the conditions prescribed for claiming the deduction under section 10AA has not been fulfilled. For the year under consideration also the assessing

officer held that the assessee is not entitled to claim deduction stating that the reasons for which the deduction was denied in AY 2007-08 are relevant and exists in this assessment year as well. The brief facts pertaining to the issue as elaborated in the order of coordinate bench for AY 2007-08 is extracted below.

> *4. There was another firm by name M/s H K Jewels (for the sake of convenience "M/s H.K.Jewels (old)") which was formed on 26.8.2002 and the said firm applied for Letter of Permission (LOP) to the Development of Commissioner, SEEPZ, a Notified Special Economic Zone in order to set up a project for manufacturing of studded Jewellery. The Development Commissioner, SEEPZ granted LOP to M/s H.K. Jewels on 16.9.2004. It was stated that another partnership firm by very same name i.e. M/s H K Jewels (for the sake of convenience "M/s H.K.Jewels(new)") was constituted on 11.2.2005 in order to implement the project of "M/s H K Jewels(old)". According to the assessee, "M/s H K Jewels (new)" commenced implementation of project and thus incurred a sum of Rs.40.26 Lakhs up to 31.3.2006. We may mention that these facts are coming out of order passed by Ld CIT(A).*
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> *5. M/s H K Jewells decided to transfer the project with its assets and liabilities etc and accordingly, they were assigned to the assessee herein under Deed of Assignment dated 7.10.2005. But it is stated that the Deed of Assignment came into effect from 1.4.2006 only. Upon receipt of assets ITA and liabilities, the assessee applied for transfer of LOP to its name and the same was transferred by Development of Commissioner on 20.10.2006. Accordingly, the assessee claimed deduction u/s 10AA of the Act.*

5. For the year under consideration, the Assessing Officer sent a show cause notice similar to earlier assessment years calling on the assessee to show cause as to why deduction claimed under section 10AA should not be disallowed. The assessee submitted that it has only one undertaking operating from SEEPZ and is engaged in the business of manufacture of studded jewellery which commenced manufacturing activity from 27/03/2006. The assessee further submitted that the undertaking is newly formed and there is no splitting up or reconstruction of

business already in existence. The assessee also submitted that all the plants and machinery are newly acquired; not previously used for any purpose and the sale proceeds in respect of export turnover are received in India in convertible foreign exchange within the prescribed time. Accordingly, the assessee submitted that it is eligible for deduction under section 10AA. The Assessing Officer did not accept the submissions of the assessee. The assessing officer also did not accept the submission of the assessee that CIT(A), in the earlier years in assessee's own case has allowed the claim in favour of the assessee stating that the revenue is in appeal before the Tribunal against the order of the CIT(A). The Assessing Officer held that the assessee is not an entrepreneur within the meaning of section 2(j) of the SEZ Act, 2005 and also not a successor as running concern for SEZ unit in Andheri, Mumbai. Accordingly, the Assessing Officer denied the benefit of exemption under section 10AA to the assessee following the order for A.Y. 2007-08.

6. On further appeal, the CIT(A) held that the co-ordinate bench of the Tribunal in earlier assessment years i.e. A.Ys 007-08 to 2009-10 has set aside the matter back to the Assessing Officer by holding that the assessee satisfies all the conditions laid down under section 10AA and, therefore, eligible for deduction. The CIT(A) further held that the Assessing Officer in the order giving effect has allowed the deduction under section 10AA and accordingly the CIT(A) directed the Assessing Officer to grant exemption under section 10AA to the assessee for the year under consideration also. Aggrieved, the revenue is in appeal before the Tribunal.

7. The Ld.AR submitted that the assessee has fulfilled all the conditions specified under section 10AA. The Ld.AR submitted that the assessee is not formed by splitting up of an existing unit as has been contended by the Assessing Officer. The Ld.AR drew out attention to the order giving effect dated 31/12/2016 for A.Y. 2007-08 where the Assessing Officer has allowed the benefit of section 10AA to the assessee. The Ld.AR, therefore, submitted that the revenue in earlier assessment years has accepted that the assessee is eligible or deduction under section 10AA and that the revenue cannot take a different stand for the year under consideration. The Ld.AR further submitted that the benefit of section 10AA if allowed in the initial assessment year cannot be denied in the subsequent assessment year. The Ld.AR also submitted that in the subsequent assessment year i.e. A.Y. 2013-14, there was no disallowance made by the department towards deduction under section 10AA. Accordingly, the Ld.AR prayed that the decision of the CIT(A) be upheld.

8. The Ld.DR relied on the order of the Assessing Officer.

9. We heard the parties and perused the material on record. We notice that the co-ordinate bench in assessee's own case for A.Ys 2007-08 to 2009-10 (ITA Nos 5192,4058 & 3213/Mum/2012 dated 04/11/2015) had considered similar issue and remitted the issue back to the Assessing Officer by holding that –

> *"10. We have heard the parties and perused the record. The Ld D.R. submitted that the Ld CIT(A) has given findings on many factual aspect without making reference to any of the documents and further the Ld CIT(A) has considered certain new facts also. Further, he submitted that the submissions made by the assessee before Ld CIT(A) also suffers from*

contradictions. He submitted that the assessee had claimed that M/s H.K. Jewels (old) and M/s H.K.Jewels (new) are one and the same firm. However, the above said firms carry different Permanent Account Numbers, viz., AADFH8907J and AACFH4846F respectively. Accordingly the Id D.R strongly supported the orders passed by the assessing officer and further submitted that the factual aspects require examination.

11. On the contrary, the Id A.R submitted that the assessee has purchased the entire project from M/s H.K. Jewels and hence it was a case of purchase and not reconstruction. He submitted that the machinery purchased from the old firm constitues less than 20% of the total value of machineries and hence the same falls within the exception given in sec. 10AA(4) r.w.s. Explanation given under 80IA(3) of the Act.

12. Though the assessee has strongly contended on legal aspects, we notice that there are apparent contradictions with regard to the facts prevailing in the instant case:-

(a) the assessee has claimed that M/s H.K. Jewels (new) was formed to implement the project of M/s HK. Jewels (old), even though the LOP was in the name of the later. This explanation was offered before Ld CIT(A) only and the effect of this explanation could not be examined by the AO. Further, it is not clear as to whether the person who is not holding LOP, i.e., H.K. Jewels (new) could implement a project in SEEPZ without letter of permission from Development Commissioner, SEEPZ.

(b) It is stated that the deed of assignment took effect from 1.4.2006 only even though the agreement was reached on 7.10.2005. It was further stated that the M/s H.KJewels (new) has incurred expenses to the tune of Rs.40,26,308/-. We notice the details of these expenses have not been examined by Ld CIT(A) or the assessing officer. It is also not clear as to what happened to the project between 7.102005 to 1.4.2006, i.e., who implemented the project, what was the details of expenses, who met the expenses etc.

(c) If the deed of assignment came into effect only from 1.4.2006, how the auditors of the assessee noted the date of commencement of production as 27.3.2006. It is not clear as to whether the date of commencement is required to be reported to the Development Commissioner, SEEPZ or to be certified by him or not. There should not be any doubt that the statutory auditor's certificate carries lot of recognition, since they certify on verification of relevant facts and documents. There is no dispute that

the of "Date of Commencement" is crucial to determine the eligibility of the assessee to claim deduction u/s 10AA of the Act.

(d)The assessee has stated that the trial runs took place on 27.3.2006. However, the fact remains that the assessee got the assets, liabilities and rights only on 1.4.-2006. In that scenario,"how and when the remaining machineries were purchased and installed by the assessee and how trial run could take place on 27.3.2006. Apparently, these factual aspects have not been examined by Ld CIT(A). These factual aspects would also help to examine the question as to whether it was a case of reconstruction of busir or not.

(e)The Id D.R has pointed out that the observations of the CIT(A) that the LOP cannot be transferred in case of reconstruc of business are not supported by any document. Hence the ; observations of the Ld CIT(A) require examination.

(f)The Ld CIT(A) has also observed that M/s H.K. Jewels (it is clear whether it was old firm or new firm) did not use machineries purchased by it. The Ld D.R contended that the 5 observations have been made without carrying out any examination.

(g) Unless the details and value of machineries purchased from I H.K. Jewels and the details and value of machineries available v the assessee were examined, one cannot come to the finding t the machineries purchased constitutes less than the prescribed limit of 20%.

13. The foregoing discussions would show that it is required to exam many factual aspects relating to the claim of the assessee by d considering the submissions of the assessee, books of accounts of old c new M/s H.K Jewels, the books of accounts of the assessee, the terms 2 conditions relating to Letter of Permission etc. With regard to the lab(. charges also, we notice that the Ld CIT(A) has not examined the cruc aspect, i.e., whether the claim of the assessee that the labour chare were received in foreign exchange is correct or not. Further, we not that the various case laws referred to by Ld CIT(A) relate to the goods manufactured by the assessee by outsourcing, where as, in the instant case, M/s Vaibhav Gems Ltd has outsourced the production activities the assessee. Hence those case laws would apply to M/s Vaibhav Gems Ltd and not to the assessee. To this extent, in our view, Ld CIT(A) has misdirected himself. Hence, this issue also requires fresh examination. There should not be any dispute that the law can be applied correctly only, if the relevant facts are very much clear. The foregoing discussions show that there is no clarity on facts of the present case and hence they need to be brought on record correctly.

14. In view of the above, we set aside the orders passed by Ld C1T(A) in all the three years under consideration and restore all the issues to the file of the assessing officer with the direction to examine the issue afresh from all the angles that may be required. After affording necessary opportunity of being heard, the assessing officer may take appropriate decision in accordance with the law. The assessee is also directed to extend full co-operation to the assessing officer by furnishing all the details that may be called for by him for expeditious completion of the assessments."

10. We further notice that the Assessing Officer in the order giving effect (page 1-38 of paper book) has passed orders for AY 2007-08 to AY 201-12 pursuant to the orders of the Tribunal, wherein he has allowed the deduction under section 10AA. We also notice that the Assessing Officer having gone through the various details submitted by the assessee with respect to claim of deduction under section 10AA has himself held that the assessee is eligible or deduction under section 10AA. It is also noticed that the year under consideration is not the first year in which the assessee has claimed the deduction under section 10AA and that it is well settled position that once the eligibility of deduction under section 10A or 10B or 10AA has been accepted in the initial assessment year, then it cannot be withdrawn in the subsequent years for a breach of certain conditions which are required to be seen or examined in the first year of claim.. Therefore, we see merit in the contention of the Ld.AR that section 10AA deduction cannot be denied to the assessee for the said reason. Accordingly, we hold that the assessee is entitled for deduction under section 10AA.

Interest income to be considered for deduction under section 10AA

11. The Assessing Officer noticed that the assessee has declared interest income of Rs.30,23,159/- in the P&L Account and the same has been claimed as deduction under section 10AA. The Assessing Officer by relying on various judgments held

that interest income cannot be considered for the purpose of deduction under section 10AA. The CIT(A) held that the interest income is eligible for exemption under section 10AA by relying on the decision of the co-ordinate bench in the case of RIAL TO EXIM (2023) 146 taxmann.com 359.

12. The Ld.AR submitted that the interest income cannot be excluded for the purpose of deduction under section 10AA. The Ld.AR placed reliance on the decision of the Full Bench of Karnataka High Court in the case of Hewlett Packard Global Soft Ltd (2017) 87 taxmann.com 182 (Karnataka)(FB). The Ld.AR further submitted that these decisions are followed by the Hon'ble Madras High Court in the case of Camiceria Apparels India (P.) Ltd vs ACIT (2019) 103 taxmann.com 238 (Madras) and also by the decision of the co-ordinate bench in the case of Jardine Lloyd Thompson Private Limited (ITA No.6313/Mum/2017) dated 12/05/2023.

13. The Ld.DR, on the other hand, vehemently argued that there should be nexus between the interest income and the business of the assessee. The Ld.DR further submitted that the interest income is not derived from the export business of the assessee and, therefore, cannot be held to be eligible for deduction under section 10AA of the Act.

14. We heard the parties and perused the material on record. We notice that the co-ordinate bench in the case of Jardine Lloyd Thompson Private Limited (supra) has considered the similar issue and held that –

> *"21. We heard the parties and perused the materials on record. We notice that the Hon'ble Karnataka High Court while considering the issue of interest on deposits being treated as income eligible for deduction under section 10A / 10B has held that –*

"34. We are of the considered opinion that the above referred decisions relied upon by the learned counsel for the Revenue, Mr. Aravind do not cover the cases under Sections 10-A and 10-B of the Act which are special provisions and complete code in themselves and deal with profits and gains derived by the assessee of a special nature and character like 100% Export Oriented Units (EOUs.) situated in Special Economic Zones (SEZs), STPI, etc., where the entire profits and gains of the entire Undertaking making 100% exports of articles including software as is the fact in the present case, the assessee is given 100% deduction of profit and gains of such export business and therefore incidental income of such undertaking by way of interest on the temporarily parked funds in Banks or even interest on staff loans would constitute part of profits and gains of such special Undertakings and these cases cannot be compared with deductions under Sections 80-HH or 80-IB in Chapter VI-A of the Act where an assessee dealing with several activities or commodities may inter alia earn profits and gains from the specified activity and therefore in those cases, the Hon'ble Supreme Court has held that the interest income would not be the income "derived from" such Undertakings doing such special business activity.

35. The Scheme of Deductions under Chapter VI-A in Sections 80-HH, 80- HHC, 80-IB, etc from the 'Gross Total Income of the Undertaking', which may arise from different specified activities in these provisions and other incomes may exclude interest income from the ambit of Deductions under these provisions, but exemption under Section 10-A and 10-B of the Act encompasses the entire income derived from the business of export of such eligible Undertakings including interest income derived from the temporary parking of funds by such Undertakings in Banks or even Staff loans. The dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category of assessees entitled to the incentive in the form of 100% Deduction under Section 10-A or 10-B of the Act, rather than it being a spec: character of income entitled to Deduction from Gross Total Income under Chapter VI-A under Section 8 HH, etc. The computation of income entitled to exemption under Section 10-A or 10-B of the Act is done the prior stage of computation of Income from Profits and Gains of Business as per Sections 28 to 44 under Part-D of Chapter IV before 'Gross Total Income' as defined under Section 80-B(5) is computed and after which the consideration of various Deductions under Chapter VI-A in Section 80HH etc. comes into picture. Therefore analogy of Chapter VI Deductions cannot be

telescoped or imported in Section 10-A or 10-B oft Act. The words 'derived by an Undertaking' in Section 10-A or 10-B are different from 'derived from employed in Section 80-HH etc. Therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction under Section 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the Undertaking even though not as a direct result of export but from the Bank Deposits etc., and therefore eligible for 100% deduction.

36. We have to take a purposive interpretation of the Scheme of the Act for the exemption under Section 1 A/10-B of the Act and for the object of granting such incentive to the special class of assessees selected the Parliament, the play-in-the-joints is allowed to the Legislature and the liberal interpretation of t exemption provisions to make a purposive interpretation, was also propounded by Hon'ble Supreme Court the following cases:— [I] In Bajaj Tempo Ltd. v. CIT [1992] 196 ITR 188/62 Taxman 480. the Hon'ble Supreme Court held that:—

"5. ..... Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. But that turned out to be the, unintended, consequence of construing the clause literally, as was do by the High Court for which it cannot be blamed, as the provision is susceptible of such construction the purpose behind its enactment, the objective it sought to achieve and the mischief it intended control is lost sight of. One way of reading it is that the clause excludes any undertaking formed transfer to it of any building, plant or machinery used previously in any other business. No objection could have been taken to such reading but when the result of reading in such plain and simple manner analysed then it appears that literal construction would not be proper. ..."

[II] In R.K. Garg v. Union of India [1982] 133 ITR 239/[1981] 7 Taxman 53, the Hon'ble Apex Court has lit as under:—

'8. Another rule of equal importance is that laws relating to economic activities should be viewed w greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic

matters, when having regard to the nature of the problems required to be dealt with, greater play in the joints has to allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights is involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [351 \ 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. T courts have only the power to destroy, not to reconstruct. When these are added to the complexity economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and t number of times the judges have been overruled by events — self-limitation can be seen to be the path judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that la are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.'

37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also inter earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the / is integral part of their export business activity and a business

decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act."

22. In assessee's case, we notice that the assessee has placed the surplus funds in FDs and has earned interest from the same. The facts of assessee's case being identical to the case of Hewlett Packard Global Soft Ltd (supra), respectfully following the above full bench decision of the Hon'ble Karnataka High Court, we hold that the interest income earned by the assessee is eligible for deduction under section 10AA. Accordingly, we delete the disallowance made by the Assessing Officer in this regard."

15. In assessee's case, we notice that the fixed deposits are held as margin money with the banks and that there is nexus between the interest earned and the business of the assessee. Therefore, respectfully following the above decision of the co-ordinate bench, we hold that the interest income earned by the assessee from fixed deposits held for the purpose of margin money is eligible or deduction under section 10AA of the Act.

Income from gold dust to be considered for deduction under section 10AA

16. The assessee, in the P&L Account has declared income from sale of gold dust of Rs.1,93,950/- and job wok charges of Rs.2,70,734/-. The assessee, in the computation of income, excluded the job work charges for the purpose of computing profit eligible for exemption under section 10AA of the Act. The Assessing Officer held that the income on sale of gold dust cannot be included in the profits eligible for deduction under section 10AA of the Act for the reason that the same has not been earned from export and that the receipt cannot be held as derived from the export of article or thing or services. The CIT(A) held that the gold dust is generated only during the manufacturing activity of the assessee as a by-product and, therefore, intrinsically linked to the eligible business of the

assessee. The CIT(A), therefore, directed the Assessing Officer to grant exemption under section 10AA of the Act on the receipt from the sale of gold dust.

17. The Ld.AR submitted that there is a direct nexus between the sale of gold dust and the business of the assessee. The Ld.AR also submitted that the Assessing Officer has accepted the income to be part of the business income of the assessee and, therefore, deduction under section 10AA of the Act cannot be denied. Accordingly, the Ld.AR submitted that the receipt from sale of gold dust should be included for the purpose of deduction under section 10AA of the Act.

18. The Ld.DR, on the other hand, relied on the order of the Assessing Officer.

19. We heard the parties and perused the material on record. Before proceeding on merits, we will look at the relevant provisions of section 10AA, which reads as below:-

> ***"10AA.*** ****
>
> *(7) For the purposes of sub-section (1), the profits derived from the export of articles or things or services (including computer software)* ***<u>shall be the amount which bears to the profits of the business of the undertaking,</u>*** *being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking:*
>
> ***Provided*** *that the provisions of this sub-section as amended by section 6 of the Finance (No. 2) Act, 2009 (33 of 2009) shall have effect for the assessment year beginning on the 1st day of April, 2006 and subsequent assessment years."*
>
> **(emphasis supplied)**

20. Plain reading of the computation mechanism as provided in subsection (7) of section 10AA leads to the conclusion that for the purpose of deduction under section 10AA, it is the profits of the business that needs to be considered. In assessee's case we notice that the Assessing Officer had not disputed the fact that the interest on deposits being part of profits from business of the assessee and therefore there is merit in the contention that while computing the deduction as per

subsection (7) of section 10AA, the same is to included as part of the profits of the business. In assessee's case, the Assessing Officer has treated the income from sale of gold dust as part of the business income of the assessee (refer the statement of assessed income in assessment order) and, therefore, the Assessing Officer himself has not denied the fact that the income from sale of gold dust is part of the business income of the assessee. Once the income has been accepted to be part of the business income of the assessee then the same needs to included for computation of deduction as per the provisions of subsection (7) of section 10AA. Accordingly we hold that income from sale of gold dust also to be considered for the purpose of arriving at the profits eligible for deduction under section 10AA. The Assessing Officer is directed to re-compute the deduction under section 10AA accordingly.

21. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 09/10/2023

Sd/- **sd/-**

(AMIT SHUKLA)	**PADMAVATHY S.**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt :09th October, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//Asstt. Registrar / Senior Private Secretary, **ITAT, Mumbai**