

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND**  
**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA no.3163/Mum./2024**  
**(Assessment Year : 2012-13)**

**V K Jewellery**

7/57, 4<sup>th</sup> Floor, A Wing,  
Nagindas Mension CHSM JSS Marg,  
Mumbai- 400004  
PAN-AAFFV7876A

..... Appellant

v/s

**DCIT, Circle 17(1)**

Kautilya Bhavan Avenue 3, Near Videsh Bhavan,  
G Block BKC Bandra Kurla Complex,  
Bandra (E), Mumbai- 400051

..... Respondent

Assessee by : Shri Sunil Hirawat  
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing – 06/08/2024

Date of Order – 26/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 22/05/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: -

*"1. On facts and in law, the Learned Commissioner of Income Tax (Appeals) had erred in confirming the action of Ld. Assessing Officer by not allowing deduction u/s. 10AA on a sum of Rs. 1,67,64,253/- being unrealised export proceeds.*

*2. Without prejudice to the above, on facts and in law, the Learned Commissioner of Income Tax (Appeals) ought to have directed the Ld. Assessing Officer to restrict the deduction u/s. 10AA on unrealised export proceeds of Rs. 1,53,792/- as against Rs. 1,67,64,253/- confirmed in the appellate order.*

*3. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, so as to enable the Hon'ble ITAT to decide this appeal according to law."*

3. The sole grievance of the assessee is against disallowance of deduction claimed under section 10AA of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to this issue are that the assessee is a partnership firm and is in the business of manufacturing, trading and exporting studded jewellery. For the year under consideration, the assessee filed its return of income on 30/09/2012 declaring a total income of Rs.3,36,000. The return filed by the assessee was selected for scrutiny under CASS to verify the claim of exemption under section 10AA of the Act. During the assessment proceedings, the assessee was asked to submit details of export and total realisation till September 2012. In response thereto, the assessee produced a statement showing the export receivable as of 31/03/2012. As per the chart produced by the assessee, an amount of Rs.1,67,64,253 was realisable till the filing of the return of income. Accordingly, the assessee was asked to explain why

the deduction on unrealised export turnover should not be disallowed. In response thereto, the assessee submitted that as per the RBI Circular dated 01/04/2003, in respect of the realisation of export proceeds for units situated in the Special Economic Zone, the stipulation of 12 months or extended period thereof for realisation of exports made by units in Special Economic Zone has been removed, and now, therefore, there is no restriction as such for the claim of exemption on export proceeds.

5. The Assessing Officer ("AO") vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee in respect of specific provisions under section 10AA of the Act. The AO held that the term "*export turnover*" as defined in section 10AA of the Act is the consideration in respect of export by the undertaking being the unit or article or thing or services received in or brought into India by the assessee. Thus, the AO held that the export proceeds should be brought into India within the stipulated time otherwise no deduction is allowable on the unrealised exports. Accordingly, the AO disallowed the deduction under section 10AA of the Act on a sum of Rs.1,67,64,253 being unrealised export within the due date of filing the return of income, i.e. 30/09/2012, while computing the deduction under section 10AA of the Act.

6. During the appellate proceedings before the learned CIT(A), the assessee submitted that as per the definition of "*export turnover*" provided in Explanation 1 to section 10AA of the Act, no time period has been specified for bringing the export proceeds into India. The assessee placed reliance upon the decision of the

coordinate bench of the Tribunal in BT E-serve (India) Pvt. Ltd., in ITA No. 99/Del/2016, dated 13/10/2017, wherein it has been held that there is no time limit for realisation of export proceeds and accordingly, deduction under section 10AA of the Act has to be allowed even in cases where export proceeds are realised after 6 months from the end of the previous year.

7. The learned CIT(A), vide impugned order, after considering the aforesaid submissions of the assessee held that the assessee has not furnished any evidence in support of the fact that the unrealised export proceeds on which the AO has disallowed the deduction under section 10AA of the Act has been subsequently received. It was further held that this fact is also absent in Form 56F submitted by the assessee. Accordingly, in the absence of any evidence of such an amount of Rs. 1,67,64,253, in the nature of export proceeds, being received into India, the learned CIT(A) held that this amount will not qualify for "export turnover" in terms of the definition as provided in Explanation 1 to section 10AA of the Act.

8. We find that the term "export turnover" has been defined in Explanation 1 to section 10AA of the Act as follows: –

*"(i) "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;"*

9. We find that the coordinate bench of the Tribunal in BT E-serv (India)(P.) Ltd. v/s ITO, [2017] 87 taxmann.com 251 (Delhi - Trib.), while dealing with the issue of allowability of deduction under section 10AA of the Act held that, unlike the provisions of section 10A(3), the provision of section 10AA does not provide any time limit of bringing consideration into India. Thus, it was held that merely because the consideration has been received after 6 months from the end of the financial year, the deduction cannot be denied to the assessee on the sum. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

*26. ....With respect to the other sum of Rs. 4.80 crores The assessee has given foreign inward remittance certificates and such sum has also been received in India on 04/02/2011 and 24/2/2011. The provisions of section 10 AA does not provide any time- limit of bringing such consideration into India like section 10 A (3) which provides for receipt of consideration or sale proceeds in India in convertible foreign exchange within a period of 6 months from the end of the previous year, or within such further period as the competent authority may allow in this behalf. Further the contention of the revenue that provision of section (5) and (6) of section 10A shall apply by virtue of the provision of section 10AA (8) of the act. The provision of section 10A (5) speaks about the audit of the accounts and submission of report of an accountant in specified Performa. In this case same has been complied with by the assessee. Further section 10A (6) speaks about the restrictions of other deduction during the holiday period, which is not the dispute in this case. In view of this it is apparent that there is no time-limit prescribed for bringing the consideration of export into India. Admittedly, the consideration has been received in India, albeit Subsequent to filing of the return by the assessee. However, merely because the consideration has been received after 6 months from the close of the financial year the deduction cannot be denied to the assessee on the sum. In view of this we direct the Ld. assessing officer to consider a sum of Rs. 4.80 crores as export turnover of the assessee and accordingly grant deduction to the assessee under section 10 AA of the income tax act.*

10. During the hearing, the learned AR referred to the following statement and submitted that the assessee has received the entire unrealised exports proceed in

India except Rs. 1,53,792, and therefore, the disallowance of deduction under section 10AA of the Act should be restricted only qua the said amount: –

M/s. V. K. Jewellery						
Assessment Year 2012-13						
Sr. No	Party Name	Balance as on 31-03-2012	Payment receipt as on 30-09-2012	Balance as on 30-09-2012	Subsequent receipt as on 31-03-2014	Balance as on 31-03-2014
1	Ace Of Diamond	11,618.00		11,618		
2	Armour Winston Ltd	2,21,676.00		2,21,676		
3	Cooljoolz Limited	1,03,856.48		1,03,856		
4	George Rankin Jewellers	25,55,898.80		25,55,899		
5	J & A Jewellery Ltd	1,55,428.00		1,55,428		
6	Jasmine Alexander	2,13,777.00		2,13,777		
7	Precious Jewellery Uk Ltd	1,25,769.28		1,25,769		
8	Rama Jewellers	61,96,532.16	40,76,800	21,19,732	02-11-2012	20,38,400
9	Al Sarraj Jewellers - Bahrain	23,81,717.52	23,81,718			
10	Alfuttaim	2,31,154.56		2,31,155	03-10-2012	2,20,963
11	Brilliant Jewellery Co Ltd	1,03,57,976.72	1,03,57,977			
12	Classic jewellery B.V.B.A	45,16,533.84	45,16,534			
13	Devi Jewels LLC	60,42,887.76		60,42,888	07-01-2013	60,42,888
14	Elegance Diamond & Jew Co.	5,41,78,225.92	4,05,79,958	1,35,98,268	09-01-2013	1,35,98,268
15	Jewel Trading (LLC)	98,38,490.48	98,38,490			
16	Malabar Gold	80,924.48		79,684		1,240
17	Mohammed othman al moall	2,69,19,518.08	2,05,36,880	63,82,638	12-11-2012	50,96,000
					22-02-2013	12,86,638
18	Precious Fine Jewelry LLC	3,42,87,554.60	1,92,34,276	1,50,53,278	21-12-2012	59,17,832
					31-12-2012	91,35,446
19	Ram Prakash Jewellers	5,71,669.28	5,71,669			
20	Ronnie Shabtay fine jewellery	12,90,460.08	12,90,460			
21	Rosin jewels	18,60,702.48	16,23,942	2,36,760	09-07-2013	2,36,760
22	Sulliman al othain company	1,13,64,997.28	66,24,800	47,40,197	16-10-2012	47,40,197
23	The Jewellery Channel Ltd	1,88,21,362.56	1,88,21,363			
24	Trikon Electronics Pvt Ltd	181.90	182			182
25	Trotters Jewellers	25,48,000.00		25,48,000	31-03-2014	25,48,000
26	Ujt ltd	5,86,498.64	4,44,320	1,42,178		1,42,178
27	Zacks fine jewellery	74,57,282.56	66,76,321	7,80,962	12-10-2012	78,733
					05-07-2013	7,02,229
28	Zaree trading est	44,65,624.80	44,65,625			
	<b>Total</b>	<b>20,73,86,319.26</b>	<b>15,20,41,314.26</b>	<b>5,49,41,097</b>		<b>5,16,42,354.40</b>
						<b>1,53,792</b>

11. In view of the facts and circumstances of the present case as noted above and respectfully following the decision of the coordinate bench of the Tribunal in BT E-serve (India) Pvt. Ltd. (supra), we deem it appropriate to restore this issue to the file of the jurisdictional AO with a direction to restrict the disallowance of deduction under section 10AA of the Act only qua the amount of unrealised export proceeds which has not been received by the assessee in India, after necessary verification. We further direct the assessee to furnish all the details before the AO in support of its claim and also furnish any other document as may be required by the AO to compute the amount of deduction under section 10AA of the Act. Needless to mention no order shall be passed without affording a

reasonable and adequate opportunity of being heard to the assessee. With the above directions, the impugned order is set aside and grounds raised by the assessee are allowed for statistical purposes.

12. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26/08/2024

**Sd/-**  
**RENU JAUHRI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 26/08/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Shubham P. Lohar

Assistant Registrar  
ITAT, Mumbai