

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 402/JPR/2018 (A.Y. 2009-10)

ITO, Ward 2(1),
Jaipur

..... Appellant

Vs.

M/s. Goenka Jewellers,
401, Panchratna, M.S.B. Ka Rasta,
Jaipur
PAN No.: AABFG 8810D

..... Respondent

Appellant by : Mr. Nishit Gandhi, Adv. (thro. VH), Ld. AR
Respondent by : Mrs. Alka Gautam, CIT, Ld. DR
Date of hearing : 14/08/2025
Date of pronouncement : 14/08/2025

ORDER

PER GAGAN GOYAL, A.M:

This appeal by revenue is directed against the order of CIT(A)- 01, Jaipur dated 18.01.2018 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act').

The revenue has raised the following grounds of appeal: -

- 1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) has erred in allowing the deduction of Rs. 6, 63, 24,970/- u/s. 10AA of the*

Income Tax Act 1961, whereas the conditions laid down for claiming the deduction u/s. 10AA of the IT Act, 1961 are not fulfilled?"

2. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition made on account that brought forward business loss and brought forward unabsorbed depreciation of Rs. 1,07,09,895/- are to be first set off against business profit before allowing deduction u/s. 10AA of the I. T. Act?."

The appellant craves the right to amend alter or add to any of the grounds of appeal given above.

2. The brief facts of the case are that the assessee firm's assessment was completed u/s. 143(3) of the Act on declared income at Rs. Nil. During the year under consideration assessee was involved in trading and manufacturing of precious and semi precious stone, jewellery and dealing in shares and securities. It is observed that the assessee claimed deduction u/s. 10AA of the Act amounting to Rs. 6,63,24,970/- without setting off of brought forward losses of earlier years amounting to Rs. 2,57,35,984/- and unabsorbed the depreciation of Rs. 13,63,558/- .

3. The case of the assessee was reopened u/s. 147 of the Act after recording the reasons by the then AO for the Asstt. Year 2009-10 which was approved by the Ld. CIT-1, Jaipur vide his office letter No. 501 dated 31-07-2014 and the same was communicated by the Addl. CIT, Range-2, Jaipur vide his office letter no. Addl.CIT-2/JPR/C-7/2014-015/807 dated 04-08-2014. Notice u/s. 148 of the Act was issued & duly served through speed post. The jurisdiction over this case has been assigned from the DCIT, Circle-2, Jaipur to the Income tax officer, Ward-2(5),

Jaipur by the Ld. CIT-1, Jaipur in exercise of powers conferred by sub section (2) of section 127 of I.T. Act, 1961 vide his office order dated 10-12-2014 for completing the pending assessment. Due to change in incumbent fresh notice u/s. 142(1) of the Act dated 26-12-2014 was issued and served through speed post. In compliance of the same the assessee vide letter dated 04-09-2014 has intimated that return submitted on 04-09-2014 has been furnished vide ack. No. 344654361040914. Shri R.K. Bhatra, CA & AR attended the proceedings from time to time, furnished requisite details/information which are placed on record. Books of accounts were produced which were examined on test check basis. The facts of the case discussed with him.

4. The reasons for reopening of the case are reproduced as under:

"On perusal of perusal of records it is noticed that assessment was completed u/s. 143(3) on a total income Rs. Nil vide order dated 28-11-2011. On perusal of records it reveals that assessee firm has claimed deduction u/s. 10AA amounting to Rs. 6,63,24,970/- in the year under consideration and without set off of brought forward business loss amounting to Rs. 2,57,35,984/- and unabsorbed depreciation of Rs. 13,63,558/ and a sum of Rs. 2,70,99,542/- have been claimed carry forwarded by the assessee. In this connection it is mentioned here that the claim of deduction u/s. 10AA was disallowed for the assessment year 2009-10 as the assessee firm is not eligible for its claim being the assessee firm is not manufacturer and doing trading activities which cannot be defined as services in view of the provisions of I.T. Act, 1961.

"As per provision of section 10AA(6) loss referred to in sub section 72 or sub section (1) or sub section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the unit shall be allowed to be carry forward or set off, further as per CBDT Circular No. 7/7/2013 dated 16-07-2013, it has been

clarified that losses, if any, are required to be set off against the profits of eligible unit before the deduction u/s. 10AA of the I.T. Act, 1961.

In view of above discussion it is clear that assessee has carried forward of business losses and unabsorbed depreciation amounting to Rs. 2,70,99,542/- which is to be first set off and remaining amount of Rs. 3,92,25,428/- only is eligible for deduction u/s. 10AA of 11. Act for the year under consideration.”

5. We have gone through the above reasons mentioned, while reopening the matter of the assessee. **It is observed that the reasons assigned are contradictory in nature, i.e. in first para mentioned (supra) the department challenged the eligibility of the assessee w.r.t. section 10AA of the Act, whereas in the last para department it-self had found the assessee eligible for section 10AA of the Act. But subject to set off of brought forward losses of Rs. 2,57,35,984/- and depreciation of Rs. 13,63,558/-.** In addition to the above observations, we have examined the order of first Appellate Authority also, who decided the matter in favour of the assessee and against which the revenue is in appeal before us.

6. The relevant facts of the matter as emerged out of the order of the Ld. CIT(A) are as under:-

“The assessee is a partnership firm and was mainly engaged in trading of diamonds (i.e. importing diamonds for re-export after boiling, grading and assortment). It has its unit in SEZ, Surat besides having a office at Mumbai wherein business in shares and securities etc. was carried. The unit in SEZ, Surat was a new unit established and commenced manufacturing and to provide

*services in F.Y. 2006-07 (A.Y. 2007-08) as per provisions of SEZ Act, 2005 and after obtaining all approvals and permissions under Special Economic Zone Act, 2005 being unit No. 361 Plot No. 239, Surat Special Economic Zone, Sachir Taluka, Distt. Surat (Gujarat) commenced business in F.Y. 2006-07. **The unit is fulfilling all the conditions laid down in Section 10AA (4) r/w. section 10 AA (1) and the same is not in dispute.** The said SEZ unit is importing diamonds from out of India for re-exporting the same out of India as stated above **The firm also carried on business in shares & securities etc. in A.Y. 2007-08 & A.Y. 2008-09 which was carried on from its Mumbai office which is a separate business from another unit of which books of accounts etc. were also separately maintained.***

The assessee firm thus has two units one SEZ unit at Surat profits and gains of which are exempt u/s. 10AA of I. T. Act, 1961. The other unit (DTA unit) carrying on business in shares and securities in which there had been loss in A.Y. 2007-08 and 2008-09 while in A.Y. 2009-10 there had been no business in DTA unit there is no loss or profit. The assessee filed returns u/s. 139 (1) for A.Y. 2007-08 & 2008-09 claiming 100% deduction u/s. 10AA of I. T. Act in respect to profits of SEZ unit and carried forward the unabsorbed depreciation and business loss of DTA unit while in A. Y. 2009-10 it claimed deduction u/s. 10AA for 100% of profits of SEZ unit. In original assessment u/s. 143 (3) the A.O. for A.Y. 2007-08, 2008-09 & 2009-10 allowed the claimed deduction u/s. 10AA for SEZ unit and in A.Y. 2007-08 & 2008-09 also allowed the unabsorbed depreciation and business loss of DTA unit to be carried forward without setting off the same from profits of SEZ unit.

Thereafter from A.Y. 2010-11 onwards in assessments the Ld. A.O. disallowed deduction u/s. 10AA claimed by assessee u/s. 10AA of I. T Act, 1961. The CIT also invoked provisions of section 263 in respect to A.Y. 2007-08 & 2008-09 and vide order u/s. 263 cancelled the original assessment holding allowed deduction u/s. 10AA as erroneous and prejudice to Revenue and directed to A.O. to make fresh assessment. The assessee filed appeal before ITAT, Jaipur Bench against orders of CIT u/s. 263 for A. Y. 2007-08 & A.Y. 2008-09. The Hon'ble ITAT cancelled the order of CIT u/s. 263. However in the meanwhile A.O. completed fresh assessment for A.Y. 2007-08 & A.Y. 2008-09 u/s. 263 r.w.s. 12 (3) disallowing claimed deduction /

*10AA against which assessee filed appeal before CIT (A) who allowed the appeals of assessee allowing claimed deduction u/s. 10AA before order of ITAT came against appeals u/s. 263. The department filed appeal before ITAT against appeal order of CIT (A) allowing deduction u/s. 10AA and ITAT confirmed the said appeal order(s) for A.Y. 2007-08 and 2008-09 passed by CIT (A). **The appeals filed by assessee against assessment order u/s. 143 (3) for A.Y. 2010-11, 2011-12 & 2012-13 disallowing deduction claimed u/s. 10AA the CIT (A) allowed claimed deduction u/s. 10AA which appeal orders for A.Y. 2010-11 & 2011-12 have also been confirmed by Hon'ble ITAT dismissing the appeal filed by department. The appeal for A.Y. 2012-13 filed by department before ITAT has also been heard in last days and order is awaited.***

7. In the light of above admitted facts by the Ld. CIT (A), we have gone through the report of the AO submitted by the Ld. DR vide dated 09.07.2024 and 01.08.2025 but the same are not found to be in a position to controvert the above findings and the orders of the Co-ordinate Bench vide ITA No. 365/JPR/2012 (A.Y 2007-08), ITA No. 48 & 727/JPR/2014 (A.Ys 2007-08 & 2008-09), ITA No. 663/JPR/2013 (A.Y 2010-11), D.B Civil Income Tax Appeal No. 222/2012, 151/2015, 69/2016 by the Hon'ble Rajasthan High Court and Special Leave Petition (Civil) Diary No(s). 22955/2018 by the Hon'ble Apex Court.

8. As far as the question of allowability of benefits of section 10AA of the Act are concerned, are being confirmed by the Hon'ble Jurisdictional High Court in favour of the assessee and the Special Leave Petition against the same has also been dismissed by the Hon'ble Apex Court. In view of this and respectfully following the principle of judicial discipline along with the principle of consistency,

we do not find any reason to interfere in order of Ld. CIT (A). **In the result Ground No. 1 raised by the revenue is dismissed as the same is found to be against the principle of judicial discipline and consistency.**

9. As far as the 2nd Ground is concerned, it is observed that the issue involved in this ground of appeal is now settled by Hon'ble Supreme Court in case of CIT & Anr. Vs Yokogawa India Ltd. (2017) 291 CTR 0001 wherein it is held that in view of the amendment made by the Finance Act 2000, section 10A of the Act has changed its colour from being an exemption section to a provision providing for deduction, though section 10A of the Act, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI and, therefore, the provisions for set off and carry forward contained in section 70, 72 and 74 of the Act do not come into play while allowing the deduction under section 10A of the Act. (Copy of judgement submitted). This judgement is equally applicable for section 10AA of the Act as section 10AA of the Act is also allows deduction of profit and gains derived by an eligible unit. In view of this the deduction u/s. 10AA of the Act of hundred percent profits and gains are to be allowed in full without applying provisions for set off and carried forward contained in sections 70, 72 and 74 of the Act do not come into play while allowing the deduction u/s. 10AA of the Act. The Ld. A.O. is wrong in holding that B/f business loss and B/f unabsorbed depreciation are to be first set off against profit of eligible unit before allowing deduction u/s. 10AA of the I. T. Act, 1961 and thereby reducing income from

eligible unit by Rs. 1, 07, 09,895/- in order to arrive at profit eligible for deduction u/s. 10AA of the Act.

10. We have duly considered the submissions of the appellant, assessment order and the material placed on record. In the assessment order, it was held by the AO that brought forward business loss and brought forward unabsorbed depreciation, are to be first set off against business profit before allowing deduction u/s. 10AA of the Act and thereby reducing income from business by Rs. 1, 07, 09,895/-, in order to arrive at profit eligible for deduction u/s. 10AA of the Act. It is to be noted that this issue has been settled by Hon'ble Apex Court in case of CIT & Anr. Vs Yokogawa India Ltd. (2017) 291 CTR 0001, wherein it was held that in view of the amendment made by the Finance Act 2000, section 10A of the Act has changed its colour from being an exemption section to a provision providing for deduction. though s. 10A of the Act, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI and, therefore, the provisions for set off and carry forward contained in section 70, 72 and 74 of the Act do not come into play while allowing the deduction under s. 10A of the Act. This judgement is equally applicable for section 10AA of the Act as section 10AA of the Act also allows deduction of profit and gains derived by an eligible unit. It may be mentioned that an Explanation to Section 10AA (1) of the Act was inserted by the Finance Act. 2017, which is being reproduced as under:

"Explanation- For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee."

(ii) It would be appropriate that in the Notes on Clauses to the Finance Bill, 2017, the purpose of inserting the Explanation to Section 10AA has been stated as under:

"Clause 7 of the Bill seeks to amend section 10AA of the Income-tax Act relating to special provisions in respect of newly established Units in Special Economic Zones."

Under the existing provisions of the said section, deduction for fifteen consecutive years is provided from the total income of an assessee in respect of profits and gains from his Unit operating in Special Economic Zone which are engaged in manufacturing or production of articles or things or providing any services, subject to fulfillment of the conditions mentioned in that section.

11. It is proposed to insert a new Explanation after sub-section (1) of the said section so as to provide that the amount of deduction referred to in that section shall be allowed from the total income of the assessee computed in accordance with the provisions of the Income-tax Act, before giving effect to the provisions of the said section and the deduction under the said section shall not exceed such total income of the assessee. This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

12. Thus, the above Explanation is applicable to the A.Y. 2018-19 and subsequent years, therefore, the same is not applicable to the year under consideration and the above referred decision of Hon'ble Apex Court in the case of CIT & Anr. Vs Yokogawa India Ltd. (Supra), which was again affirmed by the Hon'ble Apex Court in the case of PCIT vs. Rangsons Electronics Pvt. Ltd. [2017] 299 CTR 462 (SC) is applicable to the instant case under consideration. Respectfully, following the above referred judgments of the Hon'ble Apex Court, It is held that the AO was not justified in setting off brought forward losses and unabsorbed depreciation against business profit before allowing deduction u/s. 10AA of the Act. **In the result, Ground No. 2 raised by the revenue is also dismissed.**

13. In the result, appeal of the revenue is dismissed.

The Order is pronounced in the open court on 14th day of August 2025.

Sd/-

Sd/-

(Dr. S. SEETHALAKSHMI)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 14/08/2025

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr. DR., ITAT,

5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	14.08.2025		Sr.PS/PS
2	Draft Placed before author	14.08.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			