

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI JASON P. BOAZ (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1900/MUM/2015
Assessment Year: 2011-2012**

The Asst. Commissioner of Income Tax, 15 (1) (2), Room No. 403, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.	Vs.	M/s Credit Suisse Business Analytics (India) Pvt. Ltd., Third and Fourth Floor, Citypark, Central Avenue, Hiranandani Business Park, Powai, Mumbai- 400076 PAN: AADCC5878L
(Appellant)		(Respondent)

Appellant by : Shri. Premchand J (DR)
Respondent by : Shri. Farrokh V. Irani (AR)

Date of Hearing: 17/01/2017
Date of Pronouncement: 28/02/2017

ORDER

PER RAM LAL NEGI, JM

This appeal has been preferred by the revenue against impugned order dated 29/01/2015 passed by the Ld. CIT (Appeals)-24, Mumbai, for the assessment year 2011-2012, whereby the Ld. CIT(A) partly allowed the appeal filed by the assessee against assessment order dated 21/03/2014 passed u/s 143(3) of the Income Tax Act 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee engaged in the business of providing various business support and information technology enabled services to its group companies located in India and outside, filed its return of income for the relevant Asst. year 2011-12 declaring the total income of Rs.

95,88,158/- under the normal provisions of the Act and books profit of Rs. 2,11,81,988/- under the provisions of section 115JB of the Act. The return was processed u/s 143(1) and after scrutiny assessment order u/s 143(3) of the Act was passed determining the total income of Rs. 58,20,51,400/- (rounded off) under the normal provisions of the Act and Rs. 2,11,81,988/- u/s 115JB of the Act, after making additions including the addition of Rs. 1,14,63,246/- claimed disallowance of deduction u/s 10A. The assessee challenged the assessment order before the Ld. CIT(A) who after hearing the assessee partly allowed the appeal. The deduction claimed u/s 10A of the Act at enhanced income. Against the said findings of the Ld. CIT(A) the department in appeal before the Tribunal on the following effective ground:-

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that the assessee is entitled to claim deduction u/s 10A on the additions/disallowances made u/s 40(a) (ia) of the Income Tax Act.”*

3. Before us, the Ld. DR relying on the assessment order submitted that the Ld. CIT(A) wrongly allowed the deduction claimed by the assessee, therefore the impugned order is liable to be dismissed.

4. On the other hand the Ld. Counsel for the assessee submitted that the assessee's case is covered by the decision of Hon'ble Jurisdictional High Court passed in *CIT vs. Gem Plus Jewellery India Ltd. (2011) 330 ITR 175(Bom)* and the decision of Hyderabad Bench of the ITAT rendered in ITA No.1988/Hyd/2011 for the A.Y. 2007-08 and cross appeal ITA No. 2040/Hyd/2011. The Ld. counsel further submitted that since Ld. CIT(A) has passed the impugned order in accordance with the law laid down by the Hon'ble Jurisdictional High Court in *CIT vs. Gem Plus Jewellery Ltd. (supra)*,

there is no scope to interfere with the same and hence the appeal filed by the revenue is liable to be dismissed.

5. We have heard the rival submissions and also perused the material placed on record including the decisions relied upon by the parties. The Ld. CIT(A) has decided this ground of appeal holding as under:-

“3.5 In view of the above, I am of the view that the appellant is entitled to claim of deduction u/s 10A on an enhanced income. The appellant had relied on various other decisions and contended that deduction u/s 10A should be allowed on the income which was assessed to tax by the A.O after considering the allowance/disallowance made during the course of assessment proceedings as per the provisions of the I.T.Act. I find these decisions support the case of the appellant. Therefore, the action of A.O in not considering the disallowance made u/s 40 a (ia) while computing the deduction u/s 10A is not correct and hence, the addition made is deleted. This ground of appeal is allowed.”

6. We notice that in *CIT vs. Gem Plus Jewellery India Ltd.* (supra) one of the issues before the Hon'ble High Court was whether on the facts and in the circumstances of the case the Tribunal was justified in directing the A.O to exempt u/s 10A of the Act, on the assessed income which was enhanced due to disallowance of the employers as well as the employees contribution towards Provident Fund/ESIC. The Hon'ble High Court decided the issue in favour of the assessee holding as under:-

“11. For the purposes of the appeal it is necessary to refer to the admitted position which is that the assessee had deposited both the employer's and the employees contribution towards provident fund and ESIC, though beyond the due date including the grace period. The Assessing Officer added these payments to the total income of the assessee and made an addition in the amount of Rs. 71.59

lakhs, However, for the deduction under section 10A, the addition made on account of the employees' contribution was ignored in calculating the profits eligible for deduction on the ground that these receipts were not generated out of the manufacturing activity of the assessee-company.

12. By reason of the judgment of the Supreme Court in CIT v. Alom Extrusions Limited [2009] 319 ITR 306 the employer's contribution was liable to be allowed, since it was deposited by the due date for the filing of the return. The peculiar position, however, as it obtains in the present case arises out of the fact that the disallowance which was effected by the Assessing Officer has not, the court is informed, been challenged by the assessee. As a matter of fact the question of law which is formulated by the Revenue proceeds on the basis that the assessed income was enhanced due to the disallowance of the employer's as well as the employees contribution towards provident fund/ESIC and the only question which is canvassed on behalf of the Revenue is whether on that basis the Tribunal was justified in directing the Assessing Officer to grant the exemption under section 10A. On this position, in the present case it cannot be disputed that the net consequence of the disallowance of the employer's and the employees' contribution is that the business profits have to that extent been enhanced. There was, as we have already noted, an add back by the Assessing Officer to the income. All profits of the unit of the assessee have been derived from manufacturing activity. The salaries paid by the assessee, it has not been disputed, relate to the manufacturing activity. The disallowance of the provident fund/ESIC payments has been made because of the statutory provisions-section 43B in the case of the employer's contribution and section 36(v) read with section 2(24) (x) in the case of the employees' contribution which has been deemed to be the income of the assessee. The plain consequence of the disallowance and the add back that has been made by the Assessing Officer is an increase in the business profits of the assessee. The contention of the Revenue that in computing the deduction under section 10A the addition made on account of the disallowance of the provident fund/ESIC payments ought to be ignored cannot be accepted. No statutory provision to that effect

having been made, the plain consequence of the disallowance made by the Assessing Officer must follow. The second question shall accordingly stand answered against the Revenue and in favour of the assessee.”

7. We also notice that the ITAT Hyderabad Bench has decided the similar issue in favour of the assessee in the case of ITA No. 2040/Hyd/2011 and cross appeal (supra). 2007-08. We find that the Ld. CIT(A) has passed the impugned order in accordance with the law laid down by the Hon'ble Jurisdictional High Court in *CIT vs. Gem Plus Jewellery India Ltd.* (supra). Hence, we do not find any infirmity in the impugned order passed by the Ld. CIT(A) to interfere with the same. We therefore, uphold the order passed by the Ld. CIT(A) and dismiss the sole ground of appeal of the revenue.

8. In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court 28th February, 2017.

Sd/-
(JASON P. BOAZ)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/02/2017

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila