

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : SMC-3 : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No.5572/Del/2015  
Assessment Year : 2011-12

Shri Saurabh Dadu,  
A-72, Sector-2,  
Noida – 201 301  
(PAN: AELPD9421K)  
(Appellant)

Vs. ITO, Ward-3(3),  
New Delhi  
  
(Respondent)

Assessee By : Shri R.K. Kapoor, CA  
Department By : Shri Anil Kumar Sharma, Sr. DR

**ORDER**

This appeal filed by the assessee is directed against the order passed by the CIT(A)-2, New Delhi on 18.6.2015 in relation to the assessment year 2011-12 on the following grounds:-

1. That the assessment order passed by the AO and upheld by the CIT(A) in making an addition of Rs. 13,77,761/- u/s. 40(a)(ia) of the I.T. Act, 1961 on a stand alone basis is bad in law, on untenable grounds and by making erroneous interpretation of the provisions of section 10A of the Income Tax Act, 1961.

2. That the AO as well as CIT(A) has grossly erred in law in restricting the deduction available u/s. 10A of the Income Tax Act to the extent of an amount certified in Form 56F.
3. That the AO as well as CIT(A) ought to have appreciated that deduction u/s. 10A needs to be computed based on “total income” as computed under the provisions of Income Tax Act including any disallowance that may be made during the assessment proceedings.
4. That each ground is independent of and without prejudice to the other grounds raised herein.

**Prayer**

The appellant assessee prays that the relief as per grounds of appeal above may kindly be allowed to it and the appellant may also be allowed to add, delete, amend or substitute any ground(s) of appeal either at or before the date of hearing.

2. Briefly stated, the facts of the case are that the assessee filed the return of income on 30.9.2011 declaring an income of Rs. 9,50,326/-. The case was selected for scrutiny through CASS. Accordingly, notice under section 143(2) of the Income Tax Act, 1961 dated 1.8.2012 was issued. Besides, notice under section

142(1) of the I.T. Act dated 15.10.2013 was also issued to the assessee. In response to the above statutory notices, the AR of the assessee attended the assessment proceedings and filed the details as called from time to time. The same was examined. During the year, the assessee has claimed deduction u/s. 10A of the I.T. Act, 1961 of Rs. 23,81,354/- as per Form 56F furnished with the return. The deduction u/s. 10A of the I.T. Act, 1961 has been worked out to Rs. 23,81,354/-. But the AO observed that the claim of deduction u/s. 10A of the I.T. Act, 1961 on account of disallowance made u/s. 40(a)(ia) of the I.T. Act, 1961 is incorrect and against the provisions of law. Therefore, he assessed the income of the assessee at Rs. 23,28,090/- vide his order dated 26.12.2013 passed u/s. 143(3) of the I.T. Act, 1961 and made the additions.

3. Aggrieved with the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 18.6.2015 has upheld the addition made by the AO and dismiss the appeal of the assessee mainly on the ground that since assessee has furnished Form 56F only for the amount of Rs. 23,82,354/-, the AO was justified in denying the deduction for the additions made u/s. 40(a)(ia) of the I.T. Act, 1961.

4. Against the order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee has stated that although assessee has raised three grounds, but only one issue in this appeal is that whether when a disallowance u/s. 40(a)(ia) of I.T. Act, 1961 is made and income is enhanced by such disallowance, the assessee would be eligible for the enhanced deduction u/s. 10A of the Income Tax Act or not. He further stated that this issue of allowing the enhanced deduction u/s. 10A, when an amount has been disallowed, has come up before the Hon'ble Bombay High court in the case of CIT vs. Gem Plus Jewellery India Ltd. reported in 330 ITR 175 (Bombay) wherein the Hon'ble High Court has allowed the deduction u/s. 10A on the similar facts and circumstances of the case and, therefore, the issue involved in the present appeal is squarely covered by the aforesaid decision. Therefore, he requested that by following the same reasoning the present assessee's appeal may be allowed.

6. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that the same may be affirmed.

7. I have heard both the parties and perused the records. I find that the Hon'ble Bombay High Court in the case of CIT vs. Gem Plus Jewellery India Ltd. reported in 330 ITR 175 (Bombay), wherein on the identical facts, the Hon'ble High Court has held that when income of undertaking, which is eligible for deduction u/s. 10A is enhanced because of certain statutory disallowance, it is an enhanced amount of income which would be eligible for computing the deduction u/s. 10A. I find that

the Hon'ble High Court vide Question No. (b) has framed the following question of law:

“(b) Whether on the facts and in the circumstances of the case, the Tribunal was justified in directing the AO to grant the exemption u/s. 10A of the Act on the assessed income, which was enhanced due to disallowance of employer's as well as employee's contribution towards PF/ESIC”.

7.1 The Hon'ble High Court of Bombay while adjudicating the aforesaid question of law has held vide para no. 11 & 12 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 Ltd. [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 employee's 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, related 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 employee's 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.”*

8. Respectfully following the above decision of the Hon'ble High Court Bombay in the case of CIT vs. Gem Plus Jewellery India Ltd. 330 ITR 175 (Bombayt), the addition in dispute is deleted and appeal of the assessee is allowed.

9. In the result, the appeal of the assessee stands allowed.

The order pronounced in the Open Court on 20/01/2017.

Sd/-

[H.S. SIDHU]  
JUDICIAL MEMBER

Dated, 20/01/2017.

*SRBhatnagar*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.