

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2311 & 2312/Mds/2015

निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

M/s Jewels Magnum,
No.333, First floor, Big Bazar St.,
Coimbatore – 641 001.

v.

The Assistant Commissioner of
Income Tax,
Circle – III,
Coimbatore.

PAN : AAGFJ 3110 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. T. Banusekar, CA

& B. Ramakrishnan, CA

प्रत्यर्थी की ओर से/Respondent by : Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 13.01.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-2, Coimbatore , dated 16.12.2015, for the assessment years 2011-12 and 2012-13. Since common issue arises for consideration in these

appeals, we heard both the appeals together and disposing of by this common order.

2. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the only issue arises for consideration is with regard to disallowance of deduction claimed under Section 10AA of the Income-tax Act, 1961 (in short "the Act"). According to the Ld. representative, the assessee is a partnership firm engaged in business of manufacturing gold jewellery. The assessee obtained approval in the MEPZ Special Economic Zone for manufacturing gold bangles and gold pendants. The assessee claimed deduction under Section 10AA of the Act on the basis of the approval granted by MEPZ Special Economic Zone. However, the Assessing Officer rejected the claim of exemption under Section 10AA of the Act on the ground that the assessee delayed the commencement of production at Special Economic Zone. The Assessing Officer has also found that the assessee has not manufactured the item of jewellery authorized by the MEPZ Special Economic Zone. Adverting to the first ground of rejection by the Assessing Officer, namely, commencement of production at Special Economic Zone, the Ld. representative submitted that the assessee-firm was

manufacturing gold pendants/medallions for export. In fact, the Special Economic Zone by an order dated 10.06.2008, approved the assessee for manufacturing of gold bangles and gold pendants/medallions. The assessee commenced the trial production of gold pendants/medallions in April, 2009, within one year from the date of grant of approval. The assessee has also purchased 82.5 KVA Genset in October, 2008. The MEPZ Special Economic Zone granted permission for installation of the Genset on 05.12.2008. The assessee has produced copies of the file to support that the assessee has commenced manufacturing activity. MEPZ Special Economic Zone, by an order dated 03.09.2014, found that the assessee commenced production as on 14.04.2009. According to the Ld. representative, once the Special Economic Zone accepts the date of commencement of production, the Assessing Officer cannot say that the assessee had delayed commencement of production beyond the time limit mentioned in the Letter of Approval. In fact, the authority who granted approval accepted that the assessee has commenced production as on 14.04.2009. Therefore, according to the Ld. representative, the Assessing Officer cannot take different view.

3. Referring to the business activity of the assessee, the Ld. representative explained that the assessee-firm imports gold bar and converts it into gold medallions/pendants for export. Referring to process of conversions and manufacture, the Ld. representative submitted that after import of gold bar, the same was converted into rolling gold sheets. Thereafter the gold would be melted and blended. After carrying out blanking, corrections, the gold pendants/medallions would be polished and thereafter, embossing would be done. Once embossing was done, the gold medallions / gold pendants produced by the assessee would go for quality check. After completion of quality check, the gold pendants/medallions would be procured and it would be exported out of India. According to the Ld. representative, the gold bar undergoes different processes before becoming the final production, namely, gold medallion/gold pendant. Referring to the quantity of gold bar imported and its value, the Ld. representative submitted that the assessee has made substantial export and earned foreign exchange. During the assessment year 2011-12, the assessee has earned ₹27.82 Crores and for the assessment year 2012-13, the assessee has earned ₹38.81 Crores. Referring to the judgment of Madras High Court in CIT v. Pallava Granite Industries (I)(P.) Ltd.

(2014) 42 taxmann.com 102, the Ld. representative submitted that 'manufacture' would include every process, which ultimately results in production of new article having a different character. Ultimately, the High Court found that cutting and polishing of granite slabs would amount to manufacture or production of an article or thing and hence it is eligible for exemption. Referring to the definition in Special Economic Zone Act, 2005, the Ld. representative submitted that 'manufacture' means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include process such as refrigeration, cutting, polishing, blending etc. Since the gold bar imported by the assessee undergoes a series of process before it reaches the final stage as gold medallion/ gold pendant, according to the Ld. representative, the end product manufactured by the assessee, namely, gold medallion / gold pendant has to be treated as a new article. Referring to the assessment order, the Ld. representative submitted that the assessee manufactured gold medallions. Special Economic Zone authorizes the assessee to manufacture only gold bangles and gold pendants. In violation of approval granted by Special Economic Zone, according to the Ld. representative, the Assessing Officer

found that the assessee has manufactured gold medallions. According to the Ld. representative, what was manufactured by the assessee is only gold pendants and not medallions. Referring to the dictionary meaning of the word “medallion” in Concise Oxford English Dictionary, Twelfth Edition, the Ld. representative submitted that “medallion” means a piece of jewellery in the shape of a medal, worn as a pendant. Therefore, the medallion is nothing but a product of jewellery which would be worn as pendant. Therefore, medallion is a species and pendant genus. “Pendant”, according to the Ld. representative, is also called as medallion. The term “pendant” is carried in its definition to include medallion even in the technical sense.

4. The Ld. representative further submitted that there is no reference about any demarcation or classification under Special Economic Zone Rules, 2006. Even the Customs Tariff Act makes no classification as “pendant” and “medallion”. The functional utility of the medallion and pendant is one and the same. According to the Ld. representative, the predominant and primary use of commodity must be taken into account apart from understanding it in common parlance. According to the Ld. representative, the

Assessing Officer failed to consider the functional utility of the medallion. Placing reliance on the judgment of Apex Court in Hindustan Sanitaryware & Industries Ltd. v. Collector of Customs (1999) 114 ELT 778, the Ld. representative submitted that component is a genus, however, the spare is a species. Similarly, the Apex Court in Gujarat State Fertilizer Co. v. Collector of Central Excise 919970 91 ELT 3, found that the term “fertilizer” is a genesis which may consist of various species of fertilizers, namely, chemical fertilizer, soil fertilizer, animal or vegetable fertilizer, etc. Referring to the opinion said to be given by the President of Madras Jewellery & Diamond Merchants Association, the Ld. representative submitted that Shri Jayanthilal, the President of Madras Jewellers and Diamond Merchant Association, clarified that foreign national calls what is understood as “pendant” in India as medallion. He also clarified that pendant is genesis and medallion is species. Therefore, the Assessing Officer is not correct in saying that what was manufactured by the assessee is medallion and not pendant. According to the Ld. representative, the product manufactured by the assessee is pendant. It may also be known as medallion in other part of the globe. Therefore, the assessee is entitled for deduction under Section 10AA of the Act.

5. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that there was a survey in the premises of the assessee under Section 133A of the Act on 24.02.2014. During the course of survey operation, the Revenue authorities found that the assessee has not manufactured gold bangles and pendants. MEPZ Special Economic Zone granted approval only for manufacturing gold bangles and pendants. The other condition imposed by Special Economic Zone is that the assessee has to commence the production before 10.06.2009. The assessee purchased the raw material only on 03.09.2009, therefore, the assessee could not have commenced production within six months period allowed by the Special Economic Zone while granting approval. Therefore, according to the Ld. D.R., the assessee has not commenced the production within the time limit of six months stipulated by Special Economic Zone

6. Now coming the export of finished goods, the Ld. D.R. pointed out that the assessee was authorized by Special Economic Zone to manufacture gold bangles and pendants. The assessee, in violation of the approval granted by Special Economic Zone, manufactured gold medallions. According to the Ld. D.R., gold

medallion is nothing but a gold coin with purity of 99.5%. The assessee was not authorized to manufacture gold medallions. When the Managing Director Shri K. Srinivasan was examined, he confirmed that the assessee manufactured only medallions. One of the Managers Shri K. Parthasarathy also clarified that right from the commencement of the business, the assessee- firm manufactured only gold medallions and no bangle or pendant was manufactured in the unit. This was also further confirmed by the Production Supervisor Shri C. Sadasivam. The assessee obtained the opinion of Government approved valuer and he opined that medallion is usually round in shape and used for meritorious awards/gifts. The gold coin is usually round in shape without any hook or hole and it cannot be worn. According to the Government approved valuer, the pendants are casual ornamental wear in jewellery which contain a hook or hole. Therefore, according to the Ld. D.R., the composition of medallion and pendant are totally different. Coin, pendant and medallion are of different and distinct products in the manufacturing. The Ld. D.R. further submitted that the pendants cannot be made with 99.5% purity of gold. According to the Ld. D.R., the pendant has to be manufactured by mixing copper, usually the purity of pendant would be 91.6%. The assessee manufactured medallions

which is of 99.5% purity, therefore, the medallion manufactured by the assessee cannot be construed as pendant. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessee has violated the approval granted by the Special Economic Zone for manufacturing gold bangles and pendants. Since gold bangles and pendants were not manufactured as per the approval granted by Special Economic Zone, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Section 10AA of the Act provides for deduction of deduction of 100% of profits and gains derived from the export of articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the unit begins to manufacture or produce such articles or things or provide services, as the case may be. It also provides for further 50% of such profits and gains for further five assessment years thereafter. The first condition is that the assessee shall be an entrepreneur within the meaning of Section 2(j) of Special Economic Zone Act, 2005. We have carefully gone through the provisions of Special

Economic Zone Act, 2005, more particularly, Section 2(j) which reads as follows:-

“2(j) “entrepreneur” means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15.”

Therefore, “entrepreneur” means a person who has been granted a letter of approval by the Development Commissioner under Section 15(9) of the Special Economic Zone Act, 2005. In this case, the assessee was admittedly granted approval under Section 15(9) of the Special Economic Zone Act, 2005. The approval granted by the Development Commissioner under Special Economic Zone Act, 2005 was not cancelled so far and it continues. Therefore, the assessee is an entrepreneur under Section 2(j) of the Special Economic Zone Act, 2005.

8. Now coming to the product manufactured by the assessee, admittedly, the Development Commissioner granted approval for manufacturing of gold bangles and pendants. The assessee claims that what was manufactured by it is pendant. However, the Revenue claims that what was manufactured by the assessee is medallion. Therefore, we have to understand what is meant by

“pendant” and what is meant by “medallion”. The words “pendant” and “medallion” are not defined in Income-tax Act or in the Special Economic Zone Act. Therefore, we have to go for meaning in the common parlance. The Concise Oxford English Dictionary, Twelfth Edition, describes these words as follows:-

Pendant : *A piece of jewellery that hangs from a necklace chain.*

Medallion : *A piece of jewellery in the shape of a medal worn as pendant.*

In view of the meaning given in Concise Oxford English Dictionary, the words “medallion’ and “pendant” are interchanged. Pendant is used as hangs from necklace or chain; medallion is also used as hangs either from necklace or chain.

9. We have carefully gone through the orders of the lower authorities below. The CIT(Appeals) found that what was manufactured by the assessee is 24 Carat gold medallion. The CIT(Appeals) has also found that the gifts presented on special occasions would be considered as medallions which are not meant as ornaments but would be treated as treasure of mementos or items of valuable investment. The question arises for consideration is: Is there any difference between pendant and medallion? The

meaning of the word “pendant” and “medallion” has to be construed in the Indian context. Normally, the pendant would be worn as an ornament along with chain or necklace. The pendant in common parlance may also be called as medallion. The medallion has to be worn as an ornament along with chain or necklace. Similarly, pendant is also to be worn as ornament along with chain or necklace. Therefore, this Tribunal is of the considered opinion that the words “pendant” and “medallion” have the same meaning and usage in common parlance. By taking into consideration of the usage of pendant or medallion, this Tribunal is of the considered opinion that the pendant and medallion have the same characteristics and value in the common parlance. When the assessee claims that it is manufacturing pendants and the same were exported, merely because the foreign nationals call this as medallion, it does not mean that what was manufactured by the assessee is only medallion. The product manufactured by the assessee even though called as “medallion”, it is pendant in the Indian context. It is an ornament worn by hanging in the chain or necklace. It is common knowledge that the award / medal conferred on special and ceremonial occasions would be normally known as “medallions”. It does not mean that the medallions could not be

worn as ornament/jewellery in the normal course. In our opinion, the pendant and medallion can be used as ornament/jewellery along with chain and necklace. At the best, one may say that pendant and medallion are nothing but a designery jewellery to be worn along with chain or necklace. By taking into consideration of the utility of the medallions, this Tribunal is of the considered opinion that medallion is also a pendant. Therefore, merely because the product manufactured by the assessee was described as medallion, it cannot be said that there was any violation of approval granted by the Development Commissioner, Special Economic Zone. Irrespective of nomenclature used by the assessee or the Special Economic Zone, this Tribunal is of the considered opinion that what was manufactured by the assessee is pendant. Therefore, there is no violation of conditions imposed by the Development Commissioner.

10. Now coming to quality/purity of the gold, the contention of the Revenue is that the purity of gold is 99.5% in the product manufactured by the assessee. The pendants usually have the purity of 91.6%. No doubt, the purity of the gold would depend upon the product manufactured by the assessee. When the product is

manufactured with diamond as a designery stone, the purity is normally less than 90%. In other words, the pendant or medallion with diamond would have the purity of gold at 18 Carat. In case, the ordinary stones are used, the purity would be normally 20 to 22 Carats. If the pendant or medallion is made without any natural or artificial stone, then it can have the purity of 99.5% or 24 Carat. Therefore, the purity would depend upon the design and stones implanted on the pendant or medallion. Therefore, this Tribunal is of the considered opinion that merely because the pendant / medallion is of 99.5% purity, it would not lose its character as pendant. As already observed, this Tribunal is of the considered opinion that what was manufactured by the assessee is pendant and it can also be known as medallion.

11. In view of the above, we are unable to uphold the orders of the lower authorities and accordingly, the same are set aside. The Assessing Officer is directed to grant deduction under Section 10AA of the Act.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced on 19th February, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Coimbatore
4. Principal CIT-1, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.