

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 16th August , 2012.**
Date of Decision : 17th September, 2012.

+ **ITA NO.s 79/2012 & 80/2012**

CIT Appellant
Through Mr. Abhishek Maratha, sr. Standing counsel with Ms.
Anshul Sharma, Adv.

VERSUS

ARTS BEAUTY EXPORTSRespondent
Through Mr. Rajiv Saxena and Mr. Jagjeet Singh, Adv.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

R.V. EASWAR, J.:

These are two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 (“Act” for short). They relate to the assessment years 2006-07 and 2007-08 and are directed against a common order passed by the Income Tax Appellate Tribunal (‘Tribunal’ for short) on 3rd June, 2011 in ITA Nos.2955 & 2956/Del/2010. The following questions, which are common to both the years, are sought to be raised as substantial questions of law:-

“A. Whether the Ld. ITAT was justified in the eyes of law in confirming the order of the CIT(A), which has been passed in utter disregard to Rule 46 A of the Income Tax Rules, 1962?”

B. Whether the ITAT was justified in the eyes of law in approving the admission of the additional evidence by the CIT(A) in utter disregard to the remand report submitted by the AO?

C. Whether the ITAT was justified in the eyes of law in granting the exemption u/s 10B of the Act to the assessee, when the assessee doesn't fulfil the preliminary condition applicable for the grant of the exemption?

D. Whether the impugned order passed by the ITAT is perverse both in facts and law?"

2. The brief facts leading up to the filing of the present appeals may be noted. The assessee is a partnership firm engaged in the business of export of handicrafts items. We may first refer to the facts relating to the assessment year 2006-07 since the assessment order for that year was passed earlier on 15th December, 2008. In the return of income filed for that year, the assessee declared business income of Rs.57,42,645/- and claimed the entire business income to be exempt under Section 10B of the Act. The Assessing Officer examined the claim and noted that the claim was made for the first time. He further noted that the firm came into existence under a partnership deed dated 1st October, 1993 with two partners and later on another partner was taken in under a fresh partnership deed dated 18th May, 2005 which was given effect from 1st April, 2005. This firm continued the same name and style and the same business, accounts etc. The assessee had applied, prior to the reconstitution, to the Development Commissioner, SEZ, Noida for setting up of a 100% Export Oriented Unit(EOU). A letter of permission ("LOP") was granted to the assessee by the Development Commissioner on 5th May, 2005 subject to certain conditions which are as under:-

- (1) The unit shall export its entire production in the domestic tariff area as per the Export Oriented Undertaking Scheme for a period of five years for which an undertaking should be given.

- (2) Import/local purchase of all items except those listed in the prohibited list will be permitted.
- (3) The unit may procure indigenous wood from legally established units and from sawmills licenced by the forest department.
- (4) An agreement shall be entered into with the Deputy Commissioner, SEZ, Noida for fulfilling the terms and conditions mentioned in the LOP.
- (5) The unit will be custom bonded.

3. In accordance with the aforesaid terms, the agreement for fulfilling the terms and conditions was signed on 13th April, 2006. On this basis, the competent authority issued green card No.95 dated 24th April, 2006 thereby according approval under the special scheme of the Government of India as “100%” Export Oriented Unit”. The letter dated 25th April, 2006, which conveyed the acceptance of the agreement, also stated that the unit will be treated as working under the scheme from the date from which its starts functioning under a custom bond. Since one of the conditions was that the unit should be custom bonded, the Assessing Officer made enquiries with the Central Excise Department in response to which he received a letter dated 27th August, 2008 from the Assistant Commissioner, Central Excise Division-II, Karampura, New Delhi saying that the assessee has not approached them till that date for custom bonding of the unit.

4. After taking note of the above facts, the Assessing Officer further noted from the trading and manufacturing account that the assessee paid wages of only Rs.21,500/- for the period from 1st April, 2005 to 5th May, 2005, but paid wages of Rs.2,43,700/- for the rest of the period comprised in the year ended 31st May, 2006. Though he was satisfied that the wages for the rest of the period was in proportion to the wages claimed for the earlier period, he noted that there was no supervisory staff engaged by the assessee, though in its application to the Development Commissioner, SEZ, it had mentioned that about 150 such staff were proposed to be employed.

Moreover the assessee did not also disclose any plant and machinery in the second period as was proposed in the application to the Development Commissioner. Except one computer for Rs.40,660/-, scooter for 37,762, office equipment for Rs.5,900/- and machinery of Rs.35,100/-, there was no other fixed asset. Even the machinery of Rs.35,100/- was only of general nature commonly used in normal business activities. Furthermore the manufacturing expenses incurred in the second period were only Rs.1,37,978/- and the electricity expenses were only Rs.75,629/- in the second period. There was no registration under Directorate of Industries, PF and ESI. Further, from the photocopies of the few purchase bills produced before the Assessing Officer to show purchase of raw material, he found that what was purchased was not raw material but were finished items of handicrafts etc. and the sales invoices showed that they mentioned only similar item or items containing a small change in the specification, but substantially the products purchased and the products sold were the same.

5. From the above facts the Assessing Officer came to the conclusion that there was no manufacture or production of any article or thing as required by clause (i) of sub-section (2) of Section 10B of the Act. He, therefore, issued a show cause notice to the assessee to explain why the claim made under Section 10B should not be disallowed. In response to the same the assessee claimed that the processes of assembling, arranging, labelling and repacking would come within the definition of “manufacture” and that the processes to which the items were subjected were necessary to make them complete as finished goods for export purposes. The attention of the Assessing Officer was also drawn to the definition of the term “manufacture” by the Ministry of Commerce and Industries which included processes such as refrigeration, repacking, polishing, labelling, reconditioning etc. Several other submissions were made before the Assessing Officer in support of the claim.

6. The Assessing Officer rejected all the submissions. He raised the following objections to the assessee's claim under Section 10B being allowed:-

- (i) The assessee firm has come into existence in violation of clause (ii) of sub-section (2) of Section 10B.
- (ii) The assessee is not engaged in the manufacture or production of any article or thing as required by clause (i) of sub-section 2 of Section 10B. No new product has come into existence having a distinctive name, character or use.
- (iii) Letter dated 5th May, 2005 issued by the Development Commissioner, SEZ, Noida shows that it is only a communication while processing the assessee's application for approval as 100% EOU and that it is not an approval per se. It required the assessee to comply with 12 more conditions which were not complied with by the assessee. Predominantly the EOU has not been custom bonded and no bonding licence has been obtained.

In this view of the matter, the Assessing Officer rejected the claim of the assessee under Section 10B of the Act.

7. On appeal by the assessee to the CIT(Appeals), the assessee would appear to have filed detailed written submissions and a paper book consisting of additional evidence. It was submitted that a mere reconstitution of the partnership firm cannot amount to splitting up or reconstruction of business already in existence. It was submitted that the ownership, management and custody of the assets of the firm continued to remain with the partners, both before and after the approval given by the Development Commissioner, SEZ, Noida. On the point as to whether the assessee was carrying on any manufacturing activity it was submitted that it was engaged in the manufacture of wood and brass articles, chess boards etc. for which unfinished and semi-finished articles were got manufactured from various artisans as per specific

instructions, that these semi-finished products were converted into finished products by the EOU after applying several manufacturing and mechanical processes such as rubbing the raw material by sand paper, buffing, carving, pasting velvet cloth on wooden boxes etc. Similar processes, it was urged, were undertaken on the brass items which were then assembled and polished. Evidence for purchase of raw material was furnished before the CIT(Appeals) in the form of a paper book. Several authorities were cited to show that what the assessee was doing amounted to a manufacturing activity thus satisfying the requirement of clause(i) of sub-section 2 of Section 10B.

8. As regards the evidence for manufacture is concerned, the assessee also drew the attention of the CIT(Appeals) to the purchase of machinery for Rs.35,100/- consisting of various tools and the fact that the depreciation was actually allowed in the assessment for the assessment year 2005-06 and 2006-07 which established the claim that the machinery was used for the purpose of manufacturing operations. The attention of the CIT(Appeals) was also drawn to the various amounts debited as manufacturing expenses, wages etc.

9. The submissions of the assessee along with evidence adduced before the CIT(A) were sent to the Assessing Officer to enable him to submit a remand report after scrutiny. The Assessing Officer was also provided with the exhibits, namely, a raw chess board and finished chess board on which value addition had been allegedly done by the assessee. A copy of the letter dated 19th January, 2010 from the Ministry of Commerce, EPZ Section, which was obtained through an application filed under RTI Act, was also sent to the Assessing Officer.

10. The Assessing Officer vide letter dated 19th March, 2010 sent the remand report in which he objected to the admissibility of additional evidence under Rule 46A of the Income Tax Rules, 1962. He doubted the genuineness of the evidence obtained

from various suppliers in the form of affidavits which, in any case, according to him did not establish the claim that there was manufacturing activity. The Assessing Officer also claimed one more opportunity to examine the correctness, genuineness and veracity of all the affidavits filed by the assessee. So far as other submissions made by the assessee are concerned, the Assessing Officer did not offer any comment. According to him, whatever was submitted before the CIT(Appeals) was additional evidence which could have very well been submitted by the assessee in the course of the assessment proceedings.

11. The assessee filed a rejoinder to the remand report and submitted that the additional evidence and affidavits filed before the CIT(Appeals) cannot strictly be so considered as they were filed only in continuation of the submissions made and evidence adduced before the Assessing Officer in the course of assessment proceedings. According to the assessee the additional documents filed before the CIT(Appeals) were in the nature of further clarification and not independent evidence. The mistake that had occurred in the note that the date of commencement of production was 22nd September, 2006 in the letter issued by the Development Commissioner was also pointed out to the CIT(Appeals) and it was submitted that all these facts were made known to the Assessing Officer at the time of the assessment proceedings; but he did not prefer to wait for the clarifications and proceeded to complete the assessment on 15th December, 2008, even though 15 more days were available to him for completing the assessment. Thus, it was claimed, that the Assessing Officer did not afford adequate opportunity to the assessee to adduce evidence which justified the admission of the additional evidence before the CIT(Appeals).

12. The CIT (Appeals) admitted the documents adduced as additional evidence on the ground that they only clarified the assessee's claim which was not exclusively based on those documents. He considered the approval given by the Development

Commissioner for starting manufacturing operations as crucial as also the clarification issued on an application made under the Right to Information Act. He noted that the Assessing Officer had been given adequate opportunity to examine the additional evidence and file a remand report and in fact the Assessing Officer had taken more than 15 months to send the remand report. He referred to the clarification issued by the Development Commissioner, SEZ, Noida in which there was clear reference to the letter of approval as on 5.5.2005 to the export-oriented unit and opined that in the light of this, the Assessing Officer should have appreciated that the EOU was in existence from the date of issue of the letter of permission and therefore no further approval from any authority was required. This position, according to the CIT(Appeals), was clarified by the CBDT by instruction No.2/2009 issued on 9th March, 2009. In this view of the matter he held that no further documents or approvals were required by the assessee to substantiate his claim for deduction under Section 10B.

13. With regard to the objection of the Assessing Officer that the unit was not custom-bonded, the CIT (Appeals) took the view that since no imports were contemplated by the assessee in the manufacture of handicrafts, there was no need to custom-bond the unit.

14. The CIT (Appeals) also noticed that the assessee had carried out its operations from 5.5.2005 and had also effected export sales after 18.5.2005 in respect of which foreign exchange was realized. It was thus held by him that all the paper work had been completed by the assessee and nothing further was required to be done. He summed up the position in the following words :

“7.2.3 On careful and coherent appreciation of these terms, it will be sufficient to treat existence of a 100% EOU, if a valid letter of permission has been issued in this regard by the Development Commissioner. The CBDT has already clarified that, wherever such an issue of letter of permission was further ratified by the Board of Approval, the approval shall be deemed to have been issued from the

date the letter of permission was issued, in the case of the appellant, since the letter of permission was issued on 5.5.2005 and which was further ratified on 21.7.2005, the EOU had come in existence, for the purpose of section 10 B of the of the (sic) I.T.Act, 1961 on 5.5.2005 itself. The learned AO has gone beyond the above accepted legal definition of EOU by contemplating that the EOU shall come into existence only when various procedural formalities entailed in the said LOP are also fulfilled. However these procedural formalities were relevant for the competent authority, which are empowered to even cancel or revoke the approval, if such essential conditions were not met. However, for the purpose of claiming deduction under section 10 B, it is sufficient that the letter of permission is issued for setting up the hundred percent, EOU. Since the relevant competent authorities have duly issued the necessary approval and have also sorted out the procedural formalities subsequently in their own way, e.g., even though the appellant did not require the facility of custom warehouse, prevailed upon him to have a custom-bound warehouse, prevailed upon him to have a custom-bound warehouse and based on that, have not revoke or cancelled the approval, therefore, the delay in meeting these conditions, did not have any bearing on the status of 100% EOU.

Therefore, the observations of the learned AO that the legal agreement was 24th of July 2006 and based on which, in the record of the Development Commissioner, the commencement date was recorded at 22 September 2006, were not relevant for determining whether 100% EOU, in terms of the Foreign Trade Policy and the provisions of section 10 B of the I.T Act, 1961, was in existence or not w.e.f. 5.5.2005.”

15. The CIT (Appeals) also held that the assessee had commenced the manufacturing operations required by Section 10B. New machinery for ₹35,100/- was acquired during the previous year ended 31.3.2007. There was, according to the CIT (Appeals) a distinction between the manner in which the business activity of the firm was carried on prior to 1.4.2005 and after that date. Earlier to the said date, the activity of the firm was restricted to trading of handicrafts items. After the said date, under the new partnership deed, the scope of the business was enlarged to include manufacturing for the purpose of export of handicrafts items. The tax auditors had also made a reference to this in their tax audit report filed under Section 44AB. For

the previous year relevant to the assessment year 2006-07, expenses in the nature of wages and manufacturing expenses as well as depreciation had been debited to the profit and loss account. The incurring of these expenses coupled with the manufacture of handicraft items for the purpose of export, satisfied the requirements of Section 10B(2).

16. With regard to the nature of the manufacturing carried on by the assessee, the CIT (Appeals) on a perusal of the bills for purchase of raw materials, semi-finished material, unfinished material etc. and also on examining the exhibits and samples in order to emphasize the value addition brought about by the assessee held that the activity carried on by the assessee amounted to manufacturing activity. He noted that the Assessing Officer, despite being given an opportunity, did not examine the value addition made to the raw materials and the semi-finished or unfinished materials. He also noted the clarification issued by the Ministry of Finance with regard to the definition of the term “manufacture” appearing under Section 2(f) of the Central Excise Act, 1944 by issue of a trade notice No.6/2006 dated 24.7.2006 and held as follows :

“8.4 I find that in the business of export the work orders are placed on the basis of which only goods are manufactured. Looking to the facts of the case, I observe that these goods are purchased as per orders giving description of shape, size, design, weight, etc. which were ultimately manufactured for them. The appellant firm not only is clearly engaged in the business of manufacturing for which it purchased several finished and unfinished material on which further, processing was carried out to make it saleable in the international market. Therefore in view of the – above facts, it cannot be denied that the appellate firm had not done any “manufacturing” activity during the year for the purpose of export of handicrafts items.”

17. Turning to the other condition of Section 10B(2), namely, that the undertaking owned by the assessee should not have been formed by the splitting up or the reconstruction of an existing business and dealing with the objection of the Assessing

Officer that on reconstitution of the firm, there was a reconstruction or splitting up of the existing business, the CIT (Appeals) held that what happened on 18.5.2005 was merely that Gaurav Arora was inducted as a new partner and the existing partner Umesh Arora was divested of 50% of his share in the profits in favour of the new partner. This according to the CIT (Appeals) did not amount to splitting up of or reconstruction of an existing business. The reconstituted firm had started an altogether new business of manufacture and export of handicrafts items while the erstwhile firm was engaged merely in trading activity. The CIT (Appeals) perused the balance sheet of the reconstituted firm as on 31.3.2006 and found that the firm had acquired tools for the purpose of manufacturing for export of handicraft items. No such machinery was owned by the erstwhile firm. The erstwhile firm did not also incur any wages or manufacturing expense which was incurred by the reconstituted firm. In this view of the matter, the CIT (Appeals) held, agreeing with the assessee, that there was no reconstruction or splitting up of a business already in existence in order to form the undertaking owned by the assessee.

18. In the aforesaid view of the matter the CIT (Appeals) held that for both the assessment years under appeal the assessee was entitled to the deduction under Section 10B.

19. The revenue carried the matter in appeal before the Tribunal. It may be noted that both the assessments were completed within a short time gap and therefore both the appeals were taken up by the CIT (Appeals) for decision through a common order, which was passed on 30.3.2010. Therefore, the Tribunal also disposed of the appeals of the revenue on 3.6.2011 by a consolidated order. A broad perusal of the order of the Tribunal shows that it has substantially endorsed the findings and conclusions of the CIT (Appeals) and dismissed the appeals filed by the revenue.

20. The simple question which we have to address is whether the assessee has satisfied all the conditions of Section 10B of the Act. As far as the first objection raised by the Assessing Officer is concerned, namely, that the assessee was formed by the splitting up, or the reconstruction, of a business already in existence, we are of the view that the objection was rightly repelled by the CIT(Appeals). A mere reconstitution of the partnership firm can hardly be said to amount to the splitting up, or the reconstruction, of the partnership business which was already in existence. There is no dispute that after the partnership was reconstituted, the reconstituted firm had started a new business with an amendment to the partnership deed enabling the firm to carry on the manufacture and export of handicrafts items. Prior to the reconstitution the firm was authorized to merely carry on trading and exports of handicrafts etc. That apart the balance sheet as on 31st March, 2006 undisputedly shows that the assessee had acquired tools and the machinery, which were not with the firm prior to the reconstitution. Even the profit and loss accounts drawn up after the reconstitution showed manufacturing expenses and wages. We are, therefore, unable to appreciate how the Revenue can contend that the undertaking owned by the assessee was formed by the splitting up or reconstruction of the erstwhile partnership business. The contention is contrary to the facts on record.

21. The other objection of the Assessing Officer that the assessee did not fulfill the conditions prescribed by Development Commissioner in his letter dated 5th May, 2005 also does not appear to us to be of any substance. One of the main objections of the Assessing Officer was that the EOU was directed to be custom-bonded which was not complied with by the assessee. The CIT(Appeals) held that custom-bonding was required only where imports are contemplated and since the assessee-firm did not plan to import any materials to be used in the manufacture of ingredients, the EOU was not custom-bonded. It appears to us from the copy of the notification No.53/97 –customs dated 3rd June, 1997, that custom-bonding is required only where imports are

contemplated for the purposes of manufacture, production, packaging etc. for the purposes of export of goods or services out of India. The notification was issued in exercise of the powers conferred by Section 25(1) of the Customs Act, 1962. It has not been shown by the Revenue that the assessee imported any materials either of unfinished or semi-finished or in raw form, which it used in the manufacture or export of handicrafts. In this view of the matter, we do not see any purpose being served by insisting on the custom-bonding of the EOU. A reasonable way of construing the condition imposed by the Development Commissioner would be to understand the same as necessary only when imports are contemplated. We, therefore, do not see much merit in the objection.

22. The main objection of the Revenue is that the assessee was wrongly held by the CIT(Appeals) and the Tribunal to be engaged in the manufacture or production of any articles or things in fulfillment of one of the conditions of Section 10B(2). It is also contended that the Tribunal erroneously approved the admission of additional evidence by the CIT(Appeals) and it did not follow the procedure laid down by Rule 46A of the Income Tax Rules, 1962 and that the CIT(Appeals) admitted the additional evidence in disregard of the remand report submitted by the Assessing Officer.

23. We may first take up the issue relating to the admission of additional evidence of the CIT(Appeals). In support of the contention that it was engaged in the manufacture of handicrafts items, the assessee had submitted various documents and samples/exhibits before the CIT(Appeals). The exhibits included raw chess board and finished chess board on the basis of which the assessee explained that it made a value addition to the chess board exports, which amounted to manufacture. The documentary evidence and the samples or exhibits were forwarded by the CIT(Appeals) to the Assessing Officer with the direction that a remand report be submitted by him. The documentary evidence included evidence from the supplier of raw material/semi finished goods along with other details. The letter of permission

dated 19th January, 2010 issued by the Ministry of Commerce, EPZ Section which had been obtained under the RTI Act and filed before the CIT(Appeals) as additional evidence was also sent to him for comments. The Assessing Officer submitted remand report which was allegedly after a lapse of 15 months. The remand report was also commented upon by the assessee in its rejoinder. The Assessing Officer had objected to admission of the additional evidence, but the CIT(Appeals) overruled it as the additional evidence was only clarificatory in nature and the assessee's case was not exclusively based on it. He pointed out that the Assessing Officer could have carried out an enquiry before submitting a remand report and could have gone on a visit to the assessee's unit to carry out an inspection and see for himself the nature of the activity carried on by the assessee. The CIT(Appeals) held that the request of the Assessing Officer that he should be given one more opportunity of examining the evidence and the affidavits of the suppliers by summoning the deponents was not reasonable since the Assessing Officer had already taken more than 15 months to comply with the remand. He, therefore, held that it was not in the interest of justice to delay the proceedings further by giving further opportunity to the Assessing Officer. In this view of the matter he admitted the additional evidence.

24. The Tribunal dealt with this issue in paragraph 5 of its order. It noted that the additional evidence consisted of only the following:-

“(i) Copy of RTI Application dated 11.01.2010 addressed to Ministry of Commerce and Industry, Udvoy, Biawan. New Delhi.

(ii) Copy of reply dated 19.01.2010 received from EOU Section, Ministry of Commerce and industry, Government of India.

(iii) Affidavits of suppliers confirming about supplying the unfinished, unassembled and incomplete goods to the Assessee.

(iv) Exhibits 01 and 02 as Raw Chess Board and Raw Chess Pieces respectively and also Exhibits 03 and 04 as Finished Chess Board and Finished Chess Pieces respectively. ”

The Tribunal also found that all other evidence was part of the assessment proceedings. It was further noted that the only objection of the Revenue was that reasonable opportunity was not allowed to the Assessing Officer. The Tribunal rejected the contention saying that the Assessing Officer took 15 months and more to submit the remand report and, therefore, there was no merit in the contention of the Revenue that no reasonable opportunity was given to the Assessing Officer. Having regard to the Tribunal's observation in para 5.3 that the only objection raised by the Revenue before it was that no reasonable opportunity was granted to the Assessing Officer under Rule 46A, we are unable to say that the Tribunal erred in holding that the CIT(A) was justified in admitting the additional evidence. The additional evidence was rightly admitted.

25. Coming to the merits of the assessee's claim, accepted by the Tribunal, that the assessee manufactured handicrafts for the purpose of exports, the Tribunal has discussed the issue (in paragraphs 10.2 to 10.5 of its order). What we can glean from these paragraphs is that the Tribunal held that the assessee turned out a distinct commercial commodity from the raw or semi-finished components. The chess boards and brass items were received by the assessee in a raw or semi-finished or unfinished stage and the assessee carried out several processes thereon, such as carving, polishing and putting various embellishments such as velvet cloth and designs. Thereafter, the items were packed and exported as a separate commercial commodity. These included chess boards, brass items and what was called "5 indoor games", which are stated to be popular in foreign countries. According to the Tribunal the items purchased by the assessee were totally distinct and different from the items exported and this amounted to manufacture of articles or things. In coming to this conclusion the Tribunal noted the definition of the word "manufacture" given in the circular issued by the central excise department as meaning to make, produce, fabricate, assemble, process, calibrate

by hand or by machine to bring out a new product having a distinct name, character or use. The definition included various processes such as cutting, polishing, blending, repacking, labeling, refurbishing etc. The Tribunal also placed strong reliance on the fact that the additional evidence adduced by the assessee before the CIT(Appeals) was sent to the Assessing Officer for filing a remand report which was sent by the Assessing Officer after a lapse of 15 months, during which period he could have examined the exhibits/samples, affidavits, purchase bills issued by the suppliers etc., and verified whether the assessee's claim that it was engaged in the carrying out of various activities amounting to manufacture was correct or not. It was thus held by the Tribunal that ample opportunity had been given to the Assessing Officer and despite this he had submitted only "a half-hearted remand report".

26. The difficulty in accepting the findings of the Tribunal is that it has erroneously proceeded on the footing that the Assessing Officer had ample opportunity to examine and verify the additional evidence adduced by the assessee before the CIT(Appeals). The Tribunal, as noted earlier, has stated that the Assessing Officer had delayed the remand report beyond 15 months. We are unable to see the basis of this statement. The appeals before the CIT(Appeals) were filed by the assessee on 18.1.2010. It was in the course of the appeal proceedings that additional evidence had been produced and a remand report was called for by the CIT(Appeals). The appeals were eventually disposed of by the CIT(Appeals) by a common order dated 30.03.2010. Thus the entire appeal proceedings had taken less than three months for completion. In this background, it is not understandable as to how the Assessing Officer can be blamed to have delayed his remand report beyond 15 months. This aspect of the matter has not been clarified either by the CIT(Appeals) or by the Tribunal and it was also not clarified before us. No

doubt we have held that the assessee was entitled in this case to have the additional evidence admitted by the CIT(Appeals). However, the claim of the assessee based on the additional evidence, even assuming that the additional evidence only elaborated the activities of the assessee, had to be properly verified by the Assessing Officer. The Assessing Officer does not appear to have had ample opportunity to examine them and process the claim of the assessee. The claim made by the assessee is important and it has been made for the first time in the assessment year 2006-07. Admittedly, the business of exports had commenced only in the previous year relevant to the assessment year 2006-07. The profit and loss account for this year was different from the profit and loss account for the earlier years in the sense that the assessee had debited manufacturing expenses, wages etc. in the profit and loss account for the year ended 31.03.2006. The balance sheet as on 31.03.2006 also showed for the first time machinery valued at ₹35,100/-. Thus there is sufficient justification for the claim to be examined in depth as to whether the assessee was engaged in the manufacture or production of articles or things. We, therefore, restore this issue to the file of the Assessing Officer to enable him to process the claim of the assessee afresh in the light of the evidence brought on record. It is clarified that the Assessing Officer will examine only the question whether the assessee satisfied the condition stated in Section 10B(2)(i) of the Act. Accordingly, question “C” is answered in the negative but an order of remit is being passed as stated above.

27. For the aforesaid reasons we answer the first two questions of law in the affirmative, in favour of the assessee and against the revenue. The third question of law is answered in favour of the revenue, subject to our order of remit. The last

question of law is answered in the negative, insofar as it relates to the admission of the additional evidence.

The appeals are thus partly allowed.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 17, 2012
Bisht/vld