

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2348/Ahd/2018
(Assessment Year: 2012-13)

DCIT, Cir-1(1)(1), Ahmedabad	Vs.	M/s. Adani Bunkering Pvt. Ltd. Adani House, Nr. Mithakhali Six Road, Navrangpura, Ahmedabad- 380009
PAN No. AAD CC3 765 G		
(Appellant)	..	(Respondent)

Appellant by :	Shri O. P. Sharma, CIT DR
Respondent by :	Shri Vartik Chokshi, AR

Date of Hearing	15.07.2020
Date of Pronouncement	09.09.2020

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 26.09.2018 passed by the Commissioner of Income Tax (Appeals) –1, Ahmedabad arising out of the order dated 31.03.2016 passed by the DCIT, Circle-1(1)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2012-13.

2. The assessee company having business dealing in fuel old and High Speed Diesel, also setting up and operating facilities in connection with planting, storage, delivery and other logistic operations for bunkering business, registered as a Special Economic Zone (in short ‘SEZ’) Unit with

Adani Port and Special Economic Zone Ltd. filed its return of income for A.Y. 2012-13 electronically on 30.11.2012 declaring a total income of Rs. 10,51,79,840/- after claiming deduction of Rs. 42,41,29,196/- under Section 10AA of the Act which was duly processed under Section 143(1) of the Act. Ultimately the assessment was finalized under Section 143(3) of the Act *inter alia* disallowing the claim of deduction under Section 10AA to the tune of Rs. 42,41,29,196/- and added back to the total income of the assessee. The assessee has not manufactured and/or produced articles or things or provided any services during the previous year to A.Y. 2012-13 from its SEZ Unit as of the observation made by the Ld. AO and such claim was disallowed. In appeal the same was deleted by the Ld. CIT(A) relying upon the order passed by his predecessor in assessee's own case on identical issue for A.Ys. 2010-11 and 2011-12 holding that the assessee is carrying out the manufacturing activities and hence is entitled to the claim made under Section 10AA of the Act within the meaning of the provision under Section 2(r) of the SEZ Act, 2005.

3. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the assessee's case is covered on identical issue by and under the order passed by the Co-ordinate Bench in ITA No. 1555/Ahd/2016 with C.O. 112/Ahd/2016 for A.Y. 2010-11 and IT(TP)A No. 1102/Ahd/2017 with C.O. 25/Ahd/2018 for A.Y. 2011-12; a copy whereof has also been submitted before us.

Mr. Sharma, the Ld. DR, with all his fairness has not raised any serious objection to that of the admitted facts as submitted by the Ld. AR.

4. We have heard the respective parties, we have also perused the relevant materials available on record including the order passed by the Ho''ble Co-ordinate Bench in Revenue's appeal on the identical issue. The relevant portion thereof is as follows:-

"8.1 From the above explanation, it is revealed that the meaning of manufacturing shall remain the same for the purpose of claiming the deduction under section 10AA of the Act as assigned in clause (r) of section 2 of the Special Economic Zones Act, 2005¹⁹; which reads as under:

"manufacturing" 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 processes such as refrigeration, cutting, polishing, blending, repair, remarking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining; (Emphasis supplied)

8.2 From the above definition, it emerges that the activity of blending is covered within the meaning of manufacturing as provided under the Special Economic Zone Act 2005. Now the question arises whether the activities carried out by the assessee amounts to the blending as claimed by the assessee. In this connection we note that the assessee has imported various fuel oil in bulk which were blended in the tanks hired by it at Mundra port as evident from the submission of the assessee before the AO. The relevant extract of the submission of the assessee is reproduced as under:

The assessee company has made import of various fuel oil in bulk and out of such imports few quantity shall be blended at Mundra Port. Thus it shall carry the process of blending at Mundra Port. Further after blending the oil/fuel, the same shall be re-exported as bunker fuel supply to foreign run vessels different vessels as per their requirement, varying mainly in terms of Viscosity, sulfur and other parameters at ports of Gujarat.

The assessee company has hired 7 tanks of different capacity for Fuel Oil storage from APSEZ

The blending activity takes place at the time of import of cargo/ new arrival. The product being imported have the specification of i.g. "B" Grade.

- 4 -

The product of B Grade is received in tank which already have the product of A Grade, hence the specs of Imported Cargo is changed to C Grade, when it is blended with A Grade cargo already in the tank.

At the time of Import there remains some product in the tanks which have specification of i.g. "A" Grade

The blending activity takes place also when the product of different grades lying in various tanks is mixed and a product of a new grade comes into existence. As an operational requirement or specific order for supply the assessee company needs to carry out inter-tank transfers. In this activity the Specs of two different grade products are blended and the specs of the mixed product emerge different from the specs of cargo transferred. During the process of inter-tank transfer circulation, churning, heating activity also carried out to have proper blending and homogeneous product at all the levels in the tank.

There are specific equipment like churners, jet pumps, hot water lines, boilers etc. are installed in the tanks for proper blending. -(Specific cost to have manufacturing-facility).Tanks are insulated to maintain temperature. Specific IT systems are installed at storage terminal to have better control over temperature, dip measurement, level of cargo.

The above submission of the assessee has not been doubted by the AO during the assessment proceedings. However, the AO doubted on the manufacturing activity carried out by the assessee mainly for 2 reasons, firstly, that there was not sufficient equipment available with the assessee secondly, and the AO referred the definition of manufacture as provided under section 2(29B) of the Act.

8.3 Regarding the availability of equipment, we note that the assessee hired the tanks which were well equipped for carrying out the blending activities as described above. Furthermore, the activity of blending cannot be linked with the value of the equipment shown by the assessee in the financial statements.

8.4 We also note that the definition of the manufacturing under section 10AA of the Act has already been provided for the assessee's claiming the benefit therein. Thus there was no need to import the definition provided under section 2(29B) of the Act while evaluating the fact whether the assessee is carrying out any manufacturing activity. In our considered view, the assessee in the present facts and circumstances is carrying out blending activity which is manufacture within the meaning as provided under SEZ Act. Accordingly, we hold that the assessee is engaged in the manufacturing activity.

8.4 it is also pertinent to take a note of the fact that the deduction under section 10AA is also available to the assessee engaged in providing any services.

As such we are inclined to elaborate the services eligible for deduction under section 10AA of the Act.

8.5 *The word service has not been defined under the Act, therefore it is imperative to refer the definition of the services provided under the SEZ Act i.e. 2(z) of the Act which reads as under:*

(Z) “services ” means such tradable services which

- (i) *are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994.*
- (ii) *may be prescribed by the Central government for the purposes of this Act and*
- (iii) *earn foreign exchange;*

8.6 *Further, the rule 76 of Special Economic Zone Rules 2006 defines the services for the purpose of this section 2(z) of the SEZ Act which reads as under:*

“76. The “services” for the purposes of [1] [clause] (z) of section 2 shall be the following, namely:- Trading, warehousing, research and development services, computer software services, including information enabled services such as back-office operations, call centres, content development or animation, data processing, engineering and design, graphic information system services, human resources services, insurance claim processing, legal data bases, medical transcription, payroll, remote maintenance, revenue accounting, support centres and web-site services, off-shore banking services, professional services (excluding legal services and accounting) rental/leasing services without operators, other business services, courier services, audio-visual services, construction and related services, distribution services (excluding retail services), educational services, environmental services, financial services, hospital services, other human health services, tourism and travel related services, recreational, cultural and sporting services, entertainment services, transport services, services auxiliary to all modes of transport, pipelines transport.

[Explanation- The expression “Trading”, for the purposes of the Second Schedule of the Act, shall mean import for the purposes of re-export.]

On reading of the above rule, it is transpired that even the trading activity carried out by the assessee from its SEZ unit, the profit from such activity is also eligible for deduction under section 10AA of the Act.

8.7 *Now the next question arises whether the provisions of Income Tax Act 1961 will prevail over the provisions of The Special Economic Zones Act, 2005.*

At this point it is relevant to refer the relevant provisions of section 51 of SEZ Act 2005 which is given below:-

“51.(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

8.8 From the reading of the provisions it is clear that the provisions as specified under The Special Economic Zones Act, 2005 would have overriding effect on the Income Tax Act. The same view has also been held in the case of the Midas DFS (P) Ltd. by the Hon’ble Kolkata ITAT in **ITA No.30/Kol/2012** for the AY 2008-09 vide order dated 13/11/2013. The relevant extract of the order is reproduced below:-

*“3. We have heard the rival submissions and perused the relevant material on record. The first objection of the Assessing Officer was that the benefit of Section 10AA of the Act is lost when the assessee is engaged solely in ‘trading’ activities. It has been noticed above that Section 10AA(1) allows benefits, inter alia, for the provisions of any ‘services’ by an eligible enterprise. Obviously, the erstwhile partnership firm i.e., M/s Midas International was permitted to do ‘trading’ by the Competent authority. The firm got converted into assessee company and continued the same business with the prior permission from the Competent authority under the SEZ Act. the definition of “service” in the SEZ Act includes ‘trading’ activity. In that view of the matter, it becomes manifest that the trading activity has been permitted by the Competent authority under the SEZ Act. As such, there can be no question of denial of exemption u/s 10AA of the Act. The Ld. Counsel for the assessee has placed on record a copy of an order passed by the Jaipur Bench in DCIT Vs. Goenka Diamond & Jewellers Ltd. It appeal No. 509(JP) of 2011 2012(050)-SOT-0307-TJAI in which it has been held that trading of the eligible goods entitles the se to the benefit of section 10AA of the Act. Similarly, the copy of another order passed by Mumbai Bench in M/s Gitanjali Exports Corporation Limited Vs. ADCIT in **ITA No. 6947 & 6948/Mum/2011** dated 08-05-2013 has also been placed on record in which the view expressed by the Jaipur Bench has been reiterated. No contrary precedent has been brought to our notice by the Ld. DR. In view of the two Tribunals orders available on the point allowing exemption u/s. 10AA of the Act in respect to ‘trading’ activities, we are of the considered opinion that no exception can be taken to the view expressed by the Ld. CIT(A) in granting the exemption.”*

8.9 In this respect we also draw support and guidance from decision of Hon’ble ITAT Jaipur ‘B’ Bench in case of DCIT vs. Goenka Diamond &

Jewellers Ltd. reported in 19 taxamman.com 91. The relevant extract of the order is reproduced below:-

It is true that the word 'services' is not mentioned either in section 10AA or in section 2 of the Income Tax Act which contains the definition of various words. Deduction under section 10AA is available in case the unit begins to manufacture or produce such article or things or provide services. It is not disputed that the unit of the assessee has done trading activity by importing the items and thereafter selling them. However, it is disputed by the revenue that the assessee has done only trading and no value addition has been made. [Para 2.10]

The Explanation 1 to section 10AA contains the definition of the word 'export turnover', Export in relation to Special Economic Zone, Manufacture relevant to section 10AA Special Economic Zone and Unit. The word manufacture is to be considered to have the same meaning as assigned in clause (r) of section 2 of SEZ Act, 2005. Similarly, SEZ unit will have the same meaning as assigned to them under clause (za) of section 2 of SEZ Act. [Para 2.11]

It is noted that section 10AA was not inserted by the Finance Bill. Section 10AA was inserted by the SEZ Act, 2005 with effect from 10-2-2006. Section 27 of SEZ Act says that provision of Income-tax Act shall apply to, or in relation to, the developer or entrepreneur for carrying on the authorized operations in a Special Economic Zone or Unit subject to the modifications specified in the Second Schedule. Thus, if the operations are authorized then the provision of the Income-tax Act shall be subject to modifications of SEZ Act. The SEZ Act provides that services may be prescribed by the Central Government for the purpose of SEZ Act and services have been prescribed in rule 76 of SEZ rules. As per instruction No. 1/2006, dated 24-3-2006 issued on the basis of Board of Approval meeting held on 17-3-2006 on the issue of setting up trading units in the Special Economic Zone it was stated that rule 76 of SEZ rules would be confined to import of goods for export. Such instruction was modified vide instruction No. 4/2006, dated 24-5-2006. [Para 2.16]

In the said instruction, a reference has been made to section 10AA. It is made clear to the entrepreneur having units in SEZ that benefit under section 10AA will exclude other trading except in the nature of re-export of imported goods. Thus, there is a promissory estoppel by the Government to the entrepreneur putting up the units in the SEZ that benefit under section 10AA will be available on trading in the nature of re-export of imported goods. [Para 2.17]

Vide Instruction No. 1/2006, dated 24-3-2006 of Ministry of Commerce, it was clarified that trading units can be set up in the SEZ. Further, modification was made on 24-5-2006 in which it was made clear that the

deduction under section 10AA will be available in respect of the trading in the nature of re-export of imported goods. Thus the assessee was promised that they will be eligible for deduction under section 10AA in respect of the profit earning on trading of re-export of imported goods. The revenue had not been able to show us that such instruction was not withdrawn or the Board has issued instruction that instruction dated 24-5-2006 from the Ministry of Commerce will not be applicable for the purpose of allowing exemption under section 10AA. Hence, in view of the doctrine of promissory estoppel, the assessee is entitled to deduction. [Para 2.19]

Section 51 of the SEZ Act mentions that notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, the provision of SEZ Act will prevail. Thus one will have to consider the implication of section 51 of the SEZ Act. It means that anything inconsistent to the provision of the SEZ Act will not be considered. Thus, the word 'services' as mentioned in section 10AA cannot be construed in consistently with the definition of services given in the SEZ Act. Under the SEZ Act, the trading is included in the services provided the trading in export of imported goods. Therefore, the assessee is entitled to deduction under section 10AA and therefore, the Commissioner (Appeals) was justified in allowing the exemption. [Para 2.20]

Thus from the above, it is clear that the trading activity carried out by the assessee is also eligible for exemption under section 10AA of the Act within the meaning of the provisions provided under section 2(z) of the SEZ Act read with the rule 76 of Special Economic Zone Rules 2006 as discussed above.

8.10 Now coming to the aspect whether the assessee is eligible for deduction with respect to the income generated by it on account of currency fluctuation, interest income, in this regard we note that these incomes are arising in the course of the business (import and export) carried on by the assessee in its SEZ Unit. As such these incomes are intrinsically linked with the operation of the assessee. Accordingly we hold that such income is eligible for deduction/exemption under section 10AA of the Act.

8.11 We also note that the assessee has correctly calculated the amount of deduction in proportion to the export sales viz a viz domestic sales of the SEZ unit as provided under subsection 7 of section 10AA of the Act. Thus the AO erroneously has reduced the amount of domestic turnover from the total turnover of the assessee SEZ unit which resulted loss to the assessee.

In view of the above, we do not find any reason to interfere in the order of the learned CIT (A). Accordingly, we uphold the same. Hence the ground of appeal of the Revenue is dismissed."

- 9 -

We, therefore, keeping in view the ratio laid down by the Co-ordinate Bench on the similar set of facts and law find no infirmity in the order passed by the Ld. CIT(A) in allowing the appeal preferred by the assessee by deleting the addition holding it entitled to the claim of deduction /exemption under Section 10AA of the Act and to the tune of Rs. 42,41,29,196/-/- so as to warrant interference. Hence, in absence of any merit found in the appeal preferred by the Revenue, we dismiss the appeal.

5. In the result, Revenue's appeal is dismissed.

This Order pronounced in Open Court on	09/09/2020
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Sd/-
(AMRJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/09/2020

TANMAY, Sr. PS

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

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad