

**आयकर अपीलीय अधिकरण, मुंबई "के" खंडपीठ**  
**Income-tax Appellate Tribunal "K" Bench Mumbai**  
**सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य**  
**Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member**  
**आयकर अपील सं./I.T.A./7635/Mum/2014, निर्धारण वर्ष /Assessment Year: 2010-11**

M/s.Dania Oro Jewellery Pvt. Ltd., Gala No.601 & 602, Block No.I, SEEPZ-SEZ, SEEPZ Andheri (East),Mumbai – 400 096. PAN: AACCD3214E	Vs.	The Income Tax Officer – 9(3)(1), Aayakar Bhavan, M.K.Road, Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by: Shri V.Jenardhan, DR**

**Assessee by: Shri Arati Vissanji**

**सुनवाई की तारीख / Date of Hearing: 11/10/2017**

**घोषणा की तारीख / Date of Pronouncement: 03/01/2018**

**आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश**  
**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**लेखा सदस्य, राजेन्द्र के अनुसार/ PER RAJENDRA, AM-**

Challenging the order of the assessing officer (AO), dated 26/11/2014, passed in pursuance of the directions of the dispute resolution panel(DRP)-1,Mumbai, dated 20/10/2014, the assessee has filed present appeal.Assessee-company engaged in the business of manufacturing of studded gold jewellery filed its return of income on 21/09/2010,declaring total income of Rs.4.77 lakhs. The AO completed the assessment u/s.143(3) r.w.s. 144C(1) and 144C(5) determining Rs.35.40 lakhs.

2.First ground of appeal is about adjustment made on account of interest on delayed payment amounting to Rs.8.25 lakhs.During the assessment proceedings,the AO found that the assessee had entered into International Transactions (IT.s)with its associated enterprises (AE).Therefore, he made reference to the transfer pricing officer (TPO) for ascertaining the arms length price (ALP) of the IT.s.

2.1.During the Transfer Pricing (TP) proceedings the TPO found that the assessee has carried out certain IT.s with its AE.s.He TPO observed that the margin earned by the assessee on cost was higher than the average margin of the comparable companies on the cost, that the IT.s entered into by the assessee were at arm's length.

**2.2.**He further observed in many occasions there was considerable delay in receiving the payment from the overseas parties.He directed the assessee to file details in that regard and observed that the delay in realization in case of non-AE.s was greater than the delay in realization in case of the AE.s.He found that the average delay in case of AE.s was 290 days (weighted average delay-348 days),that the average delay in case of non-AE.s 340 days (weighted average delay-477 days).He found that the assessee has not charged interest for delayed payment from the AE.s as well as the non-AE.s. It was claimed before the TPO that no adjustment was required to be made for interest on delayed debt from the AE.s. It was also argued that in case adjustment was made for interest on account of delay in realisation of debt from the AE.s then the interest should be reduced from the operating profit,that the OP/TC should be reworked, that the reworked OP/TC should be compared with the selected comparable companies.After considering the invoices which were not realised,the TPO observed that for the two preceding AY.s adjustment for interest in delay in realisation of debts had been made by adopting rate of interest at 15.68% / 15.41% respectively,that the rates represented annualized average yield for 1/2 years for an entity whose rating was classified as BBB by CRISIL Ltd, that the DRP had directed to compute the interest @7%,that for the A.Y. 2009-10 DRP has directed to delete the adjustment made under the head delay in realisation of debts.The TPO observed that the average delay from non-AE for the year was more(145 days) then the earlier years' delay (115days),that the facts of the case were different from the facts of the earlier year.So, he directed the assessee to work out the average cost of borrowing in its hand without giving any weightage to interest free funds. The assessee submitted its reply on 07/08/2013 and 19/08/2013 wherein it was mentioned that rate of 8.48% could be applied for delayed payments from the AE.s.It worked out to Rs.6.43 lakhs.However, the TPO adopted the rate of interest on the basis of average yield from BBB grey corporate bonds for the A.Y 2010-11 @ 10.68%. The ALP of the interest for delay in realization of debts@ 10.68% (Rs.8.10 lakhs)was suggested for an upward adjustment. The AO passed the draft order accordingly.

**2.3.**Aggrieved by the order of the TPO/AO the assessee preferred objection before the DRP and made elaborate submissions.After considering the available material,the DRP held that the assessee was allowing its AE to utilize interest free funds without corresponding compensation to itself,that a trade transaction could not be permitted to be utilized as a funding opportunity

especially when no compensations was being received, that the TPO was correct in identifying the interest receivable and making upward adjustment, that non-AE invoices not realized for long periods could not be considered to be comparable to the interest free credit period allowed to its AE.s,that interest was chargeable from the AE.s on the invoices realized after a period of 170 days,that an interest free credit period of 170 days was to be allowed to the AE.The DRP directed the TPO/AO to compute the figure of interest accordingly.

**2.4.**It was brought to our notice that identical question was dealt with by the Tribunal in assessee's own case for the AY.(ITA/802/Mum/2014/dtd.29.07.2016).

We find that following GOA.s were filed by AO before the Tribunal:

*“Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was correct in deleting the addition of Rs.33,90,931 on account of notional interest due to delayed recovery of trade debts from AE by accepting the assessee's contention without verifying factual accuracy of the same.*

*Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP was correct in deleting the addition of Rs.33,90,931 on account of notional interest due to delayed recovery of trade debts from AE without appreciating the fact that the assessee by its own admission dated 22.12.2013 (Annexure-1 is made part of this authorization),has mentioned that in the case of non-AE if two cases of huge delay are excluded, the average delay in respect of non-AE would be 64.54 days as against average credit period of 145 days advanced to the assessee (calculation of interest as per Annexure-2 is made part of this authorization)”.*

Dismissing the appeal,filed by the AO,the Tribunal held as follow:

*6. We have heard the rival contentions,perused the findings of the authorities below as well as material available on record. The ld.Counsel for the assessee has placed reliance on the judgment of the Hon'ble Bombay High Court in the case of CIT-9 vs. Indo American Jewellery Ltd.. The said head note is extracted below:*

*“Section 92C of the Income-tax Act, 1961- Transfer Pricing-Computation of arm's length price [Comparables and adjustments] – In transfer pricing proceedings, TPO while determining ALP of international transactions, noticed that outstanding balance from Associated Enterprises was amounting to Rs.8.76 crores – said amount was outstanding for more than year and, thus, taking rate of interest at 10 per cent, Transfer Pricing Officer determined interest receivable at Rs.87.66 lakhs and added same to international transaction cost – Tribunal noted that there was complete uniformity in act of assessee in not charging interest from both Associated Enterprises and non-Associated Enterprises debtors for delay in realization of export proceeds – Tribunal thus deleted addition of notional interest on outstanding amount of export proceeds realized belatedly whether on facts, no substantial question of law arose from Tribunal's order –Held, yes [Para5] [ In favour of assessee]*

*6.1 The above decision squarely applies to the present case. This is the only decision of a High Court applicable to the case at hand which has been cited before us. In the case of Dr. T.P. Kapadia vs. CIT[1973] 87 ITR 511 (Mys.) it has been held that a decision of a High Court would have binding force in the State in which it has jurisdiction.*

*6.2 Even in the case of the assessee for the assessment year 2008-09 (Dania Oro Jewellery Pvt. Ltd. vs. ITO) relied on by the ld. DR,we find that in some of the cases the terms of credit has been*

*extended beyond 700 days and in some of the cases, it has gone beyond 1200 days whereas in the case of Non-AE, the maximum delay is of 203 days. In view of the above, the order of the Tribunal in the case of the assessee for the A.Y. 2008-09 is not applicable to the issue at hand for the A.Y. 2009-10.*

*6.3 Let us now examine the facts in the present case. In a case like this the proper method is to take a simple average. If we take a simple average then there has been a delay of 132 days in the case of AE and 130 days in the case of Non-AEs in realization of the export proceeds. Thus there is uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realization of export proceeds.*

*7. Respectfully following the judgment of Hon'ble Bombay High Court in the case of Indo American Jewellery Ltd. the appeal filed by the Revenue is dismissed."*

Considering the above, we decide first ground of appeal in favour of the assessee, as there is 'uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realisation of export proceeds.'

**3.**Recomputation of deduction u/s.10AA of the Act is the subject matter of the next ground of appeal. During the assessment proceedings, the AO found that the assessee-company had declared total income of Rs.4,77,240/- in the return of income filed on 21.09.2010, after claiming deduction of Rs.80,85,924/- u/s.10AA of the Act, that later on a revised return of income was filed by the assessee, declaring total income of Rs.5,37,170/-, that it claimed that disallowances reported in the Tax Audit Report and some of the written back old debts had not been taken care of while making the computation of total income. It also revised the amount of deduction claimed u/s.10AA of the Act, that as per the P&L a/c for the year ended on 31.03.2010, operating income comprised mainly of exports amounting to Rs 27.82 crores, that as per the Balance Sheet Sundry Debtors stood at Rs.38.60 crores. Assessee was showcaused to explain the reason for such difference and was directed to furnish partywise details, of sales and date wise realization of export sale proceeds in foreign-exchange till 31.12.2013 for verification of deduction u/s.10AA. To this assessee, vide letter, dated 28.01.2014, submitted that the total turnover of assessee was Rs.29.73 crores, out of which, export turnover was Rs. 27.89 crores. The AO held that on the total export sales, the assessee had not received/ realised export turnover to the extent of Rs.5,69,98,514/-. It requested the AO to give directions in the order u/s.143(3) so that as and when the amounts were to be realized, the assessee company should be granted deduction u/s.10AA of the Act. Accordingly, the admissible deduction u/s.10AA and the total income should be amended. Referring to the provisions of section, the AO held that the deduction u/s.10AA was to be recomputed taking export turnover to the extent of

export consideration received into India till the time of passing of draft order and not as per the calculation adopted by the assessee.

The DRP confirmed the order of the AO.

**3.1.** Before us, the AR referred to the case of M/s. Niru Jewels P.Ltd., (ITA/1468/Mum/2014 (AY.2008-09), dated 27/4/16. He also referred to the RBI Cir.No.91, dated 01/4/2003. The DR left the issue to the discretion of the Bench. He also relied upon the case of Gems and Jewellery India Ltd.(330 ITR 175) of the Bombay High Court.

We find that the issue before us, including the unrealised export turnover has been dealt by the Tribunal in the case of Neeru Jewels P. Ltd.(supra) as under:

*“3. Rival contentions have been heard and record perused. Facts in brief are that assessee company is engaged in business of manufacturing and export of diamond studded jewellery. Its claim for deduction u/s.10A was restricted by CIT(A) to the extent of receipt of foreign exchange upto 30-9-2008. It was argued by ld. AR that RBI has already issued circular in respect of units situated in SEZ(Special Economic Zone), relaxing the realisation to the exports proceeds. Reliance was also placed on the decision of coordinate bench in the case of Tara Jewels Exports Pvt. Ltd., ITA No.662/Mum/2012, dated 29-1-2014, wherein it was held that after the RBI have clarified that it has not stipulated any time period for the realisation of sale proceeds for SEZ units, it can only be considered as having allowed an indefinite period for the same. Consequently, it cannot be said that the condition of Section 10A was not satisfied.*

*4. We have considered rival contentions and found that deduction u/a.10A was restricted to the extent of export receipts realised upto 30-9-2008. The assessee company is situated in SEZ, the RBI, the Competent Authority, u/s.10A(3) of the Act had vide its Circular bearing A.P. -(DIR Series) Circular No:91 dated 1st April, 2003 relaxed the realization of export proceeds, which reads as under:*

*"In terms of para II(c) of AP (DIR Series) Circular No.28 dated March 30, 2001, units situated in Special Economic Zones have been permitted to realise and repatriate to India the full value of goods or software within a period of twelve months from the date of export. It has now been decided to remove the stipulation of twelve months or extended period thereof for realization of export proceeds. Accordingly, there shall be no prescription of any time limit for realization of exports made by units in SEZs. However, the units in SEZs will continue to follow the GR/PP/SOFTEX export procedure outlined in Part B of Annexure to A.P. (DIR Series) Circular No.12 dated September 9, 2000 as amended from time to time.*

*Further, we found that the Tribunal, Mumbai Bench, in the case of ACIT vs. Tara Jewels Exports Pvt. Ltd. in ITA No.662/Mum/2012 for A.Y. 2003-04 dated 29th January, 2014 held as under (page - 9):*

*"Once, therefore, the RBI has clarified that it has not stipulated any time period for the realization of the sale proceeds for the SEZ units, as the assessee. it can only be considered as having allowed an indefinite time period for the same. Consequently, it cannot be said that the condition of section 10A(3) is not satisfied. The objection of the Revenue is, in our view, not valid."*

*In view of the above, we restore the matter back to the file of AO for recomputing eligible deduction after considering the RBI Circular and also considering the decision of coordinate bench as discussed above.*

We find that in the case of Gems and Jewellery India Ltd.(supra),the Hon'ble Bombay High Court has held as under:

*“7. The export turnover, in the numerator must have the same meaning as the export turnover which is a constituent element of the total turnover in the denominator. The Legislature has provided a definition of the expression "export turnover" in Explanation 2 to section 10A by which the expression is defined to mean the consideration in respect of export by the undertaking of articles, things or computer software received in, or brought into India by the assessee in convertible foreign exchange but so as not to include inter alia freight, telecommunication charges or insurance attributable to the delivery of the articles, things or software outside India. Therefore in computing the export turnover the Legislature has made a specific exclusion of freight and insurance charges.*

*8. The submission which has been urged on behalf of the Revenue is that while freight and insurance charges are liable to be excluded in computing export turnover, a similar exclusion has not been provided in regard to total turnover. The submission of the Revenue, however, misses the point that the expression "total turnover" has not been defined at all by Parliament for the purposes of section 10A. However, the expression "export turnover" has been defined. The definition of "export turnover" excludes freight and insurance. Since export turnover has been defined by Parliament and there is a specific exclusion of freight and insurance, the expression "export turnover" cannot have a different meaning when it forms a constituent part of the total turnover for the purposes of the application of the formula. Undoubtedly, it was open to Parliament to make a provision to the contrary. However, no such provision having been made, the principle which has been enunciated earlier must prevail as a matter of correct statutory interpretation. Any other interpretation would lead to an absurdity. If the contention of the Revenue were to be accepted, the same expression viz. "export turnover" would have a different connotation in the application of the same formula. The submission of the Revenue would lead to a situation where freight and insurance, though it has been specifically excluded from "export turnover" for the purposes of the numerator would be brought in as part of the "export turnover" when it forms an element of the total turnover as a denominator in the formula. A construction of a statutory provision which would lead to an absurdity must be avoided.”*

Respectfully following the above we restore the issue to the file of the AO for fresh adjudication, who would decide it after affording a reasonable opportunity of hearing to the assessee and after considering the above /Judgment/order of the Court/Tribunal.Ground no is decided in favour of the assessee,in part.

4.Next ground of appeal deals with disallowance of deduction u/s.10AA on other incomes i.e.Repair charges(Rs.7.48 lakhs),Interest on electricity deposits(Rs.18,568), Assaying income (Rs.5.73lakhs),Refining income(3200/-)and sale of residual dust(42, 000/-).Assessee was show caused vide letter dated.25.01.2014 to explain why the above said receipts should be not consider -ed for the purpose of deduction u/s.10AA of the Act. In its reply,dated 29.01.2014,the assessee filed explanation in that regard.However,the AO was not satisfied with the explanation

and added back the above mentioned items to the total income of the assessee,except the repairs charge(Rs.7.48 lakhs).

**4.1.**Aggrieved by the order of the AO,the assesses filed objections before the DRP and made detailed submissions.After considering the available material,he held that interest on electricity deposit/assaying income/refining income and sale of residual dust was not incidental to the manufacturing activity nor could it be said to be business income of the assessee,that the claim for deduction u/s.10AA on these items was rightly disallowed by the AO.

**4.2.**Before us,the AR stated that there was no justification in denying the deduction to the assessee for the above referred items of income.He referred to pg.67 of the PB.The DR supported the order of the DRP and stated that provisions of section 10AA could not be compared with section 10B of the Act.

**4.3.**We have heard the rival submissions and peruse the material available on record.We find that interest on electricity deposit(Rs.18,568/-)was on account of security deposited placed for availing electricity connection for its manufacturing unit and therefore,in our opinion,it was eligible for the purpose of calculation u/s.10AA of the Act.The details filed by the assessee clearly prove that assaying- income(Rs.5,73,575/-)was on account of verifying the characteristics of gold,that refining income(Rs.3,200/-)arose out of refining gold and Rs.42,000/-were received on sale of residual dust.We hold that income arising out the above referred three activities is directly related to manufacturing and therefore,it is eligible for the purpose of calculation u/s.10AA of the Act.Considering the peculiar facts of the case under appeal,we are deciding ground no.3 in favour of the assessee.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 3<sup>rd</sup> January, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 03 जनवरी, 2018 को की गई।

Sd/-

(रविश सूद / Ravish Sood)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : .01.2018.

S.Gangadhara Rao, Sr.PS./JV, Sr.PS

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ K ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, के खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

आदेशानुसार/ **BY ORDER,**  
उप/सहायक पंजीकार **Dy./Asst. Registrar**  
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**