$~R-6A, 6B & 6C

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

% **DECIDED ON: 03.02.2014**

\+ **ITA 775/2009**

COMMISSIONER OF INCOME TAX ..... Appellant

versus

M/S JAYSHREE GEMS & JEWELLERY ..... Respondent

ITA 1025/2010

CIT ..... Appellant

versus

JAY SHREE GEMS & JEWELLERY ..... Respondent

ITA 53/2013

COMMISSIONER OF INCOME TAX-VII ..... Appellant

versus

JAYSHREE GEMS & JEWELLERY ..... Respondent

Appearance: Mr. N.P. Sahni, Sr. Standing Counsel for appellant with Mr. Nitin Gulati, Advocate.
Mr. Salil Kapoor with Mr. Vikas Jain and Mr. Sanat Kapoor, Advocates for respondent.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The lead case in the present set of appeals is ITA 775/2009 whereby the following questions of law were framed: -

> "1. Whether the ITAT was correct in law and on facts in holding that the assessee was entitled to deduction under Section 10A of the Act?

2. Whether the ITAT while deleting the additions, was correct in law and on facts in upholding the finding of CIT (A) that the job work done by the assessee on behalf of foreign company would fall under the ambit of export as envisaged under Section 10A of the Income Tax Act, 1961?

3. Whether the ITA/CIT (A) were correct in law and on facts in ignoring the specific provisions of Section 10A (2) and accepting the claim of the assessee in the absence of any evidence produced in respect of acquisition of any new machinery, tools or equipment for manufacture/production of jewellery?

4. Whether the ITAT has erred in law and on facts in allowing the expenses in respect of the design and fabrication disallowed by the AO for want of proper verification and allowed by the CIT (A) after accepting the additional evidence without following the prescribed procedure?

2. In ITA 1025/2010, the last question is pertaining to designing and fabrication charges. Question No.4 does not arise and order framing question of law also does not allude to this issue.

3. In ITA 53/2013, the sole question of law framed is as follows: -

"Whether the ITAT was correct in law in holding that the assessee was entitled to the deduction to the extent of Rs.84,98,360/- under Section 10A of the Income Tax Act, 1961."

4. The facts necessary to decide these appeals are that the assessee, a partnership firm engaged in manufacturing and export of plated and studded jewellery, sought the benefit of Section 10A on the basis of its license obtained from the Central Government on 18.08.2000. The assessee firm came into existence on 12.08.2000. It claimed exemption in respect of profits derived from export of jewellery

manufactured in the said industrial undertaking to the extent of 90% of the profits. In respect of AY 2003-04, the firm reported an income of ₹3,62,500/- on the basis of its returns after claiming deduction to the tune of ₹32,62,635/- under Section 10A. The benefit was declined by the Assessing Officer on the ground that the activity carried on by the assessee did not amount to manufacturing and that it was not exporting the finished product to the agency at Dubai. The CIT (A) allowed the assessee's appeal and the ITAT confirmed the order.

5. During the pendency of these appeals, the first question, i.e., as to whether the process of jewellery making through job work in the manner undertaken by the appellant amounts to manufacturing for the purpose of Section 10A was examined by this Court in another appeal. The Court then held that the said activity amounts to manufacturing in *CIT v. Lovlesh Jain* 2012 (204) Taxman 134 (Del). Following the said judgment, the first and second questions in ITA 775/209 and 1025/2010 and the sole question in ITA 53/2013 are answered in favour of the assessee and against the Revenue.

6. Regarding question no.3 (common to the ITA 775/2009 and 1025/2010), the assessee had in the present case in the assessment years 2003-04 and 2005-2006 claimed that it purchased machinery and equipments. The Assessing Officer had disallowed these claiming that there was no proof of the transaction in the form of bills and vouchers. During the course of appellate proceedings, the assessee had produced the materials on record. These were taken into consideration and the CIT (A) allowed the expenses after giving the AO an opportunity as envisaged by Rule 46A of the Income Tax Rules, 1962.

The ITAT affirmed the decision of the CIT (A). The CIT (A) ordered in this regard for AY 2003-04 as follows: -

> *"8.7. As this formed additional evidence, the same was forwarded to the Assessing Officer vide this office letter no.DEL/CIT(A)-XXVII/R.R//2006-07 dated 26th Feb 2007 requesting for his comments along with objections, if any, before admitting additional evidence under section 250 of the Act read with Rule 46A. The Assessing Officer vide his letter no. Income-tax Officer/W-19(2)/2007-08/09 dated 16/05/2007 placed on record has stated that on going through the additional evidence filed, it has been noticed that the appellant/assessee has filed the photocopies of bills and vouchers related to purchase of almirah, AC, weighting scale, generator and furniture. These bills were not filed by the assessee during the course of assessment proceedings nor were specially requisitioned by the then Assessing Officer. Now, the AO has no objection if the above documents are admitted in appeal as additional evidence under sub-clause (b) of Rule 46A (1) of the Income Tax Rules, 1962. In view of the above, the evidence now filed is admitted under clause (b) of Rule 46A of the Income-Tax Rules, 1962."*

7. This Court notices that the Assessing Officer had queried the appellant as to whether transfer of any old machinery had taken place at the time of setting up of unit and he made an adverse comment in respect of non-production of such materials.

8. Counsel for the appellant/revenue argued that the CIT (A) and ITAT fell into error in accepting the materials placed in the first instance in the appellate proceedings. We are of the opinion that as to whether the machinery was new or not was an aspect which the CIT (A) was within its rights to enquire into; he did so by invoking the Rule 46A of the Income Tax Act. The assessing authority was

afforded an opportunity and a remand report appears to have been called for. In the circumstances, findings of fact concurrently recorded cannot be gone into. The question of law, therefore, does not arise and is answered against the Revenue, in the circumstances.

Question No.4 in ITA 775/2009

9. This pertains to the disallowance made in respect of the sum of ₹14.5 lakhs and ₹9,86,795/- by the Assessing Officer. These amounts were paid towards designing and fabrication charges. The Assessing Officer rejected these expenses holding that the assessee did not submit details as to the persons to whom the payments were made either for designing or for fabrication and that the deduction, therefore, could not be permissible. In addition to urging that this finding was not sound and it was not based upon proper appreciation of the evidence, learned standing counsel also endeavoured to urge that the assessee was not carrying on any manufacturing or processing in the Unit. It was urged that the nature of machinery claimed to have been purchased, i.e., almirahs, generators, air conditioners and electronic printers etc. showed that the relevant machinery necessary to carry out gold processing and making jewellery was not even shown to have been procured. Therefore, the claim which was ultimately upheld by the Tribunal which did not upset the findings of the CIT (A) with respect to the expenses in counsel's submissions establishes that the assessee did not itself carry out any processing and manufacturing activity who left it to some contractors and the question of its being entitled to the benefit of Section 10A did not arise.

10. We notice that the question formulated is limited to the findings of the CIT (A) and the Tribunal with respect to the setting aside of the disallowance. The ground of appeal urged before the Tribunal did not disclose that the Revenue had ever argued that the claim for deduction of these amounts (towards fabrication and designing charges) itself evidenced that the appellant did not carry on any manufacturing activity. Such being the circumstance, the Revenue cannot be now permitted to urge this aspect for the first time before the Court under Section 260A.

11. So far as the actual expenses go, the CIT (A) in this regard held as follows: -

> *"The submissions made by the appellant have been carefully considered in view of the facts and circumstances of the case. It is observed that the Assessing Officer has disallowed the entire designing & fabrication charges and factory maintenance expense only for want of verification in the absence of books of accounts. This, however, cannot be taken as a sufficient ground for making such disallowance in the absence of any cogent reasons or evidence to the contrary brought on record. The appellant on the other hand has furnished all the relevant details including copies of account and bills/vouchers etc. in support of its claim which have been placed on record.*
>
> *It is also noted that the appellant is engaged in the business of export of gold jewellery which naturally involves designing and fabrication charges. Comparative chart of similar expenses in the earlier and later years has also been furnished in support. Also, as seen at length vide para 8 supra, the appellant is entitled to deduction u/s 10A of the Act and, as such, any disallowance out of the expenditure debited to the P&L account will also have to be considered for deduction thereunder.*

In view of the above, it is hereby held that the Assessing Officer was not justified in disallowing the designing and fabrication charges and factory maintenance expenses as above. The additions of Rs.14,50,000/-, 9,86,795/- and 2,40,000/- made on these counts are, accordingly, hereby deleted."

12. The corresponding findings of the ITAT in the impugned order are as follows: -

"5. Ground Nos.8 and 9 are regarding the deduction of designing charges, fabrication charges and the office maintenance expenses. The assessee had not produced requisite bills and vouchers before the AO. These bills and vouchers were produced before the learned CIT (A). The learned CIT (A) considered the matter in totality by comparing these expenses with the expenses of the earlier year and the subsequent year. He came to the conclusion that the expenses were reasonable having regard to expenses in previous and subsequent years. It was also pointed out by him that the assessee is entitled to deduction u/s 10A and, therefore, if the disallowance is sustained, the deduction will also increase correspondingly. On the basis of the bills and vouchers produced by the assessee, he came to the conclusion that the expenses were deductible in full more so when the expenses were in line with the expenses of other years. On consideration of the submissions made before us, it is clear that the accounts of the assessee were audited and the bills and vouchers were produced the learned CIT (Appeals). It would have been better if the learned CIT (A) had forwarded these bills and vouchers for the examination of the AO with a view to obtain his remand report, as done in the case of verification of the bills for purchase of new machinery. However, looking to the fact that the bills were produced before the learned Cit (Appeals) and the expenses were found to be reasonable, it is held that he was right in allowing the expenses and deleting the disallowance made on estimate basis. Therefore, these grounds are also dismissed."

13. As is evident, the Tribunal noted that it might have been more appropriate for the CIT (A) to have forwarded the bills and vouchers for the examination of the AO. However, it was in its discretion to make any directions towards remand. This Court is of the opinion that the approach of the CIT (A) confirmed by the ITAT cannot be considered so perverse as to warrant interference under Section 260A.

14. In view of the above discussion, the appeals have to fail. All questions of law are answered against the Revenue and in favour of assessee.

15. The appeals are, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.V.EASWAR
(JUDGE)

FEBRUARY 03, 2014
/vks/