IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A No.1292/Bang/2010
(Assessment Year : 2006-07)

I.T.A No.287/Bang/2013
(Assessment Year : 2007-08)

M/s. Intergarden (India) P. Ltd,
No.68, Obalapura Village, Anngondanahalli Hobli,
Hoskote Taluk, Bangalore 560 067 .. Appellant
PAN : AAACI7962H

v.

Asst. Commissioner of Income-tax,
Circle -11(4), Bangalore .. Respondent

I.T.A No.968/Bang/2013
(Assessment Year : 2007-08)
(By the Revenue)

Assessee by : Shri. Prakash Chand Yadav, Advocate & Shri. Suresh Balani, CA
Revenue by : Ms. Neera Malhotra, CIT-DR & Shri. Manoj Kumar, Add. CIT

Heard on : 18.02.2016
Pronounced on : 18.03.2016

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

First of these is an appeal filed by the assessee directed against an order dt.20.09.2010 of the Assessing Officer for A. Y. 2006-07, passed in

pursuance to directions of DRP u/s.144C of the Income-tax Act, 1961 ('the Act' in short) whereas the other two are cross appeals filed by the assessee and Revenue respectively directed against order dt.22.03.2013 of CIT (A) - I, Bangalore, for A. Y. 2007-08.

2. Appeal for A. Y. 2006-07 is taken up first for disposal. Assessee has altogether taken ten grounds of which, grounds one and ten are general and ground nine which is on levy of interest u/s.234B of the Act, is consequential.

3. Vide its ground 2 to 5 and 7, assessee is aggrieved on the reduction of insurance charges and freight charges aggregating to Rs.10,56,29,513/- from export turnover while computing the deduction u/s.10B of the Act. Alternatively assessee pleads that such amount should also be excluded from total turnover while computing such deduction.

4. In so far as assessee's claim for not reducing insurance and freight charges from the export turnover is concerned, we are afraid we cannot accept it in view of the definition given to export turnover in Explanation 2(iii) to Section 10B of the Act, which give room for no doubt. AO is obliged to deduct such amount from the export turnover while computing the deduction under the said section. However the alternative claim of the

assessee that such amounts which are deducted from the export turnover was required to be deducted from the total turnover also, has to be accepted in view of the Hon'ble jurisdictional High Court decision in CIT v. Tata Elxsi (349 ITR 98). Accordingly, we direct the AO to reduce these amounts from the total turnover also while computing the deduction u/s.10B of the Act.

5. Vide its ground 6, assessee is aggrieved on disallowance of a portion of interest on borrowings made by it from its AE. Assessee had External Commercial Borowings (ECB) of Rs.8,13,19,000/- from its AE abroad. TPO was of the opinion that the interest paid by the assessee on such loans came to 5% and this was excessive. As per the TPO, on applying CUP method on ECB loans, interest rate would be 3.87% only. For the difference of 1.13%, he recommended an adjustment of Rs.2,99,908/-. Before the DRP, assessee argued that effective rate of interest paid by assessee on loans taken by it in India was 6.62%, which itself was below the average PLR of 10.89%. As per the Assessee, rate of interest paid on the loans taken from the AE was only 5%. Thus according to it, if internal CUP was applied, there was no necessity for any adjustment. However, the DRP refused to interfere with the recommendations of the TPO.

6. Now before us, Ld. AR strongly submitted that there was no dispute regarding commercial CUP rate of 6.62%. According to him, when internal CUP method was available, there was no need to apply external CUP method

7. Ld. DR strongly supported the orders of lower authorities.

8. We have perused the orders and heard the rival contentions. Revenue has not disputed the submission made by the assessee before the CIT (A) that effective rate of interest paid by it in India was 6.62% on loans. Interest paid by assessee on loans taken from AE abroad was 5%. This was below the rate of interest assessee was paying on loans taken within India. When internal CUP with unrelated parties is available, in our opinion, it should be given precedence over external CUP. We are of the opinion that no adjustment ought to have been done on the interest paid by the assessee to the AE abroad. Addition of Rs.2,99,908/- stands deleted. Ground 5 of the assessee is allowed.

9. Now we take up cross appeals of the assessee and Revenue respectively for A. Y. 2007-08, in the same sequence.

10. Ground 1 of the assessee is general in nature and its ground.11 which is on levy of interest u/s.234B of the Act, is consequential in nature. Vide

its grounds 2, 3 and 4, assessee is aggrieved on the denial of exemption u/s.10B of the Act.

11. Facts apropos are that assessee had filed its return for impugned assessment year declaring income of Rs.1,38,04,710/- after claiming deduction u/s.10B of the Act, of Rs.7,18,79,252/-. Assessee claimed such deduction considering it to be manufacturer and producer of gherkins pickles. There was a survey done by the Income-tax Authorities in the premises of the assessee on 27.09.2010. Based on the inputs received from the survey, AO put the assessee on notice as to how it could be considered as doing any manufacturing. According to the AO, assessee was only into processing of the gherkins obtained from the farmers through contract farming. As per the AO, assessee was having a packing unit, where gherkins obtained from farmers were washed and put into jars of various sizes with some preservatives and some spices. AO noted that the jars were steam heated for 20 minutes and labeled with prints, depending on the country of export. As per the AO such exercises could not be considered as manufacture or production for allowing a claim of deduction u/s.10B of the Act.

12. Reply of the assessee was that the original commodity in the nature of raw gherkins was subject to several stages of processing resulting in a different commodity. Relying on the judgment of Hon'ble Apex Court in Chillies Export House v. CIT [225 ITR 814], assessee submitted that treatment with chemicals which resulted in goods becoming a marketable commodity would amount to processing of goods. As per the assessee, it fell within the meaning of the term ‘manufacture as defined in Foreign Trade Policy ('FTP' in short). Relying on the judgment of Hon'ble Kerala High Court in Tata Tea Ltd v. ACIT [(2011) 338 ITR 0285], assessee stated that the definition of the term 'manufacture' as contained in Export Import policy would have to be applied, when construing section 10A and 10B of the Act. Assessee also submitted that it was grading the gherkins and pickling it in jars with different flavours.

13. AO was however not convinced or satisfied with the above reply. According to him in the case of Chillies Export House (supra) relied on by the assessee, the matter was remitted back to the AO for better investigation on the process involved therein. Relying on the judgment of Hon'ble Apex Court in the case of CIT v. Tara Agencies (292 ITR 444), AO held that processing could not be considered as manufacturing activity. As per the

AO, when the legislature had distinguished between manufacture and processing, then both activities could not be considered as the same. AO held that deduction u/s.10A or 10B of the Act could be given only to a manufacture or production and not for processing. Further according to him, director of the assessee company in a statement recorded at the time of survey had stated that assessee was engaged in selling gherkins bought from farmers through contract farming. Even the crop was not grown on assessee's land. AO also placed reliance on Hon'ble Apex Court decision in the case of Dy.Commissioner of Sales tax v. PIO Food Packers [(1980) AIR 1228 (SC)] wherein it was held that slicing and packing of pineapple did not change the complexion of original pineapple and no new commodity came into existence. Thus he held that assessee was not eligible for the claim of deduction u/s.10B of the Act.

14. Aggrieved assessee moved in appeal before the CIT (A). As per the assessee, it was exporting goods which were subject to excise levy. It was not paying excise duty only due to its status as an EOU. Submission of the assessee was that gherkin pickles were entirely different from raw gherkins. Assessee also placed detailed submission as to what it claimed was manufacturing process, was being carried out. Further as per the assessee,

judgment of Hon'ble Apex Court in the case of Tara Agencies (supra) was rendered in relation to the context of weighted deduction claimed u/s.35B of the Act and not relevant to claim of deduction claimed u/s.10B of the Act. Assessee also submitted before the CIT (A) a flow-chart of the various steps involved in the preparation of its product. As per the assessee, such process included a step called fermentation which increased the shelf life of the product considerably. Submission of the assesssee was that Gherkins pickle which it was exporting was a new product different from raw gherkins sourced from the contract farmers. Reliance was once again placed on the Hon'ble Kerala High Court in the case of Tata Tea Ltd, (supra).

15. CIT (A) after considering the submissions of the assessee was of the opinion that assessee was approved as a 100% EOU as per letter dt.29.05.2001 with reference number 16/13/2001; PER EOU:KA:CSEZ;4174. As per the CIT (A), this letter by the Deputy Development Commissioner of Cochin SEZ, did not per se make the assessee eligible for availing deduction u/s.10B of the Act. As per the CIT (A), ratification by the Board for EOU scheme, in their meeting dt.14.01.2011 would also not help the assessee. Ld. CIT (A) was of the

opinion that assessee could not produce any document or notification to show that Deputy Director of Cochin SEZ, was entitled to notify a person as 100% EOU, u/s.14 of Industries (Development and Regulations) Act, 1951(in short 'IDRA 1951).

16. Further according to the CIT (A), assessee also could not show that it was engaged in any manufacture or production. After going through the various steps carried out by the assessee in its unit, CIT(A) was of the opinion that assessee was not engaged in any processing or manufacturing. As per the CIT (A), assessee did not treat the raw gherkins with any chemicals, for any change to have happened. CIT (A) confirmed the finding of the AO that assessee was only packing the gherkins. Thus he upheld the order of the AO denying the deduction claimed u/s.10B of the Act.

17. Now before us, Ld. AR strongly assailing the orders of lower authorities submitted that letter dt.29.05.2001 of Development Commission of Cochin SEZ (placed at paper book pages 271 and 272) had not only considered assessee to be a manufacturer but also gave it permission to work in the SEZ as a 100% Export Oriented manufacturer of gherkins. Ld. AR submitted that Board of Approval of EOU Scheme falling under

Ministry of Commerce, Government of India vide letter dt.18.01.2011, placed at paper book page 275, had approved various EOU schemes including that of the assessee. As per Ld. AR, name of the assessee appeared at paper book page 281. Thus according to him, assessee had fulfilled the conditions set out in Explanation 2(iv) to Section 10B of the Act.

18. Coming to the aspect of eligibility of the assessee as a manufacturer or producer, Ld. AR submitted that the flow-chart of the various steps undertaken by the assessee in the production of gherkins pickles were submitted before the AO but was not properly considered. According to him, AO simply went by a statement recorded from the Director of the assessee company during the course of survey which did not have any evidentiary value. As per the Ld. AR, one of the steps involved was fermentation, which clearly brought out a change in the state of gherkins. Raw gherkins due to this process, became something which had a long storage. Relying on the judgment of Hon'ble Kerala High Court in the case of Tata Tea Ltd (supra), Ld. AR submitted that the term 'manufacture' in relation Section 10A, 10AA and 10B of the Act, had to be construed with reference to the definition of such term as given in export / inport policy.

Such definition took into its fold any type of process which brought into existence a new product. According to him in the case of Tara Agencies (supra) of Hon'ble Apex Court relied on by the AO related to blending of tea. As per the Ld. AR, blending of tea was an altogether different process, when compared to what assessee was doing here. Ld. AR also pointed out that for the earlier years assessee was granted such deduction u/s.10B of the Act and Revenue had taken a different view for only one year without any specific change in circumstances. Thus according to him assessee was eligible for deduction u/s.10B of the Act.

19. Per contra, Ld. DR submitted that gherkins as bottled by the assessee was not a pickle. It was raw gherkins packed in tins and bottles. As per the Ld. AR there was no change in the complexion of the raw gherkins through various processes done by the assessee. On the aspect of consistency, Ld. DR submitted that during the relevant previous year, there was a survey in which one of the directors of the assessee had stated that it was not engaged in any manufacture and therefore the AO was justified in considering the claim of the assessee afresh. Ld. DR also relied on Section 10B of the Act as it stood prior to 01.04.2001. According to her, prior to 01.04.2001, definition of the term 'manufacture' included process,

assembling or recording of programmes on desktops. By virtue of the substitution of Section 10B of the Act through Finance Act, 2000, w.e.f. 01.04.2001, the term 'process' was taken out of the said section. In other words according to her, even if we consider that assessee was doing some processing, it cannot be considered as a manufacturer or producer eligible for deduction u/s.10B of the Act. Gherkins prepared by the assessee was not even sliced. According to her, assessee was only adding certain material for preserving the gherkins. In her view, even if there was some process it could not be considered as production.

20. Ad libitum reply of the Ld. AR was that judgment of Hon'ble Kerala High Court in Tata Tea Ltd (supra) took into account the effect of substitution of Section 10B with Finance Act, 2000 w.e.f.01.04. 2001. As per the Ld. AR, Hon'ble Kerala High Court after considering the effect of such substitution, held that the term ‘manufacture’ as it appeared in Section 10B of the Act would have to be given the meaning as per FTP.

21. We have perused the orders and heard the rival contentions. What assessee was doing in its premises, has been reproduced by the CIT (A) in his order. This is reproduced hereunder once again for brevity :

"Manufacturing Process

1) The manufacturing system from raw Gherkin to Gherkin pickle is continues and regular action i.e. successions of action carried on in a definite manner to lead in accomplishing the desired results as illustrated in the graphical Chart. From a quick look to the graphical Chart ***(Annexure 5),*** *necessary activities may be bracketed within the ambit of "manufacture" as indicated hereinafter:-*

(b) Gherkins are stored in cold storages at particular temperature.

(c) Thereafter, defects are removed from to get the assured quality of raw material. This process is known as pre culling

(d) Gherkins are subjected to the process of manual culling.

(e) Selected varieties after grading are taken through a process of washing by the machine.

(f) Thereafter the process of fine grading is undertaken.

(g) The gherkins are then passed onto filling tables for filling for filling into jars or any suitable primary packaging material.

(h) The cover liquid solution used for longevity of the gherkins (or increasing the acid content in them) is then manufactured in a cover liquid tank by mixing appropriate proportions of declared ingredients as per the customer's requirement or country of destination.

(i) The cover liquid permeates the membrane of the pickled gherkins/ cucumbers/ jalapeño's through a biological process of osmosis- which is very different from a lateral application of wax. In other words real

transformation of taste (hence value) to gherkins happens not just because of its size or the way it is cut, but the media in which it is preserved and it is different from application of wax say for polishing an apple in a retail mart which does not change it properties.

(j) *The cover liquid is then filled into the jars with gherkins and is passed through thermal processing equipment like pasteurizer for cooking / to achieve lethality in killing undesirable pathogens that are harmful to human kind.*

(k) *The product is then passed through a cooling process in the same manufacturing line to ensure crispiness of the product and to avoid vacuum loss for shelf stability.*

(l) *Every retail unit packed at specific time is then assigned with a unique time slot comprising of a manufacturing code and best before date for consumption.*

(m) *The finished product is then allowed for equalization i.e fermentation which takes 24 to 48 hours resulting in an equalized pH of less than 4.6 to be categorized under Acidified pickle category.(Such pH factor was 5.4-5.9 at the initial step was reduced to pH factor of less than 4.6) as explained* ***in Annexure 6.***

(n) *The product with the pH at < 4.6 and with a max. % Salt of 4.0 (For any given type of product) is then stable on shelf as per the declared shelf life. In other words*

(o) *The product is then evaluated by Quality Assurance for adherence to CGMPs (Current Good Manufacturing Practices) and Quality parameters as prescribed by the destination countries such as USFDA in USA.*

22. Assessee has placed a process flow chart at paper book page 303. One step we specifically note in the flow-chart is the fermentation process. Argument of the AO is that fermenting only extended the shelf-life of the gherkins and had no other effect what so ever. In any case there is an admission by Revenue that gherkins pickled by the assessee had much higher shelf life than what raw gherkins would have had. As a raw vegetable, gherkins would not last more than a week. Once such raw gherkins are put into some process which increases its shelf life to six months or more, there indeed happen some irreversible change. Raw gherkins are changed from its original state to a state where it remains good for human consumption even after six months. Thus the steps as undertaken by the assessee which included fermentation and which extended the shelf life of raw gherkins, even if we construe as not 'manufacture', as commonly understood, it cannot be denied that it resulted in a product which cannot be equated with raw gherkins. The processes undertaken by the assessee had significant effect on the raw nature, converting it to a material capable of withstanding decay for a considerable period of time. In our opinion, in such a situation, it is difficult to say that what was packed by the assessee after the various process was very same as the raw gherkins which it got from its contract farmers.

23. One another argument taken by the Ld. DR is that even if assessee was doing some sort of processing, still it would not be eligible for claim of deduction u/s.10B of the Act. In our opinion the effect of substitution of Section 10B by virtue of Finance Act 2000, was an issue which came up before Hon'ble Kerala High Court in the case of Tata Tea Ltd (supra). Question there was whether assessee who was blending tea could be considered as eligible for exemption u/s.10B of the Act. There also the Department had placed reliance on the Hon'ble Apex Court judgment in the case of Tara Agencies (supra). Paragraphs 2 and 3 of this judgment is reproduced hereunder :

> *2. Appellant-assessee has a division exclusively engaged in blending, packing and export of tea bags, tea packets and bulk tea-packs. This division enjoys recognition as a 100 per cent Export Oriented Unit which is granted by the Development Commissioner, Ministry of Commerce and Industry, Government of India. Income-tax exemption under section 10B of the Act claimed by the assessee for the assessment year 1996-97 onwards was granted up to the assessment year 2000-01. However, for the assessment years 2001-02 and 2002-03 to which these appeals relate, exemption was declined for the reason that by the Finance Act, 2000 the definition of "manufacture" which included "processing" contained in section 10B was deleted with effect from 1-4-2001. The department's stand is that manufacture or production had a liberal meaning under the definition clause contained in section 10B until its deletion with effect from the assessment year 2001-02 which covered even processing and therefore, blending and packing of tea for export was treated as manufacture or production of an*

article qualifying for exemption. However, once the definition clause is deleted, "processing" does not qualify for exemption from the assessment year 2001-02 onwards and so much so, assessee's activity being only processing not amounting to manufacture or production, is not entitled to exemption under section 10B. However, Senior counsel appearing for the assessee has relied on recent Division Bench judgment of this court in Girnar Industries v. CIT [2010] 187 Taxman 136declaring eligibility for exemption from payment of tax in respect of the income from same activity carried on by a unit in the Special Economic Zone at Kakkanad for the assessment year 2004-05. The contention of counsel for the assessee is that scheme of income-tax exemption available to units in the Special Economic Zone under section 10A and units in the Free Trade Zone provided under section 10AA and the exemption available to 100 per cent Export Oriented Units under section 10B are very similar in nature and the wordings of the statutory provisions are similar in nature and so much so, going by the earlier Division Bench judgment of this court assessee is entitled to exemption under section 10B in respect of the profit derived by it from the 100 per cent Export Oriented Unit. Senior counsel for the assessee also stated that the assessee's case on facts is better because assessee is not only engaged in packing of blended tea in retail and wholesale packs, but is also making a product called "tea bag" which is a product in itself because it is not just packing of blended tea in packets. On going through the provisions of sections 10A, 10AA and 10B, we feel the scheme of exemption is very similar in nature and the wordings used in all the sections are similar in nature. So much so, our decision above referred should apply to this case as well. However, we notice from our judgment that there was an omission by this court to consider in that judgment the decision of the Supreme Court in CIT v. Tara Agencies [2007] 292 ITR 444relied on by the Senior Standing Counsel for the Revenue wherein the Supreme Court has clearly held that blending of tea does not amount to manufacture or production of an article, but is only processing. Even though processing also qualified for exemption under the definition clause of "manufacture" contained in section 10B and assessee was in fact granted exemption up to the

assessment year 2001-02, the contention of counsel for the revenue is that once the definition clause of "manufacture" is deleted from the assessment year 2001-02, the processing that was until then covered in the definition clause, no longer qualifies for exemption. The question, therefore, to be considered is whether the removal of definition clause on manufacture by the Legislature through the amendment introduced by the Finance Act, 2000 with effect from the assessment year 2001-02 onwards is with the object of restricting the benefit of exemption to 100 per cent Export Oriented Units, only to goods manufactured or produced by them other than through processing. In the decision of this court above referred, this court considered the exemption clause in the light of the principles laid down by the Supreme Court in CIT v. Gwalior Rayon Silk Mfg. Co. Ltd. [1992] 196 ITR 149, wherein the Supreme Court held as follows :—

> *"It is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative intention. It is equally settled law that, if the language is plain and unambiguous, one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless, tax laws have to be interpreted reasonably and in consonance with justice adopting a purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee."*

3. In this context we notice that the decision of the Supreme Court in Tara Agencies' case (supra) above referred was on assessee's entitlement for weighted deduction on export market development allowance provided under section 35B(1A) of the Act which is no longer in the statute. In our view, the scheme of deduction of export market development allowance earlier available and the scheme of exemption on export profits are different in nature. It may be noticed that exemption on export profit is available even to merchant exporters by virtue of the

provisions contained under section 80HHC of the Income-tax Act. Besides the exemption available on profits earned in export business by traders, specific provisions are incorporated in sections 10A, 10AA and 10B providing for exemption to entire profits earned by industrial units in Free Trade Zones, Special Economic Zones and industries which are declared 100 per cent Export Oriented Units. While deciding the issue in the case of the industry located in the Special Economic Zone in the case above referred, this court has taken into account the definition of "manufacture" contained in Chapter IX of the Export Import Policy, 2002—2007, which is as follows :—

"'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 processes such as refrigeration, repacking, polishing, labelling, re-conditioning, repair, remaking, refurbishing, testing calibration, re-engineering. Manufacture, for the purpose of this Policy, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining."

This Court also noticed that the definition of "manufacture" contained in section 2(r) of the Special Economic Zones Act, 2005, was incorporated later under section 10AA of the Income-tax Act with effect from 10-2-2006, which is as follows :—

"'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 processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining."

The finding of this court is that the purpose of incorporation of section 2(r) of the Special Economic Zones Act, 2005 into section 10AA of the Income-tax Act is to provide a liberal meaning to the

word "manufacture" which takes in even blending, refrigeration etc. It was noticed by this court that the definitions of "manufacture" contained in the above definition clauses are very liberal which takes in even processing like blending. The contention of counsel for the assessee is that the purpose of removal of definition of "manufacture" from section 10B was not to provide a restricted meaning for that term contained in the main section because if that was so, then the Legislature would have only modified the definition clause. Further, definition of 100 per cent Export Oriented Unit even after the amendment is retained in the said section, which defines it as an undertaking which has been approved as a 100 per cent Export Oriented Undertaking by the Board appointed in this behalf by the Central Government in exercise of powers conferred by section 40 of the Industries (Development and Regulation) Act, 1951 and Rules made under that Act. It is pertinent to note that the products for which assessee's unit is recognised as a 100 per cent Export Oriented Unit are tea bags, tea in packets and tea in bulk packs. In fact, assessee is exclusively engaged in blending and packing of tea for export and is not manufacturing or producing any other article or thing. Still it is recognised as a 100 per cent Export Oriented Unit by the concerned authority within the meaning of that term contained in the definition clause of section 10B of the Income-tax Act and the department has no case that assessee's unit engaged in export of tea bags and tea packets is not a 100 per cent Export Oriented Unit. So much so, in our view, if exemption is denied on the ground that products exported are not produced or manufactured in the industrial unit of the assessee's 100 per cent Export Oriented Unit, the same would defeat the very object of section 10B. Further, industrial units engaged in the very same activity, i.e., blending, packing and export of tea in the Special Economic Zones and Free Trade Zones, will continue to enjoy tax exemption under section 10A and section 10AA respectively. The still worse position is that the appellant would be denied of export exemption available under section 80 HHC even to a merchant exporter. In our view, the decision of the Supreme Court in Tara Agencies' case (supra) is not applicable for the purpose of considering exemption for industries in the Export Processing Zones, Free Trade Zones and

> *to 100 per cent Export Oriented Units covered by sections 10, 10AA and 10B of the Income-tax Act. Therefore, following the judgment of this court abovereferred we hold that assessee is entitled to exemption on the profit derived by its 100 per cent Export Oriented Unit engaged in blending, packing and export of tea bags and tea packets. Consequently we allow the appeals by reversing the orders of the Tribunal and by restoring the orders of the first appellate authority declaring appellant's entitlement for exemption.*

24. Their Lordships had considered the effect of substitution of Section 10B of the Act by Finance Act, 2000 w.e.f. 2001. It had held that for the purpose of Section 10A, 10AA and 10B, what was relevant was the definition of 'manufacture' as mentioned in Chapter IX of Export Import Policy 2002 to 2007, and as mentioned in Section 2(r) of Special Economic Zones Act, 2005. As per this, judgment for units falling within an Export Processing Zone, Free Trade Zones and 100% Export Oriented Units covered by Section 10A, 10AA and 10B, what would be relevant is the definition of 'manufacture' as mentioned in the Export Import Policy and Special Economic Zones Act, 2005.

25. Further, Hon'ble jurisdictional High Court in the case of CIT v. Saint Gobins Crystals & Detectors India (P) Ltd [ITA.351 & 352 of 2009, dt.19.01.2015], had held that etymologically the word "manufacture" property construed would cover transformation, when a question regarding

applicability of Section 10B to an assembling unit was raised before it.

26. Coming to the aspect of finding of CIT (A) and AO that assessee was not having the required recognition under CSEZ as a 100% EOU, Office Memorandum (OM), dated.18.01.2011, issued by Ministry of Commerce and Industry of Government of India, placed at paper book page 275 to 298 show that assessee was approved as an EOU. Explanation 2(iv) to Section 10B reads as under :

> *(iv) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act."*

There is no case for the Revenue that the Board which gave approval mentioned in the above OM, was not one which was appointed by Central Government under IDR Act, 1951. Assessee was therefore a hundred percent export oriented undertaking.

27. In such circumstances, we are of the opinion that assessee's claim u/s.10B of the Act, had to be allowed. Disallowance of such claim and the addition made stands deleted.

28. Ground nos.2, 3 and 4 of the assessee are allowed.

29. Coming to its ground 5, grievance of the assessee is that export bills realized belatedly were excluded from export turnover while computing deduction u/s.10B of the Act. Ld.AR submitted that assessee's realisations from exports were as under :

Sl. No.	*Description*	*Amount*
1.	*Realised before 30.09.2007*	*Rs.45,63,18,012.13*
2.	*Realised before 1 year from the date of exports*	*Rs.2,55,64,662.57*
3.	*Realised after 1 year from the date of exports*	*Rs.28,17,17,233.95*
4	*Not yet realized*	*Rs.2,16,87,825.35*

30. As per the Ld. AR, AO had curtailed the claim of the assessee u/s.10B of the Act, by excluding from turnover, realizations after 30.09.2007. Though the assessee relied on a circular of RBI, AO was of the opinion that assessee did not have any specific sanction from RBI to receive export receipts even after six months from the end of the relevant financial year. As per the Ld. AR this view was confirmed by the CIT (A) in its appeal. Relying on an RBI circular dated.01.04.2003, placed at paper book page 441, Ld. AR submitted that blanket permission has been given by RBI to authorised dealers to realise and repatriate to India, full value of

goods or software without any specific time limit when the exports were made from units in SEZ. According to him, when a blanket permission was there, there was no question of any specific permission being obtained by the assessee. Further as per the Ld. AR, assessee had net exchange gain of Rs.3,76,61,463/- arising out of exchange gain due to the realisation of foreign exchange arising out of sales made earlier. As per the Ld. AR this also was eligible for deduction u/s.10B of the Act, since the gain arose from realisation of export turnover.

31. Per contra, Ld. DR supported the orders of authorities below.

32. We have perused the orders and heard the rival contentions. Sub-section (3) of Section 10B of the Act, is reproduced below :

> *(3) This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.*
>
> *Explanation 1.— For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.*
>
> *Explanation 2.— The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale*

proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

33. Above sub section allows an assessee to claim the benefit of the said section for export proceeds which are brought into India within a period of six months or within a further period as allowed by competent authority. Explanation (1) clearly states that competent authority is RBI. AP (DIR) series Circular No.91, dt.01.04.2003 of RBI states as under :

"A. Realisation of export proceeds"

In terms of para 11© of AP (DIR Series) Circular No.28, dated March 30,2001, units situated in Special Economic Zones have been permitted to realize 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 FR/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."

34. There is no dispute that assessee was an unit in SEZ. It being so, in our opinion assessee could not have been fastened with any time limit for bringing the sale proceeds in foreign exchange to India. No doubt assessee could never make such claims for amounts which was not realised at all.

However in so far as items at sl.nos.2 and 3 of the table at para 29, viz., Rs.2,55,64,662.57 realised within one year of the exports, and Rs.28,17,17,233.95 realized after one year of the date of exports, assessee was eligible for claiming deduction. Forex gains of Rs.3,71,61.463/- earned by the assessee was on account of exchange gain arising out of the difference between date of realisation of export proceeds and date of invoicing. These were directly related to the export turnover of the assessee and also has to be considered as part of profits arising from assessee's 100% EOU. Such amount is also in our opinion eligible for deduction u/s.10B of the Act. AO is directed to grant deduction u/s.10B of the Act for all the amounts realised by it from the sales effected by it including the forex gains. Ground.5 of the assessee stands allowed.

35. Ground 6 of the assessee is with regard to its alternate claim u/s.80IB(11) of the Act. Since we have already held that assessee is eligible for deduction u/s.10B of the Act, this ground is dismissed as infructuous.

36. Vide its grounds 7, 8, and 10, assessee is aggrieved on disallowance on travelling expenses, farmer welfare expenses and provision made for doubtful debts. Ld. AR submitted that such disallowances would only go to increase in

the profits of the assessee which was eligible for deduction u/s.10B of the Act and had no tax ramification. In view of the above submissions of the Ld. AR, grounds 7, 8 and 10 are dismissed as infructuous.

37. Ld. AR submitted that he was not pressing ground number 9. Hence, ground number 9 is dismissed as not pressed.

38. Now we take up cross appeal of the Revenue. Revenue is aggrieved that CIT (A) gave relief of Rs.39,46,476/- on travelling expenditure and Rs.26,71,640/- in respect of credit notes to the assessee.

39. Ld. DR submitted that disallowances made by the AO were because the claims were unlawful. According to her, CIT (A) had allowed a sum of Rs.39,46,476/- out of the total claim of Rs.64,01,477/- in respect of travelling expenditure. Further according to her, credit notes for which assessee could not show any relation to the parties were also allowed by the CIT (A).

40. Per contra, Ld. AR strongly supported the order of CIT (A) in this regard.

41. We have perused the orders and heard the rival contentions. Finding of the CIT (A) with regard to the claim of travelling expenditure is

reproduced hereunder :

4.3 I have carefully considered the submissions of the appellant and perused the records. The appellant in their submissions dated 17/1/2012 explained that an amount o Rs.39,46,476/- is relating to the AY 2007-08 and the balance amount of Rs.24,55,001 is relating to the year under consideration. Therefore it was argued that the disallowance of Rs.64,01,477 is not correct. The appellant also stated that the expenditure was incurred for the purpose of business and there was no personal expenditure incurred and the AO's conclusion that the expenditure was bogus is not correct. It may be seen from the assessment order that the Internal Audit Report has clearly mentioned that there was no basis for charging and no bills were available in respect of the payments made to M/s Extasy Pvt Ltd. The AO had given detailed reasons in the assessment order at page No.34 to 35 However, the appellant vide its letter dated 16/10/2012 filed some additional evidence relating to the travelling expenses in the form of Ledger Account of M/s Ecstasy Ltd. in the books of account of the appellant. This additional evidence was forwarded to the AO who sent his report by letter 24/12/2012, stating that the said Ledger Account was already furnished by the appellant at the time of assessment proceedings and had already been verified and reiterated the. reasons given in the assessment order and recommended for confirming the addition. The appellant in their rejoinder to the remand report objected to the AO's finding stating that there was no enquiry made by the AO before coming to the conclusion and requested for allowing the travelling expenses. Filing of the Ledger Account

does not prove the genuineness of the expenditure unless it is confirmed by the travel company. No evidence has been produced from the travel company to prove the genuineness of the expenditure incurred. The burden is on the appellant to prove this aspect. Hence, the Ledger Account cannot be accepted as a valid evidence. Therefore, the amount of Rs.64,01,477/disallowed by the AO is restricted to Rs.24,55,001/- which is relating to this year. As regards the balance amount of Rs.39,46,476 is relating to 2007-08, the same cannot be sustained as it related to previous assessment year. The appellant gets a relief of Rs.39,46,476/-.

42. His findings with regard to credit notes is reproduced hereunder :

"9.2 I have carefully considered the appellant's submissions and perused the assessment order as well as the remand report. Issue of credit notes to the customers is a common business practice for different reasons to give discount to customers. The appellant filed only sample credit notes and, therefore, they may not relate to the parties mentioned in the assessment order. The sample credit notes are given for understanding the business practice. In view of the small quantum involved, the expenditure in respect of credit notes is reasonable and, therefore, allowable considering the submissions of the appellant."

43. CIT (A) has given a clear finding that assessee had produced evidence with regard to the sum of Rs.39,46,476/- on travelling expenditure. With regard to the credit notes, CIT (A) observed that assessee had filed sample credit notes and just because it did not relate to

the parties in the assessment order, credit notes could not be ignored. Nothing was brought before us to take a different view. We therefore do not find any merit in this appeal filed by the Revenue. It stands dismissed.

44. In the result, appeal of the assessee for A. Ys. 2006-07 and 2007-08 are partly allowed, whereas appeal of the Revenue for A. Y. 2007-08 is dismissed.

Order pronounced in the open court on 18th day of March, 2016.

Sd/-	Sd/-
(VIJAY PAL RAO) JUDICIAL MEMBER	(ABRAHAM P GEORGE) ACCOUNTANT MEMBER