

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. N. K. Saini, AM And Sh. C. M. Garg, JM**

**ITA No. 4954/Del/2011 : Asstt. Year : 2007-08**

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| M/s Bridal Jewellery Mfg. Co.<br>196, NSEZ, Phase-II,<br>Noida | Vs | Income Tax Officer,<br>Ward-I,<br>Noida |
| <b>(APPELLANT)</b>   |    | <b>(RESPONDENT)</b>                     |
| <b>PAN No. AADFB0557C</b>                                      |    |   |

**Assessee by : Sh. Salil Kapoor & Shubham Rastogi, Advs.  
Revenue by : Sh. K. K. Jaiswal, DR**

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| <b>Date of Hearing : 22.09.2015</b> | <b>Date of Pronouncement : 18.12.2015</b> |
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the assessee against the order dated 24.08.2011 of Id. CIT(A), Ghaziabad.

2. Following grounds have been raised in this appeal:

*“1. The CIT(A) has, in view of the facts and circumstances of the case, erred in law and on facts in upholding the addition of Rs.1,31,00,000/- on account of suppression of stock and difference in books of accounts.*

*2. The CIT(A) has, in view of the facts and circumstances of the case, erred in law and on facts in not allowing the deduction u/s 10A on the amount of Rs.1,20,00,000/- on account of excess stock found during survey which is admittedly generated out of*

*recovery of gold from wastage generated during manufacturing activity.*

*3. The CIT(A) has, in view of the facts and circumstances of the case, erred in law and on facts, in upholding the addition of Rs.11,00,000/- which is made without any incriminating document found during survey and without pointing any defect in the books of account.*

*4. The CIT(A) has failed to appreciate the fact that (a) the survey of jewellery factory was carried out without any jewellery appraiser or expert, (b) the Dy. Commissioner of Custom, Noida has also held that the excess gold found during the survey was on account of wastage recovery, which was erroneously omitted to be entered in books and there was no outside source of the said gold, (c) the custom's jewellery appraiser report which was commissioned by custom department, immediately after survey also upheld that source of excess gold was from gold recovered out of wastage generated during production activity.*

*5. The CIT(A) has failed to appreciate that the excess stock found during survey has been exported and its export is covered u/s 10A and as such the profit is exempt from tax particularly when it is admitted by Assessing Officer that the appellant is located in SEZ area and it is a 100% export unit.*

*6. The observation of CIT(A) are unwarranted, baseless and not based on the any material on record. His observations are categorically denied and the same are liable to be rejected/ignored.*

*7. That the additions made are unjust, unlawful and bad in law. The additions made are based on mere surmises and conjunctures and cannot be justified by any material on record.*

*8. That the explanations given, evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions made.*

*9. That the AO or the CIT(A) has not pointed out any discrepancy in the books of Account or with reference to the impounded material and in the absence of any such discrepancy no addition could have been made or sustained.*

*10. That the income has being illegally and wrongly assessed at Rs.1,31,00,000/- as against Nil income returned by the Appellant.”*

3. From the above ground it is clear that the grievance of the assessee relates to the sustenance of addition of Rs.1,31,00,000/- made by the AO on account of suppression of stock and difference in books of accounts and in not allowing the deduction u/s 10A of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee is a partnership firm engaged in manufacturing & Export of Gold Jewellery, located in Noida Special Economic Zone (NSEZ) and also having office at Karol Bagh. The unit located in NSEZ is claiming its income exempt u/s 10A of the

Act. The assessee filed the return of income declaring Nil income on 29.10.2007 after claiming the exemption u/s 10A of the Act. The said return was processed u/s 143(1) of the Act on 13.03.2009. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed that the assessee had shown export sales amounting to Rs.58,81,29,823/- and gross profit of Rs.4,51,06,063/- showing G.P rate of 7.67%. The assessee earned net profit of Rs.3,30,48,394/- from 100% export sales. The claim of the assessee for exemption u/s 10A of the Act was verified by the AO and found the same in order. During the year under consideration a survey u/s 133A of the Act was carried out on 03.08.2006 and physical stock of gold was taken. On verification from the books of accounts, a difference of 12kg of gold was found. Apart from this, some loose papers were also found which did not tally with the entries of books of accounts. The AO while recording the statement of the working partner asked certain questions for clarification relating to jewellery weighting about 12kg. The assessee surrendered a sum of Rs.1,31,00,000/- on account of various discrepancies. However, later on furnished a letter stating therein as under:

*“During the survey some stock of gold was observed by surveying team which was erroneously omitted to be entered in stock register. It was submitted before the survey team, in writing, that the same is on account of some normal loss, which accumulates for the firm during manufacturing process. The stock hence found is accumulated over a period of time.*

*The visiting team was shown all related invoices to confirm our submission.*

*However, the submission was not accepted, reason unknown to us and the assessee was asked to pay tax on stock. Henceforth in the absence of any other alternative and no legal advice available at hours, the assessee was forced to pay the amount hence asked for.*

*Later, to further clarify the matter a semi judicial inquiry was conducted by Custom authorities, NOIDA. The inquiry continued for 3 days and after the inquiry a semi judicial judgment was passed by Dy. Commissioner of Custom. Noida wherein it was upheld that the excess gold found was on account of wastage recovery and that is erroneously omitted to be entered in books, has been accumulated from normal loss and there is no outside source of the said gold.*

*Hence it is evident that, it was an accounting error of omission only.*

*The gold in question has been exported since then and its export income; fully exempt u/s 10A of Income Tax Act, 1961 has been accounted for in later years.*

- 1. The stock in question was erroneously omitted from books of accounts.*
- 2. The stock has accumulated on account of normal loss of manufacturing process.*
- 3. Submission of assessee before survey team was ignored.*

4. *Semi judicial inquiries conducted by Custom Authority, Noida have upheld that the stock has generated from normal loss during manufacturing process.*
5. *The stock in question is exported thereafter and income generated is tax free u/s 10A of I.T. Act, 1961.*
6. *No tax is attracted on above and hence tax got deposited by the department during survey is refundable to the assessee.”*

5. The AO summarized the reply of the assessee in six points which are incorporated in para 10 of the assessment order dated 31.12.2009 and discussed the same as under:

*“I. The contention of the assessee as mentioned sl. No. 1 above is not acceptable because Sh. Rajan Kohli the working partners of the firm is well experienced and managing all day to day affair from England. Further as per letter dated 08.06.2006 addressed to the Dy. Commissioner of Custom, NSEZ, Noida assessee himself stated that the sweeping of dust and recovery from polishing Department is done on regular basis under these circumstances, it can be said that this is not a case of omission from books of accounts but actually the assessee is not maintaining any records of recovery of wastage. It is strange that recovery is done on regular basis but not accounted for anywhere.*

*II. The contention that stock has accumulated on account of normal loss of manufacturing process. The contention of the assessee appears to be correct but the question is that where the accumulated gold on account of manufacturing process has gone. It has never been shown in the stock books nor any*

*accounts has been filed during the course of assessment proceedings.*

*III. Thirdly the submission of the assessee before survey team, was ignored is baseless. The assessee was given due opportunity by putting question during the course of statement and the assessee had out rightly accepted the mistake and surrendered the value of gold along with difference in mfg. expenses. The total surrendered value on this account was Rs.120 lakhs. Further Rs.11 lakhs also surrendered on account of difference in books of account. Thus the total surrendered amount was Rs.131 lakhs.*

*IV. Further the submission that semi judicial inquiries conducted by the Custom Authority Noida have upheld that stock was generated from normal loss during manufacturing process. First of all it is to be seems that stock taking report has not been signed by all the officers who were present at that time. Further the appraiser of stock has not upheld that stock has generated from normal loss during manufacturing process but they have mentioned as under:*

*The unit has mentioned that excess stock is on account of recovery of gold out of wastage. However, the unit is not maintaining records of wastage, but as per interaction with their production supervisor it seems they have got knowledge & facility of recovery of gold out of wastage, which they confirmed that they are recovering gold of wastage on regular basis.*

*From the above it is clear that the wastage is being recovered on regular basis as stated by the Production Supervisor but these wastage is not accounted for in the books of accounts. For these reason the Appraiser Custom has issued warring*

*vide letter F.No. NSEZ/CUS/07/04/Bridal/2006 dated 24.08.2006.*

*V. The fifth point is that stock in question is exported and therefore the income generated is tax free u/s 10A of I.T. Act, 1961. The contention of the assessee is accepted and no tax is being charged on income earned on export of stock generated out of wastage.*

*VI. The sixth point that no tax is attracted on above and hence tax got deposited by the Department during survey is refundable to the assessee is baseless. Actually the tax is being charged on the excess stock of gold generated out of recovery of wastage the value of which has already been surrendered. Therefore this point is not maintainable.”*

6. The AO, however, made the addition of Rs.1,31,00,000/- which was earlier surrendered by the assessee during the course of survey on account of suppression of stock manufacturing charges and other discrepancies. The AO while making the above said additions observed as under:

*“Actually the gist of the case is that the assessee is not showing the value of wastage because its value has already been recovered from the customers. The assessee is deriving income from making charges of jewellery. During the course of assessment proceedings, assessee has furnished invoices. On perusal of these invoices it is found that each invoices has the value and amount of gold purchased and while billing the jewellery, the same value and quantity of gold are being charged after adding the making charges and other charges. While billing, the value of wastage is also added to the quantity of jewellery. Thus whatever excess gold found and*

*stated to be wastage, the value of which has already been charged from customers. In other words, the wastage found in the possession is free of cost because its cost has already been recovered the customers.”*

7. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

*“REG: 11 LAKHS*

*“This surrender of Rs.11 lakhs was made because there were some loose documents found during the course of survey. As per the surrender letter dt. 03.08.2006 the surrender was made to cover up certain discrepancies. When at the time of preparation of return and finalization of books of A/c it was noted that there was no discrepancy in respect of loose papers found during search and said surrender was made inadvertently under pressure from survey team. During the course of assessment proceedings all loose papers and documents found at the time of survey were tallied with the books of accounts of the assessee and no discrepancy was found then. Notings to this effect are there in the order sheet of the A.O. It is humbly submitted that since there are no discrepancies in respect of loose papers found and checked at the time of assessment proceedings, the surrender of Rs.11 lakhs is meaningless and no addition is called for. As stated earlier that the surrender was not voluntary and the assessee was threatened with dire consequences if the surrender was not made. This submission was made before the A.O. also but was ignored by him.*

*REG: 1.2 CRORES*

*This surrender was made since there was pressure and threat from the survey team to make the surrender for the excess gold*

*of about 12kg found from the factory premises. The assessee is entitled to refund of the tax deposited because of the following reasons:-*

*1. WASTAGE & RECOVERY FROM WASTAGE: The assessee is running a 100% export unit at the Noida Special Economic Zone where the jewellery manufacture takes place. The assessee is availing of the 10A exemption since A.Y 2004-05 and it is being allowed to the assessee by the department. Total exports made from F.Y 2003-04 till 31.07.2006 is 2146kg. This is evident from the annual audit reports filed with the department and the letter dt. 08.08.2006 filed with the Deputy Commissioner of Customs, Noida, SEZ. In the process of manufacture of jewellery, 1.6% to 1.85% wastage is normal and accepted. A detailed investigation was carried out by the officials from the customs department on 12.08.2006 to 14.08.2006 and a report was prepared on 14.08.2006 by the jewellery appraiser of the customs department and other custom official wherein it was stated that as per the customs register the stock is 43.750kgs whereas the stock found on physical verification was 54.848kgs. It has stated that the unit is not maintaining record of wastage but the report says that on interaction with the production supervisor, they have knowledge and facility of recovery of gold out of wastage and they are doing the same on regular basis. The customs have also accepted the fact that jewellery manufacturing units recover gold from wastage as this is a precious item. Further held that 1.6-1.7% is the wastage and recovery of 25%-35% is feasible.*

|   |   |                       |
|---|---|-----------------------|
| <i>Total gold exported</i>                            | = | <i>2146Kgs</i>        |
| <i>Wastage</i>  | = | <i>1.8%</i>           |
|   | → | <i>36.4kg</i>         |
| <i>Recovery of gold (certified in customs report)</i> | = | <i>25% to 35%</i>     |
| <i>25% of 36.48kgs.</i>                               | → | <i>12kgs (approx)</i> |

*This clearly proves the bonafides of the assessee. Actually the excess gold is 11.098 gms & details of custom jewellery appraiser report is enclosed. This is on A/c of wastage being recovered out of wastage claimed since start of manufacturing activity i.e. F.Y 03-04. The error on part of the assessee has been that said recovery was not entered in books of account and whereas it was part and parcel of the profits of the exports made by the appellants at the time of survey such excess stock on account of recoveries made by the appellant firm was noted and also entered in books of account and used for export of jewellery during the period relevant to A.Y 07-08. The whole income/revenue is duly accounted for in books of account for A.Y 07-08 and the profits are exempt u/s 10A. The AO has himself admitted that the profit shown by the appellant is 100% exempt from tax under provisions of 10A."*

8. It was further submitted that the entire jewellery manufactured was exported outside India to various concerns and 12kg gold which was recovered out of wastage was entered in the books of accounts after the survey and that the jewellery made from the same was also exported. It was further stated that recovery of gold wastage and conversion to jewellery was an ongoing and a continuous process, the revenue received from the sale of this 12kg gold is also part of the regular books of accounts which were audited and produced before the AO during the course of assessment proceedings. It was emphasized that the surrender was made under undue pressure and coercion by the survey team. It was stated that the custom department made a complete investigation and

prepared a report on 14.08.2006 wherein it was mentioned that that the excess gold of 12kg was a result of the wastage accumulated and recovery made there from. In the said report it was accepted that 1.6% to 1.7% was the wastage in the manufacture of the jewellery and that 25% to 35% was the recovery from the wastage collected. It was also emphasized that nowhere the custom department had stated that this gold of 12kg was purchased outside the books of accounts and no kind of penal action was initiated against the assessee. It was pointed out that Central Board of Excise and Customs in the notification no. 3/88 clearly mentioned and admitted that in the manufacture of jewellery of different kinds the percentage of wastage ranges from 1.25% to 9% depending on the nature and variety. It was further stated that 12kg gold found at the time of survey was in the form of semi-finished and finished jewellery and that all the invoices, airways bills and customs clearances were produced before the AO who examined the same. The assessee also counter the reasons given by the AO and submitted as under:

*“1. It is true that the recovery of gold from sweeping of dust and polishing department is a regular process in the unit. However it is true that the same was not recorded in the books of accounts and it was an omission and an inadvertent human error. It was never deliberate. This was stated before the AO as well as before the survey team also. After the custom officials conducted the detailed investigation, we made a request to the customs to allow us to enter the same in the customs register on 21.08.2006.*”

2. *The AO has accepted the fact that the gold is recovered on account of normal loss of manufacturing process. As stated earlier this was not recorded in the stock register and we applied to the customs on 21.08.2006 to allow us to put duty free gold 11098gms in the register. After that the customs allowed us to put the gold in the register and a stamp was also placed on the register as a token of acceptance.*

3. *This observation is totally false and baseless. The assessee was forced to make a surrender of the gold and the survey team did not listen to the explanations tendered by the assessee. They were adamant on voluntary surrender and warned the assessee of dire consequences if it did not make a voluntary surrender.*

4. *The stock report prepared by the customs officers was signed by Appraiser Customs Noida SEZ and Joint Investigating Authority. Law does not require that the report be signed by all officers concerned. The survey report is also not signed by all officer of all ranks who conduct the survey.*

5. *The AO has accepted the fact that the income generated from export of jewellery is exempt under section 10A. Hence this proves that there was no need on part of the assessee to have gold outside the books of accounts.*

6. *The observation is baseless. We are challenging the very surrender made by us which was under coercion and illegal. The gold was recovered out of wastage. This has been authenticated by the customs department and it was exported. The revenues have been declared in the annual return.”*

It was further submitted as under:

*“1. That the survey team directed Mr. Rajan Kohli to write the surrender letter by hand as per the wordings supplied by the survey team. The surrender letter was never voluntary and was made under coercion and pressure. Mr. Rajan Kohli is also filing an affidavit stating all these facts. Hence it would be incorrect to assume that Rajan Kohli himself stated that he would not claim any further exemption or deduction from the surrendered amount. In fact in the surrender letter it is stated by Rajan Kohli himself that this surrender of excess gold is on account of wastage suppression. This was accepted by the survey team itself.*

*2. The SEZ unit is making only export sales. The unit was given permission to run unit at SEZ only if it achieves a minimum set target of exports. On the other hand the unit has exported more than the set targets.*

*3. There are no local sales made by the unit and we are also enclosing a certificate to this effect from the customs authorities.*

*4. Customs authorities keep a strict check and vigil on the activities of the units at SEZ. Each time a consignment leaves the unit to be exported, the customs officials verify the consignment and after inspection the official signs the customs export register which is annexed at paper book.*

*5. Even the incoming of gold is verified and inspected by the customs and after inspection the customs register is signed by the customs officials.*

*6. Nowhere is there any allegation by the AO or by the survey team that the firm is doing any bogus or sham transactions.*

7. *The deduction under section 10A is accepted by the department in all years (including A.Y 2007-08) starting from A.Y 2004-05 till today and every year there is a detailed scrutiny by the AO.*

8. *We have also attached a certificate from the CA of the assessee firm that no local sales took place from AY 2004-05 to AY 2007-08.*

*Hence in light of the submissions made earlier and today and the evidences filed in the paper book, the appellant firm should be assessed at NIL income as declared in the return of income.”*

9. The Id. CIT(A) after considering the submissions of the assessee observed as under:

*“In such factual backdrop; in my firm view, such a retraction, thought and planned over a long period of time, loses its any significance. It is very easy to comprehend that appellant took its time to devise its defences and has tried to take advantage of its strategy to export this excess gold jewellery, after it was found to be keeping such stock outside books and has, thus tried to claim the surrender income of Rs.120 lakhs as part of exempt export income.*

*Similarly, it completed its books, incorporating the entries found in loose papers, and thus, tried to regularize the other part, viz; discrepancy of Rs.11 lakhs.*

*In my view, the declaration made during survey was because discrepancies were detected during on-the-spot inspection/survey. There is no evidence or even any sign of any pressure or coercion (apart from automatic mental*

*pressure, which is normal during any such survey, especially when huge discrepancies are detected). The law does not promote such retraction. All the court case/judgments, on the issue of retraction of agreed surrender during survey or searches, lay down that if there is undue pressure or forced surrender, any assessee would naturally protest immediately after survey or within a reasonable period, say, a week or so. The appellant, in this case also, in case he was sure of his explanation, would not have made any such disclosure, and, in case he was unduly forced to do so, would have filed a letter/affidavit of retraction within a day or two, or within 7 days or latest (even giving all benefits of doubt) within a month.*

*But retracting from such surrender after more than a year, certainly indicates that appellant, strategized its defense, which took a long time, and that appellant planned its affairs before making formal retraction in form of return of income. Such belated, cooked-up retraction cannot be given any weightage.”*

10. The Id. CIT(A) observed that there cannot be any valid and bonafide justification of not accounting for any recovery out of the wastage, if the motive was not to earn unaccounted income. He further observed that the certificate issued by the customs department did not accept the assessee's claim of genuine possession of excess gold. He also pointed out that the issue under consideration comes under Income Tax Act and not under the Customs Act, so the fact that only a warning was given by the customs department will not weaken the case of the Income Tax Department. According to the Id. CIT(A) the assessee had

eventually exported the impugned excess stock of gold jewellery, which was found embedded in unexplained stock of 12kg of gold jewellery found during the course of survey. The Id. CIT(A) also pointed out that the assessee itself accepted the discrepancies of Rs.11 lakhs on account of incomplete/defective books, therefore, merely incorporating these entries later in books of accounts would not negate surrender of the additional income of Rs.11 lakhs. He also observed that there was no evidence of any connection of such additional income to the export activity and there was no basis for including Rs.11 lakhs within the aspect of export income. Accordingly, the addition of Rs.1,31,00,000/- made by the AO was sustained.

11. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee is 100% Export Oriented Unit (EOU) established in Special Economic Zone (SEZ) and having the benefit of exemption u/s 10A of the Act since 2004-05. It was further stated that a survey u/s 133A of the Act was conducted on 03.08.2006 at the business premises of the assessee and excess gold weighting approximately 12kg was found. The said gold was on account of recovery from the wastage of earlier years. It was explained that the assessee was claiming wastage ranging from 1.6% to 1.85% from the customers and the recovery of gold was to the extent of 0.6% to 0.8% from the said wastage, this fact had also been accepted by the Customs Department. A reference was

made to page no. 60 of the assessee's paper book wherein the Customs Department by considering the volume of operation and export accepted recovery of gold out of wastage up to 25% to 35%. The Id. Counsel for the assessee also referred to page no. 85 of the assessee's paper book and submitted that the gold weighting 11098gms was recovered on 28.02.2006 out of the wastage which was sold on 25.08.2008 and the said fact was duly entered in the stock register which had been accepted by the income tax department. It was further stated that the assessee entered sales in the books of accounts and claimed the exemption u/s 10A of the Act. Therefore, the addition made by the AO was not justified when the assessee had already shown the sales of the impugned amount in the books of accounts, as such the addition made by the AO and sustained by the Id. CIT(A) for a sum of Rs.1,20,00,000/- was not justified. As regards to the other addition of Rs.11 lakhs, it was stated that the assessee himself agreed for the addition of Rs.11 lakhs on account of various shortcomings to buy peace, the said income was in the normal course of business, therefore the deduction u/s 10A of the Act was allowable on the said income disclosed by the assessee. The Id. Counsel for the assessee referred to page no. 123 of the assessee's paper book which is the copy of the order sheet wherein it is mentioned that the assessee furnished purchase & sales register, cashbook, bankbook etc. which were checked & tallied and the assessment was framed u/s 143(3) of the Act. It was submitted that when the books of accounts

were accepted wherein the amount of Rs.1,20,00,000/- was shown on account of sale of the gold recovered from wastage, the separate addition made by the AO was not justified. It was also stated that the income of Rs.11 lakhs disclosed by the assessee was in the regular course of export business, therefore, the exemption u/s 10A of the Act was allowable on the said income also. The ld. Counsel for the assessee referred to page nos. 56 & 57 of the assessee's paper book which is a letter written to the Addl. Commissioner of Income Tax on 03.08.2006, (during the course of survey) wherein it is mentioned that the assessee disclosed Rs.1,20,00,000/- on account of gold recovered from wastage and Rs.11 lakhs to cover up the various discrepancies on account of entries not recorded in the books of accounts and certain documents. It was stated that the said surrender was made to buy piece subject to no penalty and prosecution and the surrender made was relating to the income earned during the course of regular business, therefore the assessee was entitled for exemption u/s 10A of the Act being 100% Export Oriented Unit established in Special Economic Zone. The reliance was placed on the following case laws:

- *Commissioner of Income-tax Vs. S. Khader Khan Son (2008)*  
*300 ITR 157 (Mad)*

12. In his rival submissions the ld. DR strongly supported the orders of the authorities below and reiterated the observations made in the assessment order as well as the impugned order passed by the ld.

CIT(A). It was further submitted that the assessee surrendered the amount when it was cornered and if there had not been any survey then the assessee might have not disclosed the income. Therefore, the addition made by the AO was rightly sustained by the Id. CIT(A). The Id. DR referred to page no. 148 of the assessee's paper book which is the copy of the statement recorded during the course of survey wherein the assessee agreed to surrender a sum of Rs.1,31,00,000/- and gave the post dated cheques for the payment of taxes. It was stated that the assessee did not disclose the aforesaid income while filing the return of income, therefore, the addition was rightly made by the AO and sustained by the Id. CIT(A).

13. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee was engaged in the manufacturing of jewellery, during the process of manufacturing on behalf of the customers, the gold wastage in the range of 1.65 to 1.85% was recovered from the gold of the customers, the said wastage was due to dust, impurities etc. and out of the said wastage the assessee was allowing 1% wastage to its worker. In this manner, the assessee was saving gold to the extent of 0.6% to 0.85% and recovered gold accumulated to the extent of 12kg. The gold recovered by the assessee from the wastage was in its regular course of business of manufacturing and export of gold jewellery and there was no local sale. The AO

accepted that the assessee was eligible for deduction u/s 10A of the Act being 100% Export Oriented Unit established in Noida Special Economic Zone. The assessee disclosed the gold recovered from the wastage in its books of accounts after the survey and the same was sold which was also entered in the stock register. The department had accepted the books of accounts maintained by the assessee in its regular course of business. The assessee disclosed the sale of the gold weighing 12kg which was recovered from the wastage. When the assessee itself disclosed the sale of the gold obtained on recopying the wastage and disclosed the profit on the said sale in the books of accounts which had been accepted by the department. In our opinion, the value of 12kg gold recovered by the assessee from its customer in regular course of business was its income but the assessee was eligible for deduction u/s 10A of the Act on the said income of Rs.1,20,00,000/-. In the present case, the deduction u/s 10A of the Act has not been denied by the AO. Therefore, the addition of Rs.1,20,00,000/- made by the AO and sustained by the Id. CIT(A) was justified but the assessee is entitled for deduction u/s 10A of the Act on the said addition because the said income was directly related to the export business of the assessee. As regards to the another addition of Rs.11 lakhs is concerned, the said amount was disclosed by the assessee itself to cover up the various discrepancies found during the course of survey but that discloser was also related to the regular business of the assessee and it was not from the sources other than the

business. On the said income of Rs.11 lakhs disclosed by the assessee, the exemption u/s 10A of the Act was available. The decision of the Honøble Madras High Court in the case of CIT Vs S. Khader Khan Son (2008) 300 ITR 157 is of no help to the assessee. In the said decision it has been held as under:

*“The principles relating to section 133A of the Income-tax Act, 1961, are as follows: (i) an admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts; (ii) in contradistinction to the power under section 133A, section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Act. On the other hand, whatever statement is recorded under section 133A is not given any evidentiary value obviously for the reason that the officer is not authorized to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law; (iii) The expression “such other materials or information as are available with the Assessing Officer” contained in section 158BB would include the materials gathered during the survey operation under section 133A; (iv) the material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment; and (v) the word “may” used in section 133A(3)(iii) of the Act, viz., “record the statement of any person which may be useful for, or*

*relevant to, any proceeding under this Act” makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.”*

It has been further held as under:

*“In view of the scope and ambit of the materials collected during the course of survey action under section 133A shall not have any evidentiary value. It could not be said solely on the basis of the statement given by one of the partners of the assessee firm that the disclosed income was assessable as lawful income of the assessee.”*

14. In the present case, the assessee agreed during the course of survey for the addition only when discrepancies in the loose papers were found. The assessee surrendered Rs.11 lakhs to cover up the irregularities of the business and short coming found during the course of survey. The said surrender was related to the regular business of the assessee and it is not brought on record that the assessee earned the said income from any other source. Therefore, the deduction u/s 10A of the Act was allowable to the assessee being 100% Export Oriented Unit established in SEZ on this income also. We order accordingly. In view of the above we uphold the addition made by the AO and sustained by the Id. CIT(A), however, the AO is directed to allow the deduction u/s 10A of the Act.

15. In the result, the appeal of the assessee is partly allowed.

(Order Pronounced in the Court on 18/12/2015)

**Sd/-**  
**(C. M. Garg)**  
**JUDICIAL MEMBER**

**Dated: 18/12/2015**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**