

9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON: 31.10.2012

+ ITA 1049/2011

CIT Appellant
Through: Ms. Rashmi Chopra, Sr. Standing Counsel.

Versus

LUNAR DIAMONDS LTD Respondent

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. In this appeal by the Revenue, an order of the ITAT dated 11.02.2011 in ITA No.1595/Del/2009 has been challenged. The question of law urged is whether the Tribunal was justified in upholding the Appellate Commissioner's order deleting the sum of ₹.8,73,040/-.

2. The assessee was engaged in diamond cutting and processing business and had filed its return on 31.12.1999 declaring NIL income. It claimed deduction under Section-80IA. The AO rejected the deduction sought on the ground that the assessee was ineligible in view of the decision of the Supreme

C/6

Court in *CIT v. Gem India Manufacturing Co.*, 249 ITR 307. The assessee appealed to the Commissioner who set aside the assessment order in that regard and after considering the submissions as well as remand report accepted the assessee's claim in the following terms: -

"Rival contentions have carefully been considered. After considering the rival submissions I have come to the conclusion that since the Assessing Officer has not repudiated the facts brought to my notice by the ld. A.R. of the appellant that the assessee company is engaged in the business of manufacturing of the jewellery and not cutting and polishing of the diamonds, I acknowledge them as the genuine facts. The decision of Hon'ble Supreme Court in the case of Gem India Manufacturing Company is applicable only in the case of cutting and polishing of raw-diamonds and not in the case of manufacturing of jewellery which includes several process such as, cutting and polishing of diamonds, studding them in the ornaments of various shapes using the precious metals like, gold, silver and platinum etc... Therefore, the deduction under section 80IA cannot be denied to the assessee company. Appellants succeed on this ground of appeal also."

3. The Tribunal upon being approached by the Revenue, affirmed the Commissioner's order, observing as follows: -

"5. We have considered the rival submissions and have gone through the orders of authorities below. We find that the claim of the assessee for deduction u/s 80IA was rejected by the A.O. on the basis that as per the judgment of Hon'ble Apex Court rendered in the case of Gem India Manufacturing Co. 249 ITR 307 (S.C.) it was held that cutting and polishing of raw diamonds does not make the assessee company entitled to claim deduction u/s

12

80I of the I.T. Act. On the basis, the A.O. rejected the claim of the assessee regarding deduction u/s 80IA. It has been noted by the Ld. CIT (A) that as per the submission of the assessee, the assessee is engaged in the business of manufacturing of jewellery and not is the business of cutting and polishing of diamonds and, therefore, the judgment of Hon'ble Apex Court rendered in the case of Gem India Manufacturing Co. (supra) is not applicable in the present case. Even before us, nothing has been brought on record by the revenue to show that the business of the assessee is merely cutting and polishing of diamonds and the assessee is not engaged in the business of manufacturing of jewellery. Under these facts, we do not find any reason to interfere in the order of Ld. CIT (A) on this issue Ground No.3 of the revenue is rejected."

4. The assessee in this case was subjected to winding up proceedings before the Allahabad High Court; accordingly the Court had directed the Revenue to serve the Official Liquidator. Fresh notice was also issued on 09.08.2012. The office report for two dates states that the respondents were served through Official Liquidator. However, no one has appeared on behalf of the respondent to represent it.

5. This Court has considered the records and the submissions appearing from it. The Revenue's contentions consistently – before the Commissioner as well as the ITAT – were that even though the assessee claimed that it was engaged in diamond processing and studding activities -which are covered under Section 80IA, there was no merit in such a plea. The assessee had filed a letter on 10.11.2004 putting forward its claim that it was

engaging itself in diamond processing and studding. It is pointed out on behalf of the Revenue that this claim has not been backed with any material and that on the contrary the closing stock for the relevant year was to the extent of ₹.1,54,38,324/- (comprising of diamonds valued at ₹.1,00,81,836/- and precious stones and gems valued at ₹.53,56,488/-); the value of gold was shown to be NIL. It was contended that this evidence had to be seen in the backdrop of the assessee's letter which did not furnish any particulars as to the process it undertook in the diamond processing and studding industry that it claimed.

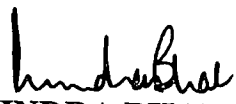
6. This Court is of the opinion that there is considerable merit in the contention of the Revenue. The closing stock in the order under consideration nowhere showed that the assessee held any stock of gold; at any rate it was not shown in the valuation. In the absence of any other supporting material such as expenses incurred towards machinery, salaries or wages paid to artisans etc., the Appellate Commissioner and later the Tribunal could not have blindly accepted the assessee's claim that it was engaging in an activity that was not covered by the decision in *Gem India Manufacturing Co.* (supra). There is no dispute that the Supreme Court held that mere cutting and polishing of diamonds does not amount to industry under Section-80IA. The findings of the CIT (A) and the Tribunal; therefore, are clearly unjustified and not supported by law.

7. As a result of the above discussion, the appeal has to succeed. It is accordingly allowed. The impugned order, as well

13

as the order of the CIT (A) are hereby set aside and the disallowance made by the AO stands restored.

8. The Appeal is allowed in the above terms.


S. RAVINDRA BHAT
(JUDGE)


R.V. EASWAR
(JUDGE)

OCTOBER 31, 2012
/vks/