IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'G' MUMBAI

ITA Nos.6947&6948/Mum/2011
Assessment Year: 2006-07 & 2007-08

M/s GITANJALI EXPORTS CORPORATION LTD
801/802, PRASAD CHAMBERS, OPERA HOUSE
MUMBA-400004
PAN NO:AABCG2804N

Vs

ASSTT DEPUTY COMMISSIONER OF INCOME TAX
5(1), MUMBAI

ITA Nos.6781&6783/Mum/2011
Assessment Year: 2006-07 & 2007-08

ASSTT DEPUTY COMMISSIONER OF INCOME TAX
5(1), MUMBAI

Vs

M/s GITANJALI EXPORTS CORPORATION LTD
801/802, PRASAD CHAMBERS, OPERA HOUSE
MUMBA-400004
PAN NO:AABCG2804N

ITA Nos.6949&6950/Mum/2011
Assessment Year: 2006-07 & 2007-08

M/s GITANJALI EXPORTS CORPORATION LTD
801/802, PRASAD CHAMBERS, OPERA HOUSE
MUMBA-400004
PAN NO:AAACG1642F

Vs

ASSTT DEPUTY COMMISSIONER OF INCOME TAX
5(1), MUMBAI

ITA Nos.6785&6787/Mum/2011
Assessment Year: 2006-07 & 2007-08

ASSTT DEPUTY COMMISSIONER OF INCOME TAX
5(1), MUMBAI

Vs

M/s GITANJALI EXPORTS CORPORATION LTD
801/802, PRASAD CHAMBERS, OPERA HOUSE
MUMBA-400004

PAN NO:AAACG1642F

R K Gupta, JM and D Karunakara Rao, AM

Dated: May 8, 2013
ORDER

Per: Bench:

These eight appeals have been preferred by two different assessees as well as by department against the order leaned CIT(A)-9, Mumbai relating to the assessment years 2006-07 & 2007-08.

2. Since common issues are involved in all the cases, therefore, for the sake of convenience, these cases which have been heard together and, therefore, disposed of by this consolidated order.

3. We will take first appeals in the case of assessee M/s Gitanjali Export Corporation Limited for assessment years 2006-07 & 2007-08 and the outcome of these appeals will be applicable in case of other assessees i.e M/s Gitanjali Gems Limited as the facts are similar and the same has been admitted by both the parties i.e. assessee and department.

4. In ITA No.6947&6948/Mum/2011 filed by the assessee M/s Gitanjali Export Corporation Limited, the assessee has raised grounds in regard to treating the FDs kept as margin money with Bank against credit facilities as income from other sources instead of income from business and not netting such interest against interest payment to Banks, for calculation of deduction under Section 10AA & 10A for assessee's unit at SEZ and thereby reducing the claim of deduction under Section 10AA & 10A, the amount of deduction was reduced at Rs.75,12,493/- for assessment year 2006-07 and an amount of Rs.31,42,069/- for assessment year 2007-08.

5. The AO denied netting of interest income and expenditure and deduction under Section 10AA & 10A of the Act on interest income was reduced because according to him the interest income has not derived from manufacturing activities and, therefore, the same need to be reduced from business profits and accordingly, he reduced the deduction under Section 10AA/10A of the Act. He also denied the deduction on the delay in payments which was received after the prescribed time and, therefore, he reduced the amount from export turnover for calculation of deduction under Section 10A of the Act.

6. Against the order of the AO, appeals were preferred before the CIT(A). Learned CIT(A) held that the interest income cannot be treated as derived from the undertaking and, therefore, the action of the AO was justified in treating the interest income as income from other sources. Learned CIT(A) also confirmed the action of the AO in respect of not allowing the netting of interest income and expenditure for the reason that the jurisdictional High Court of Bombay in the case of *Asian Star Trading (Bom), reported in 326 ITR 56 =* ***(2010-TIOL-238-HC-MUM-IT)***, has held that for the purpose of deduction under Section 80HHC, the Tribunal was justified in holding that interest on fixed deposit in the bank receipt by the assessee should be considered for the purpose of working out the deduction under Section 80HHC and not the gross interest.

7. Now, the learned counsel of the assessee here before the Tribunal stated that this issue is squarely covered by the decision of the Hon'ble Apex Court reported in *[2012] 343 ITR 89*

= ***(2012-TIOL-13-SC-IT-LB)***, wherein the Hon'ble Supreme Court has held that netting of interest is to be allowed.

8. On the other hand, learned DR placed reliance on the order of learned CIT(A).

9. After considering the order of AO, CIT(A) and the submissions of both the parties, we find that this issue is to be decided partly in favour of the assessee. Regarding interest income, it is settled position in law that interest income is to be assessed as income from other sources and not under the head business income for the purpose of deduction under Section 10AA/10A. However, this issue in respect of netting i.e. interest income and expenditure income has to be netted of, if there is a nexus. There is no dispute in respect of nexus as the interest income earned by the assessee is earned on FDs kept with the bank as margin money against credit facility. Therefore, in view of the decision of the Hon'ble Supreme Court reported in *[2012] 343 ITR 89* = ***(2012-TIOL-13-SC-IT-LB)***, we allow the netting of interest. Accordingly, the AO will compute the net income of interest or expenditure. If after netting of interest it is found that interest income is more than then the surplus income has to be treated as income from other sources and if interest expenditure is more than the interest income, then no deduction is to be made while calculating deduction under Section 10AA/10A. We order accordingly.

10. The second issue in both of the years is against confirming the action of the AO in disallowing interest under Section 36(1)(iii) of the Act by treating the same as interest which is attributable to capital borrowed for purchase/acquisition of assets. For assessment year 2006-07, the disallowance has been made at Rs.52,18,944/- and for assessment year 2007-08, the disallowance has been made at Rs.17,06,082/-.

11. During the assessment proceeding, the AO noticed that the assessee has given advances for the purpose of two units at Bharat Diamond Bourse and Gujarat Hira Bourse. The assessee has shown the same under the capital work-in-progress. The assessee was asked to produce the detail of source of investment. Thereafter the AO found that the assessee could not explain the investment properly, therefore, the impugned additions were made by the AO, which has been confirmed by the learned CIT(A).

12. Learned counsel of the assessee stated that this issue is squarely covered by the decision of the Tribunal in case of *Mehta Brothers Gems Pvt. Ltd. Vs. ACIT, decided in ITA No.6245/Mum/2010*, for assessment year 2006-07, vide order dated 25-1-2012. Copy of which has also been filed.

13. On the other hand, learned DR fairly stated that the issue is covered by the order of the Tribunal in the aforesaid case, however, he placed reliance on the order of CIT(A).

14. After considering the order of the AO and CIT(A) and the order of the Tribunal in case of *Mehta Brothers Gems Pvt. Ltd Vs. ACIT, decided in ITA No.6245/Mum/2010*, for assessment year 2006-07, vide order dated 25-1-2012 and in ITA No.4791/Mum/2011 for assessment year 2007-08, vide order dated 18-5-2012, we noted that in this case also certain advance payments were made for the purpose of units at Bharat Diamond Bourse and Gujarat Hira Bourse and on similar manner, the additions were made by the AO, which was confirmed by the learned CIT(A). However, on appeal before the Tribunal, the Tribunal has deleted the addition by making the following observations in para 4 at page 3 while deciding the appeal for assessment year 2006-07 :-

"4. We have perused the records and considered the rival contentions carefully. The dispute is regarding disallowance of interest in relation to acquisition of asset for extension of business. Under the provisions of section 36(1)(iii), any interest on borrowings made for acquisition of assets for extension of existing business is required to be capitalized till the asset is first put to use. In this case, assessee had made total advance payments of Rs.1,53,25,5000/- for acquisition of two new premises out of payment made during the year was Rs.10,06,000/- and balance payment had been made in the earlier years. Authorities below have proceeded with the presumption that the assets had been acquired from borrowed funds. However, no basis for such finding has been given. The assessee has pointed out that most of the payments had been made in earlier years in which· year there was no disallowance of interest. Therefore, in the earlier years, the payments were made from own funds. During the year, payment was only Rs.10.06 lacs. Assessee had own funds of Rs.3.95 crores and interest free borrowing of Rs.7. 92 crores. In addition, current year profit was itself Rs.96.00 lacs. Considering these facts in our view source of current payment is easily explained from own funds. Therefore, when the payment for acquisition of assets have been made from own funds, there cannot be any case of disallowance of interest. We, therefore, set aside the order of CIT(A) and delete the addition made".

These findings were followed by the Tribunal wile deciding the appeal for assessment year 2007-08 in the above case.

15. Facts are similar before us. Therefore, respectfully following the decision of the Tribunal in the case of Mehta Brothers (supra), we allow the issue for both of the years in favour of the assessee.

16. Now, we will take up the appeals of the department i.e. ITA Nos.6781&6783/Mum/2011 for Assessment Years 2006-07 & 2007-08.

17. The department in both of its appeals raises following ground :-

"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer to allow deduction u/s 10AA of the IT Act of Rs. Rs. : 2.33 Crs. and Rs. 4.59 Crs. for A.Yrs. 2006-07 & 2007-08, respectively on profit arising from the trading activity of the assessee holding that as per the definition of 'services' given in the SEZ Rules, 'trading' is covered by the term 'services', ignoring the fact, that, see. 2(z) of the SEZ Act itself defines 'services' to mean "tradeable services" satisfying sub-clause (i), (ii) & (iii), thereon"

18. The AO disallowed the deduction under Section 10AA for both of the years by observing that the exemption claimed u/s. 10AA is applicable only for manufacturing unit as per the Act, whereas the assessee was involved in trading activities carried out from Plot No.241, Unit No.374, Surat, SEZ, Sachin GIDC Road No.4, Surat. Therefore, the assessee was asked to explain as to why this exemption should not be disallowed. In response, the assessee filed reply dated 1.12.2009 stating therein that "as regards availability of Section 10AA for trading Activities,' it is stated that as per section 10AA benefits available to units providing services. Under the SEZ Act section 2(z_) defines "services' to include tradable services as may be prescribed by the Central Government for the purpose of this Act and Central Government has included trading as one of the services. The assessee further relied on the Rules notified under Special Economic Zone (SEZ) Act, 2005. The AO also observed that the exemption u/s. 10AA under the I.T.Act is applicable to those assesses who begin to manufacture or produce articles or things or provide any services from a unit located in any of the SEZ as defined under the SEZ Act. For the purpose of Section 10AA of the Act,

manufacture is defined under clause (iii) in Explanation 1 that "(iii) 'Manufacture' shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act 2005". However, there is no such definition for services. Since the Income-tax Act does not define the word 'service' the meaning of 'service' can be gathered from the general meaning of the work 'service', and from the case law that has evolved over a period of time in this regard. Reliance was also placed on the decision of the Hon'ble High Court of Delhi in the case of *SRF Finance Ltd vs CBDT (211 ITR 861)* and the Hon'ble Delhi High Court while discussing the difference between work and service has observed as under:-

"There are qualitative differences between the subject, referred as 'work' and the subject referred as 'service'. The two words convey different ideas. In the former (i.e. work) the activity is predominantly physical; it is tangible. In the activity referred as 'services' the dominant feature of the activity is intellectual, or at/east, mental. Certainly, 'work' also involves intellectual exercise to some extent. But the physical (tangible)aspect is more dominant than the intellectual aspect. In contrast, in the case of rendering any kind of 'service' intellectual aspect plays the dominant role. The vocation of a lawyer, doctor, architect or a chartered accountant (there are' other similar vocations also) involves deep intellectual exercise and physical skill involved in their vocational activities is minimal."

Therefore, Income Tax Act defines "service' essentially as professional and technical services as can be seen by the provisions of the Income-tax Act uls.9 and u/s.194J. As right/y observed by Hon. Delhi High Court, providing a service is generally in connection with intellectual rather than physical aspects. The assessee is mainly involved in trading which involves purchases and sale of goods rather than rendering any services. Transfer, delivery or supply of any good shall be deemed to be a sale of goods according to the established concept of sale under Sale of Goods Act, 1930. The Hon. Supreme Court in the case of *Tamil Nadu Kalyana Mandapam Association v/s. Union of India (267 ITR 9)* = ***(2004-TIOL-36-SC-ST)*** discussing of difference between supply of services and sale of goods clearly defined that "Art 366 (29A)(f) of the Constitution does not conceptually or otherwise include the supply of services within the definition of sale and purchase of goods." Thus by no stretch of imagination can trading in goods can be considered as supply of service by the assessee. In view of the above, assessee's claim of exemption u/s. "10AA of the Act, of RS.1,58,06,018/- (Rs.2,33,18,511 - Rs.75, 12,493) for trading in gold and studded jewellery is rejected and the entire sum is considered as the taxable income of the assessee."

19. Before CIT(A), detailed written submission was filed, which has been incorporated in the order of the learned CIT(A) at pages 4 to 9, which are as under :-

"2.1 In the appellant proceedings, the appellant has filed paper book and written submission from time to time and agitated against the action of the Assessing Officer. The written submissions dated 23/10/2010 and 01/03/2011 filed by appellant are as under:

"The learned Assessing Officer erred in not allowing exemption uls.10AA with regard to trading activity carried on by your appellant's undertaking at Surat SEZ and thus further erred in disallowing related deduction of Rs.2,33,18,511/- for Assessment Year 2006-07 and Rs.8,38,27,763/- for Assessment Year 2007-08 u/s.10A.A.

Your appellant is dealing in rough diamonds, polished diamonds, gold and jewellery.

The appellant has claimed Deduction u/s. 10AA in respect of undertaking at Surat, SEZ.

In respect of Trading activities at Surat, SEZ, Deduction u/s.10AA amounting to Rs. 4,59,58,882/- has been claimed, wh.ch has been disallowed by the learned Assessing Officer.

The appellant has claimed deduction u/s. 10AA on Trading activities as same is covered by definition of "Services" in the SEZ Act.

The learned Assessing Officer has held that providing of any services does not include Trading for the following reasons:-

No definition of services is available in Income tax Act, whereas "Manufacture" has been defined under clause (iii) in Explanation 1 of Section 10AA.

This definition of "service" can be gathered from general meaning of the word "service" and case law evolved over a period of time in this regard. According to him, section 9 and section 194 J define professional and technical service.

(iv) As trading in goods is covered by sale of goods Act, 1930, trading cannot be considered as supply of services. In this connection appellant make the following submissions.

A. Section 10AA (1) is as under-

Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of sec ion 21..2 of the Special Economic Zones Act, 2005. from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant 10 any assessment year commencing on or after the 1st day of April, 2006, a deduction of -

(i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;

(ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section.

B. In this connection, please find enclosed herewith Instructions regarding SEZ Act 1 Rule. Instruction no. 612006 dated 03-08-2008 (Page Nos. 1 to3),

Section 51 of the S5Z Act provides as follows:-

'51(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act". Hence, by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rules will have overriding ,-effect over the provisions contained in any other Act.

We are further enclosing Special Economic Zones (Amendment) Rules, 2006 - Notification No. G. S.R. 470(#) dated 10-08-2006 (Page Nos. 4 to 6.)

We are specifically reproducing an explanation for your kind consideration :-

Explanation - The expression "Trading", for the purposes of the Second Schedule of the Act, shall mean import for the purposes of re-export".

D. Further relevant extract of second schedule of the SEZ Act is enclosed

Under SEZ Act definition of "services" is as under :- (Item No. 76 - Page 7) " or the purposes of sub-clause (z) of section 2 shall be the namely:

Trading, warehousing, research and development services, computer software services, including information enabled services such as backoffice operations, call centers, content development or animation, data processing, engineering and design, graphic information system services, human resources services, insurance claim processing, legal data bases, medical transcription, payroll, remote maintenance, revenue accounting, support centers and web-site services, off-shore banking services, professional services (excluding legal services and accounting) rental/leasing services without operators, other business services, courier services, audio-visual services, construction and related services, distribution services (excluding retail services) educational services, environmental services, financial services, hospital services, other human health services, tourism and travel related services, recreational, cultural and sporting services, entertainment services, transport services, services auxiliary to all modes of transport, pipelines transport.

E. We are enclosing copy of Schedule to SEZ which clearly gives directions or modification to the Income tax Act, 1961 for inserting section 10AA. (Page Nos. 11 to 15).

F. Please find enclosed herewith Instruction No. 412006 which clearly guides to grant deduction u/.s. 10AA t-J units carrying on trading in the nature of re-export of imported goods. (Page Nos. 16 to 17).

G. view of the above it is stated as under :-

1. The Income tax Act, 1961, clearly provides a deduction of hundred per cent profits and gains derived from the export of such articles or things or from services (Section 10AA(1) and section 10AA(1)(i)

2. SEZ Act has clearly included "Trading" as services (Second schedule to the SEZ Act)

3. "Trading for the purpose of the Second Schedule of the Act, shall mean import for the purpose of re-export".

(Please refer to special Economic Zones (Amendment) Rules 2006 - notification no. GSR 470(E) dated 10-08-2006).

5. By virtue of Section 51 of SEZ Act, the provisions of the SEZ Act and rules will have overriding effect over the provisions contained in any other Act. Thus provisions of the Income tax Act, 1961 merges with that of SEZ Act.

4. Word any services in Section 10AA (1) further strengthens case of the your appellant in view of special Economic Zones (Amendment) Rule 2006.

In view of the above deduction u/s. 10AA may be granted as claimed by the appellant.

1. "Section 10AA was inserted by the Special,' Economic Zones Act, 2005, with effect from 10th February, 2006. Under section 27 of the Special Economic Zones Act, 2005, effective from 10th February, 2006, the provisions of the Income tax Act, 1961, as in force for the time being, apply to, or in relation to, the Developer or entrepreneur for carrying on the authorized operations in a Special Economic Zone or Unit subject to that Act.

2. We are enclosing copy of Schedule to SEZ which clearly gives directions for modification to the Income tax Act, 1961 for inserting section 10AA.

3. Please find enclosed herewith Instruction No.412006 which clearly guides to grant deduction u/s. 10AA to units carrying on trading in the nature of re-export of imported goods".

After considering the submission and perusing the material on record, learned CIT(A) found that the assessee is entitled for deduction under Section 10AA. Accordingly, he allowed the deduction as claimed by the assessee for both of the years.

20. Learned DR firstly placed reliance on the order of AO. Part of the order of AO was read also. It was further submitted that the Board has issues circular by which circumstances under which the deduction is allowable is explained. It was further submitted that the rules and provisions provided under SEZ Act will not override the income tax laws. The assessee has done simple trading and, therefore, on trading activity deduction under Section 10AA is not allowable. Accordingly, learned CIT(A) was not justified in allowing deduction. It was further submitted that provision of Section 10AA are very clear and they cannot be interpreted in any other manner. In support of this contention, reliance was placed on the decision in the case of *Novopan India Limited, reported in 1994 (73) E.L.T. 769 (SC)* = ***(2002-TIOL-89-SC-CX)***. It was also stated that circular is binding, however, learned CIT(A) has ignored the circular. It was further submitted that the assessee has made trading and, therefore, they cannot be equated with the manufacturing activity. It was also submitted that the issue in respect of trading its services, is not decided by the learned CIT(A) and, therefore, that has to be considered separately for this purpose. Attention of the Bench was drawn on Explanation to subclause 4 of Section 10AA and Explanation to sub clause 3 of Section 80IA.

21. Learned counsel on the other hand, firstly placed reliance on the order of CIT(A). Further reliance was placed on the decision of Jaipur Bench in the case of *Goenka Diamond and Jewellery Limited, reported in 146 TTJ 68* **=** ***(2012-TIOL-137-ITAT-JAIPUR)***. It was further stated that identical issue was involved before the Jaipur Bench and after discussing the issue in great detail, the Tribunal has allowed the issue in favour of the assessee. It was further submitted that under the SEZ Act, it has been provided that the provision of SEZ Act will override the provision of Income Tax Act and, therefore, there is no ambiguity or incorrectness in the finding of the learned CIT(A).

22. We have heard rival submissions and considered them carefully. After considering the submission and perusing the material on record, we found no infirmity in the finding of the learned CIT(A). The finding of the learned CIT(A) have been recorded in para 2.2 & 2.3 at page 9 and 10, which are as under :-

“I have carefully considered the findings of the Assessing Officer and submissions of the appellant. I have also gone through the relevant sections as well as provisions of SEZ Act and Circular NoAI2006 issued by the Government of India (Ministry of Commerce & Industry). The Assessing office has disallowed deduction u/s.10AA on the trading activity by the appellant from plot No.241, Unit No.374, situated in Surat SEZ areas because he was not agreeable with the arguments of the appellant that trading activity carried out by the appellant are red by service. The Assessing Officer was of the view that such exemption ct is available only on manufacturing activity and not on trading of goods. He has relied upon the decision of Delhi High Court and Supreme Court to understand the meaning of the word 'service' because the service has not been denied in the Income-tax Act. After considering the entire facts and case laws as well as circular relied by the appellant I find merit in the claim of the appellant because it is very clear from Circular 17 of 29.05.2006 issued by the. Export Promotion Council For EOUs & SEZ Unit (Ministry of Commerce & Industry, Government of India) para 2 of which reads as under :-

"In the meantime, sourcing from domestic area may be permitted by units in the SEZs which are allowed to do trading subject to this circular being cited on prescription of an undertaking by the concerned unit that no Income-tax benefit will be availed by the Unit for trading except in the nature of re-export of imported goods".

2.3 The appellant has filed a schedule to SEZ which clears the case with modifications to the income-tax Act, 1961 for inserting Sec.10AA of the Act.

10 Instruction No.4/2004 also clears the claim of deduction u/s.10AA of the Act to the units carried out for trading in the nature of re-export form the SEZ Act. So it is very clear from the SEZ Act that service includes trading also and appellant has done trading from SEZ Act of the imported goods which have been re-exported after processing. It is further very clear from Section 51 of the SEZ Act which provides as under:

"Section 51 of the SEZ Act provides as follows:"51(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act". Hence, by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rule will have overriding effect over the provisions contained in any other Act. it can be seen from the wordings of Section 51 (1) of SEZ Act the provisions of the SEZ Act and Rules has overriding effect in case of contradiction between the SEZ Act and other Act. Thus the provisions of SEZ Act will be applicable and since there is no doubt that trading is covered by services and services include trading as per SEZ Act. Therefore the appellant is fully entitled for deduction u/s.10M of the Act on goods imported and re-exported from SEZ Act. However, no such deduction will be available on the local purchase and sales made by the Appellant and that is why Government has made it clear that local purchase and sale will not be entitled for benefit. Therefore, the Assessing Officer is directed to allow benefit and deduction u/s.10M of the Act on the import-export trading activity of the appellant. However, no such benefits should e given in the local purchase and sale made by the appellant. He should ensure this fact again while giving effect to this order. Hence, this ground of appeal is allowed.”

We noted that learned CIT(A) has taken into considering the aspect and observation of the AO that deduction under Section 10AA is not allowable for the reason that the assessee has not carried out any manufacturing activity but has done trading of goods only. For this purpose, learned AO has placed reliance on the order of Hon’ble Delhi High Court. Learned CIT(A) has taken into consideration these observation of the AO and thereafter he found

that the Government of India has issues a circular No.17 of 29.5-2006, which was issued by Export Promotion Council For EOUs & SEZ Unit (Ministry of Commerce & Industry, Government of India). The contents of the Circular have also been incorporated in the finding of the learned CIT(A), which have also been reproduced somewhere above in this order. Therefore, we are not repeating the contents of that circular issued by the Ministry of Commerce & Industry, Government of India). Under Section 51(1) of the SEZ Act, it has been clearly provided that the provision of this Act has overriding effect in case of contradiction between the SEZ Act and other Act. Hence, by virtue of Section 51 of the SEZ Act, the provision of SEZ Act and rules will have overriding effect over the provision contained in any other Act. Learned CIT(A) has taken into consideration this circular issued by Government of India and the provision of Section 51 of the SEZ Act and found that trading done by the assessee is a service and, therefore, deduction under Section 10AA is allowable. We further noted that on similar facts in case of Goenka Diamonds and Jewellery Limited (supra), the Jaipur Bench of the Tribunal has discussed the issue in detail. The provisions of Section 51 of SEZ Act were also considered. The decision of the Hon'ble Supreme Court in the case of *Tax Recovery Officer Vs. Custodian Appointed Under The Special Court, reported in the case of 211 CTR 369 (SC)* = ***(2007-TIOL-148-SC-IT)*** and the decision of the Hon'ble Delhi High Court in the case of *CIT Vs. Vasisth Chay Vyapar Ltd., reported in 238 CTR 142 (Delhi)* = ***(2010-TIOL-781-HC-DEL-IT)***, were also taken into consideration and thereafter it was concluded that in view of the Instruction No.1 of 2006, dated 24-3-2006 as modified by Instruction No.4 of 2006, dated 24-5-2006 issued by the Ministry of Commerce & Industry, Government of India and the definition of service given in the SEZ Act, 2005, which overrides the word 'service' accruing in Section 10AA by virtue of Section 51 of the SEZ Act. The assessee engaged in trading in nature of re-export of imported goods and for the same the assessee was entitled deduction under Section 10AA of the Act. Facts are similar before us, as the assessee is engaged in trading of re-export of imported goods and, therefore, the assessee is entitled for deduction under Section 10AA of the Act. All the arguments advanced by the learned DR before us have also been taken care of by the Tribunal while discussing the appeal in the case of Goenka Diamonds and Jewellery Limited (supra). It is further noted that the main plank of argument of learned DR is that rules provided under the SEZ Act cannot partake the character of the Section of the Income Tax Act. We find that in the SEZ Act under Section 51, it has been clearly provided that the provision of SEZ Act will override the provision of any other Act, meaning thereby the provision provided under the SEZ Act has to override on the provision of Section 10AA of the Income Tax Act. Under the rules, it is not provided but under Section 51 of the SEZ Act, it is provided, therefore, in our view, the contention raised by the learned DR is not tenable. Moreover, the issue is squarely covered by the decision of the coordinate Bench in the case of Goenka Diamonds and Jewellery Limited (supra). Therefore, respectfully following the decision of the Tribunal in the case of Goenka Diamonds and Jewellery Limited (supra) and in view of the reasoning given by the learned CIT(A), we confirm his order.

23. Now, we will take up the appeals in case of other assessee i.e. *Gitanjali Gems Ltd. listed under ITA Nos.6949&6950/Mum/2011*(for assessment years 2006-07 & 2007-08).

24. In these case also, the assessee is objecting in not allowing netting of interest against interest expenditure for the purpose of deduction under Section 10AA/10A. Similar issue was involved in case of *M/s Gitanjali Exports Corporation Limited (ITA Nos.6947&6948/Mum/2011)*, whereby we have already discussed the issue, wherein we have decided the issue in part in favour of the assessee. Therefore, on the same reasoning, the issue involved in the present cases also is decided in favour of the assessee and the AO is directed to allow the netting of interest accordingly.

25. In appeals i.e. ITA Nos. 6785&6787/Mum/2011, the department has raised the issue against directing the AO to allow deduction under Section 10AA of the IT Act for both of the years.

26. Similar issue was involved in case of *M/s Gitanjali Exports Corporation Limited (ITA Nos.6947&6948/Mum/2011),* whereby we have already discussed the issue and confirmed the order of the learned CIT(A) as the issue was covered by the decision of the Tribunal in case of Goenka Diamonds and Jewellery Limited (supra). Therefore, on the same reasoning, we confirm the order of the learned CIT(A) in this case also for both of the years.

27. In the result, appeals of the both the assessees for the assessment years 2006-07 & 2007-08 (i.e ITA Nos.6947, 6948, 6949 & 6950/Mum/2011) are allowed in part and appeals of the department i.e. ITA Nos.6781, 6783, 6785 & 6787/Mum/2011 are dismissed.