

[2012] 3 S.C.R. 273

VIKAS KALRA

v.

THE COMMISSIONER OF INCOME TAX-VIII, NEW DELHI
(Civil Appeal No. 1915 of 2012)

FEBRUARY 08, 2012

**[S.H. KAPADIA, CJI, A.K. PATNAIK AND
SWATANTER KUMAR, JJ.]**

Income Tax Act, 1961 – ss. 80 HHC and 28(iiid) – Deductions in respect of profits retained for export business – Claim for, by exporter – Assessing Officer held that the entire sale value of Duty Entitlement Pass Book (DEPB) represents profit on transfer of DEPB u/s 28(iiid) and did not allow exemption/deduction u/s 80 HHC – Order upheld by Commissioner of Income Tax (Appeals) – Appellate Tribunal relying on a decision of Special Bench of the Tribunal in M/s Topman Exports holding that the face value of DEPB would be cash assistance against export and would fall u/s 28 (iiid) and sale value less the face value of DEPB would be profit on transfer of DEPB – High Court remitted the case to the Appellate Tribunal since the decision of the Special Bench was reversed by the High Court in CIT v Kalpataru Colours and Chemicals – As regards the additional issue whether the Tribunal was correct in law in ignoring explanation (baa) u/s 80 HHC which specifically excludes profits of DEPB from total turnover, the High Court held that the issue was covered by CIT v Shri Ram Honda Power Equip – On appeal held: Appeals disposed of in terms of the judgment passed by this Court in M/s Topman Exports v. Commissioner of Income Tax, Mumbai and other connected appeals setting aside the judgment of the High Court in CIT v Kalpataru Colours and Chemicals; and M/s ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai and other connected appeals affirming the judgment of the High Court in CIT v Shri Ram Honda Power Equip.

A Appellant-exporter filed returns of income claiming deductions in respect of profits retained for export business under Section 80HHC of the Income Tax Act, 1961. The Assessing Officer held that the entire sale value of Duty Entitlement Pass Book (DEPB) represented the profit on transfer of DEPB under Section 28(iiid) of the Act and did not allow the amount of deduction under Section 80HHC. The Commissioner of Income Tax (Appeals) upheld the order. On appeal, the Tribunal following the order of the Special Bench of the Tribunal in the M/s

B Topman Exports's case allowed the deductions holding that the face value of the DEPB would be 'cash assistance' against export and would fall under Section 28(iiib) of the Act and the sale value less the face value of the DEPB would be profit on transfer of DEPB.

C Aggrieved the Revenue filed appeals. The High Court held that the tribunal had simply followed the decision of the Special Bench of the Tribunal which was reversed by the High Court in *Commissioner of the Income Tax v. Kalpataru Colours and Chemicals* ITA(L) 2887 of 2009 and remitted the case to the tribunal to decide the appeals on merits. As regards the issue whether the Tribunal was correct in law in ignoring Explanation (baa) under Section 80HHC of the Act which specially excludes profits of DEPB from total turnover, the High Court held that the issue was covered by its judgment in the *Commissioner of Income-Tax v. Shri Ram Honda Power Equip* (2007) 289 ITR 475 (Delhi). Therefore, the appellant filed the instant appeals.

Disposing of the appeals, the Court

G HELD: The instant appeals are disposed of in terms of the judgment in Civil Appeal arising out SLP (C) No.26558 of 2010 (*M/s Topman Exports v. Commissioner of Income Tax, Mumbai*) and other connected appeals setting aside the judgment of the High Court in *Commissioner of the Income Tax v. Kalpataru Colours and Chemical*; and in

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terms of the judgment in Civil Appeal arising out of S.L.P. (C) No.32450 of 2010 (M/s ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai) and other connected appeal affirming the judgment of the High Court in Commissioner of Income Tax v. Shri Ram Honda Power Equip's case. [Para 5] [277-D-F]

Commissioner of the Income Tax v. Kalpataru Colours and Chemicals ITA (L) 2887 of 2009; Commissioner of Income-Tax v. Shri Ram Honda Power Equip (2007) 289 ITR 475 (Delhi); M/s. Topman Exports v. Commissioner of Income Tax, Mumbai [2012] 4 SCR 684; M/s ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai 2012 (2) SCR 401, referred to.

Case Law Reference:

ITA (L) 2887 of 2009	Referred to	Para 4
(2007) 289 ITR 475(Delhi)	Referred to	Para 4
2012 (2) SCR 401	Referred to	Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1915 of 2012.

From the Judgment & Order dated 21.02.2011/22.03.2011 of the High Court of Delhi at New Delhi in ITA No. 308 of 2011.

With

C.A. No. 1916 of 2012.

D.R. Thadani, Ashwani Kumar for the Appellant.

R.P. Bhatt, V. Shekhar, Arijit Prasad, D.D. Kamat, Aman Ahluwalia, Kunal Bahri, Fuzail A. Ayyubi, Abhigya, Jatin Rajput, Deepakshi Jain, Vishal Saxena, B.V. Balram Das for the Respondent.

The Judgment of the Court was delivered by

A **A.K. PATNAIK, J.** 1. Leave granted.

2. These are the appeals against the order dated 18.02.2011 as modified by the order dated 22.03.2011 of the Delhi High Court in ITA No.185 of 2011 and the order dated 21.02.2011 as modified by the order dated 22.03.2011 of the Delhi High Court in ITA No.308 of 2011.

3. The facts very briefly are that the appellant is engaged in manufacturing and exporting leather garments. For the assessment years 2001-2002 and 2004-2005, the appellant filed returns of income claiming deductions in respect of profits retained for export business under Section 80HHC of the Income Tax Act, 1961 (for short 'the Act'). The Assessing Officer held in the assessment orders that the entire sale value of Duty Entitlement Pass Book (for short 'DEPB') represents profit on transfer of DEPB under Section 28(iiid) of the Act and did not allow the amount of deduction claimed by the appellant under Section 80HHC. The appellant filed appeals before the Commissioner of Income Tax (Appeals) but the Commissioner of Income Tax (Appeals) sustained the orders of the Assessing Officer. The appellant filed appeals before the Income Tax Appellate Tribunal (for short 'the Tribunal') and the Tribunal following the order dated 11.08.2009 of the Special Bench of the Tribunal at Mumbai in the case of M/s Topman Exports allowed the appeals and held that the face value of the DEPB will be 'cash assistance' against export and will fall under Section 28(iiiib) of the Act and the sale value less the face value of the DEPB will be profit on transfer of DPB and will fall under Section 28(iiid) of the Act.

4. Aggrieved, the Revenue preferred the appeals ITA No.185 of 2011 in respect of assessment year 2001-2002 and ITA No.308 of 2011 in respect of assessment year 2004-2005 before the Delhi High Court against the orders of the Tribunal. In both the appeals, the High Court held in the impugned orders that the Tribunal simply followed the decision of the Special

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Bench of the Tribunal at Mumbai in *M/s Topman Exports* and the decision of the Special Bench in *M/s Topman Exports* has been reversed by the Bombay High Court in *Commissioner of the Income Tax v. Kalpataru Colours and Chemicals* (ITA(L) 2887 of 2009). The High Court accordingly set aside the orders of the Tribunal and remitted the case to the Tribunal to decide the appeals of the appellant on merits after taking into account the facts of the cases. In ITA No.308 of 2011, an additional issue raised before the High Court was whether the Tribunal was correct in law in ignoring Explanation (baa) under Section 80HHC of the Act which specially excludes profits of DEPB from total turnover and the High Court held that this issue was covered by its judgment in the case of *Commissioner of Income-Tax v. Shri Ram Honda Power Equip* [(2007) 289 ITR 475 (Delhi)].

5. We have today delivered judgment in Civil Appeal arising out SLP (C) No.26558 of 2010 (*M/s Topman Exports v. Commissioner of Income Tax, Mumbai*) and other connected appeals setting aside the judgment of the Bombay High Court in *Commissioner of the Income Tax v. Kalpataru Colours and Chemicals*. We have also delivered a separate judgment in Civil Appeal arising out of S.L.P. (C) No.32450 of 2010 (*M/s ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai*) and other connected appeal affirming the judgment of the Delhi High Court in *Commissioner of Income Tax v. Shri Ram Honda Power Equip* (supra). These two appeals are disposed of in terms of our aforesaid two judgments. There shall be no order as to costs.

N.J.

Appeals disposed of.