

SUPREME COURT OF INDIA

Vikas Kalra

Vs.

Commissioner of Income Tax-VIII, New Delhi

C.A.No.1915 OF 2012

(S. H. Kapadia CJI. A. K.Patnaik and Swatanter Kumar JJ.)

08.02.2012

JUDGMENT

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(iiib) 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 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.