

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI AMARJIT SINGH, JM

आयकर अपील सं./ITA No.4966/Mum/2013

(निर्धारण वर्ष / Assessment Year :2001-2002)

Shri Narayan Pagrani, C/o M/s. Ravi & Dev, Chartered Accountants, 601, "A" Wing, Aarus Chambers, Behind Mahindra Towers, S.S.Amrutwar Marg, Worli, Mumbai-400013	Vs.	ACIT-21(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPP 6459 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Devendra Mehta

राजस्व की ओर से /Revenue by : Shri Airiju Jaikaran

सुनवाई की तारीख / Date of Hearing : **05/11/2015**

घोषणा की तारीख/Date of Pronouncement **14/01/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A), Mumbai for the assessment year 2001-02, in the matter of order passed u/s.143(3) r.w.s.254 of the I.T.Act

2. The assessee has raised the following grounds :-

"1.0 The order passed by the learned Commissioner of Income-tax (Appeals) 32, Mumbai, confirming the order passed u/s.143(3) r.w. Sec.254 of the Income-tax Act, 1961, is both bad-in-law and bad-in-facts.

2.0 The learned Commissioner of Income-tax (Appeals) erred in law as well as in facts in not admitting belated appeal filed by the assessee.

RE-COMPUTATION OF DEDUCTION U/S.80HHC BY THE ASSESSING OFFICER Rs.19,10,909/-

3.0 *The learned Commissioner of Income-tax (Appeals) erred in law as well as in facts in not directing the assessing officer to re-compute deduction u/s.80HHC in accordance with the judgement of the honourable Supreme Court in the case of Topman Exports vs. C.I.T. (342 ITR 49)."*

3. At the outset Id. AR placed on record order of the Hon'ble Supreme Court in the case of Topman Exports, 342 ITR 49 and contended that the issue is directly covered by the above decision of the Hon'ble Supreme Court.

4. Rival contentions have been heard and record perused. Facts in brief are that originally the assessment was completed u/s.143(3) vide order dt.24.12.2007 allowing assessee's claim u/s.80HHC to the extent of Rs.56,40,485/- (reduced to Rs.55,22,240/- pursuant to order u/s.154) as against his claim of Rs.1,39,89,402/- as per Return of Income filed by him. Against the said assessment order, the assessee preferred appeal before C.IT.(A). and the assessee's appeal was partly allowed by C.IT.(A). vide order dt.19.11.2009. The revenue preferred appeal before the IT.A.T., Mumbai which vide its order dt.19.11.2010 allowed the revenue's appeal by relying upon the judgement of the honourable Bombay High Court in the case of Kalpataru Colours and Chemicals (42 DTR 193) directed the A.O. to re-compute deduction u/s.80HHC as per the aforesaid judgement of the honourable Bombay High Court. Pursuant to the said order, the A.O. completed assessment u/s.143(3) r.w. Sec.254 and rejected the assessee's claim u/s.80HHC entirely. By the impugned order the CIT(A) confirmed the action of the AO, against which assessee is in further appeal before us.

5. There was delay of 4 months and 22 days in filing the appeal before the CIT(A). The CIT(A) rejected the assessee's application for condonation of delay. However, he also decided the issue on merit by holding that the assessee was liable to comply with the conditions of fourth proviso as his turnover exceeded RS.10 Crores. As the assessee failed to comply with the conditions of fourth proviso, he was not entitled to claim deduction in relation to profit under sections 28(iiid) and 28(iiie).

6. We have considered rival contentions, carefully gone through the reasons for delay in filing the appeal before the CIT(A). We found that there were justifiable reasons for the delay in filing appeal before the CIT(A). Keeping in view the proposition of law laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & Ors., 167 ITR 471, in the interest of substantial justice, we condone the delay and do not find any merit on the part of CIT(A)'s action for rejecting the condonation application of the assessee.

7. On merits, we found that the issue regarding availability of deduction u/s.80HHC of the Act in relation to DEPB, Duty Drawback and Profit on sale of DEPB in case an exporter whose turnover is more than Rs.10 crores, was dealt by the honourable Supreme Court in the case of Topman Exports Vs. C.I.T. (342 ITR 49). The honourable Supreme Court distinguished export incentives in the form of DEPB and Duty Drawback from profit on sale of DEPB and held that the 4th proviso to Sec.80HHC(3) restricting allowability of deduction u/s.80HHC was applicable to Sec.28(iiid) i.e. profit on sale of DEPB and not in relation to

export incentives taxable under sections 28(iia), 28(iib) and 28(iic) of the Act. The ratio of the aforesaid judgment is squarely applicable to the facts of the assessee's case. In the assessee's case, while its turnover was Rs.12,51,42,392/-, it derived export incentives of Rs.1,60,37,836/-, which were taxable u/s.28(iib) and profit of Rs.5,92,191/- on sale of DPEB, which was taxable u/s.28(iid). The 4th proviso to Section 80HHC(3) was applicable in relation to profit covered u/s.28(iid) and not in respect of export incentives covered u/s.28(iib). As per material placed on record the deduction u/s.80HHC in accordance with the judgment of Hon'ble Supreme Court in the case of Topman Exports (supra), works out as under :-

Working regarding computation of deduction u/s.80HHC for an assessee who is engaged in export of trading as well as manufactured goods.

Amount (Rs.)

Turnover in respect of trading goods	71,678,980
Turnover in respect of manufactured goods	53,463,952
Total Turnover	<u>125,142,932</u>
FOB value of trading goods exports	71,678,980
FOB value of manufactured goods exports	<u>53,463,952</u>
FOB Value of Exports	<u>125,142,932</u>
Profit of the business	17,537,795
Adjusted profit of the business =profit of the business -90% of export incentives-profit from trading goods export	(3,463,952)
Adjusted export turnover =FOB value of total export-FOB value of trading goods export	53,463,952
Adjusted export turnover =Total turnover-FOB value of trading goods export	53,463,952
Indirect cost pertaining to trading goods export	7,074,625
Indirect cost pertaining to manufactured goods export	5,276,625
Total indirect cost	12,351,449
Export incentives	16,361,757

90% of Export incentives		14,725,581
Deduction u/s.80HHC =	Profit from trading goods export(A) + Profit from manufacturing goods(B)+ Export incentive(C).	
<u>Profit from export of trading goods:</u>		
= FOB value of trading goods export-Direct cost-Proportionate indirect cost		
FOB value of trading goods exports		71,678,980
Less: Direct cost of trading goods exports-Purchases	58,329,010	
	7,074,625	(65,403,635)
Profit from export of trading goods	A	<u>6,275,345</u>
Profit from export of manufacturing goods = Adjusted profit of the business *adjusted export/ Adjusted total turnover		(3,463,131)
Profit from export of manufacturing goods	B	<u>(3,463,131)</u>
Export incentive =90% of export incentive *export turnover/total turnover		14,725,581
Export incentive	C	<u>14,725,581</u>
	Total A+B+C =	17,537,795
Deduction under Section 80HHC	80% of 17,537,795	14,030,236

As against the eligible deduction of Rs.1,40,30,236/-, the assessee had claimed deduction of Rs.1,39,92,223/-. We accordingly direct the AO to allow deduction of Rs.1,39,92,223/-. We direct accordingly.

5. In the result, appeal of the assessee is allowed, in terms indicated hereinabove.

Order pronounced in the open court on this 14/01/2016

**Sd/-
(AMARJIT SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 14/01/2016

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai