

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A 4659/Mum/2024  
(Assessment Year :2000-01)

<b>Jawaharlal Ramsharandas Kapoor HUF,</b> 2/4, Naju Mansion, 54, Wode House Road, Opp Naval Transport Pool, Colaba, Mumbai-400 020 <b>PAN : AABHJ4121Q</b>	vs	<b>Income-tax Officer-Ward 17(2)(1),</b> Mumbai, Kautilya Bhavan, C-41 to 43, G Block, Bandra Kurla Complex, Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Nitesh Joshi  
Respondent by : Shri Ashish Kumar Sr.DR  
  
Date of hearing : 30/10/2024  
Date of pronouncement : 12/11/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2000-01, date of order 29/08/2024. The impugned order is emanated from

the order of the Learned Income-tax Officer, Ward-17(2)(1), Mumbai (in brevity the Id. AO), order passed under section 154 of the Act, date of order 11/11/2020.

2. The assessee has taken the following grounds: -

*“Ground No. 1*

*Based on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals), National Faceless Appellate Centre (NFAC) erred in upholding the Assessing Officer's rejection of application for rectification of the order passed under Section 143(3) r.w.s. 254 even though it was a fit case under Section 154.*

*Ground no. 2*

*Based on the facts and circumstances of the case and in law, the NFAC erred in upholding the Assessing Officer's denial of relief with respect to deduction under Section 80HHC by applying the Supreme Court ruling in the case of Topman Exports v CIT.*

*Ground No. 3*

*The appellant craves leave to add to, alter, amend, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.”*

3. We heard the rival submission and considered the documents available in the record. The issue is agitated before the Bench related to the rectification of assessment order passed on dated 30/03/2006. The application was made under section 154 by considering the order of the Hon'ble Supreme Court in the case of **Topman Exports & Others vs CIT 342 ITR 49 (SC)** where the profit on sale of DEPB was duly exempted under section 80HHC of the Act. The claim of deduction under section 80HHC was duly rejected during the assessment under section 143(3) read with section 147 of the Act, date of order 30/03/2006. The assessee challenged the order before the appellate forum. Finally, the issue is migrated to Hon'ble

Jurisdictional High Court. The Hon'ble Jurisdictional High Court, by order dated 29/06/2010, dismissed the assessee's appeal and set aside the order of the ITAT-Mumbai Bench. On the same issue, the Hon'ble High Court disagreed with the ITAT's view in **Topman Exports v. ITO** (ITA 5769/Mum/2006, dated 11/08/ 2009) and delivered its decision in reliance on **CIT v. Kalpataru Colours and Chemicals**, ITA(L) 2887 of 2009. This matter was subsequently challenged before the Hon'ble Supreme Court, which set aside the decision of Hon'ble Bombay High and upheld the ITAT's view in the case of **Topman Exports v. CIT, Mumbai, 342 ITR 49 (SC)**. Considering the Supreme Court's decision, the assessee filed a rectification petition before the Id. AO on 20/05/2013 to recompute the deduction claimed under Section 80HHC of the Act and to allow the claim of profit on DEPB. However, the rectification application was rejected on the grounds of limitation and on the basis that the error was not apparent on the record. The aggrieved assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) relied on the order of the **Hon'ble Apex Court** in the case of **Mepco Industries Ltd (2009) 185 Taxman 409 (SC)** upheld the impugned rectification order.

4. The Ld.AR argued and relied on the **CBDT Circular No.68(F.No.245/17/71-A&PAC)** dated 17/01/1971. The relevant paragraph of the circular is reproduced as below: -

**"68 [F.NO. 245/17/71-A&PAC],**

*SECTION 154 OF THE INCOME TAX ACT, 1961-RECTIFICATION OF MISTAKE APPARENT FROM RECORDS - MISTAKES APPARENT FROM RECORDS-WHETHER CAN BE TREATED AS SUCH ON THE BASIS OF SUBSEQUENT DECISION OF SUPREME COURT*

CIRCULAR NO. 68 [F.NO. 245/17/71-A&PAC), DATED 17-11-1971.

1. The Board are advised that a mistake arising as a result of a subsequent interpretation of law by the Supreme Court would constitute "a mistake apparent from the records" and reificatory action under section 35/154 of the 1922 Act/ the 1961 Act would be in order. It has, therefore, been decided that where an assessee moves on application under section 154 pointing out that in the light of a later decision of the Supreme Court pronouncing the correct legal position, a mistake has occurred in any of the completed assessments in his case, the application shall be acted upon, provided the same has been filed within time and is otherwise in order. Where any such applications have already been rejected and the assessee files fresh applications within the statutory time limit, the same may also be treated on par with the applications which may either be pending or received after the issue of this circular.

2. The Board desire that any appeals or references pending on the point at issue may please be withdrawn."

Further respectfully relied in the case of **ACIT vs Saurashtra Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC)**. The relevant paragraph 40 is reproduced as below: -

*"The core issue, therefore, is whether non-consideration of a decision of jurisdictional court (in this care a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record? In our opinion, both the Tribunal and the High Court-were night in holding that such a mistake can be said to be a "mistake apparent from the record which could be rectified under section 254(2)."*

5. We considered the rival submission and perused the documents available in record. The Hon'ble Jurisdiction High Court rejected the assessee's appeal by order dated 29/06/2010 by setting aside the order of the ITAT-Mumbai Bench. On same issue Hon'ble High Court disapproved the view taken by the ITAT in the case of Topman Exports v ITO (ITA 5769/Mum/2006 dated 11/08/2009) & order was passed relied on the order of the CIT vs Kalpataru Colours and Chemicals ITA(L)

2887 of 2009. The issue was challenged before the Hon'ble Apex Court and Hon'ble Apex Court set aside the order of Hon'ble High Court of Bombay and upheld the view of ITAT in the case of Topman Exports vs CIT, Mumbai 342 ITR 49 (SC). Respectfully considering the order of the Apex Court the assessee filed rectification petition before the Id. AO to recompute the deduction claimed U/s 80HHC of the Act and allow the claim of profit on DEPB. The rectification application was rejected on the ground of limitation and the mistake is not apparent from the record.

We consider the circular No.68 issued by the CBDT dated 17/11/1971 and respectfully follow the order of **Saurashtra Kutch Stock Exchange Ltd** (supra). The circular has empowered the revenue officer to amend the order after correct interpretation of law as directed by the Hon'ble Supreme Court and allow the claim of the assessee. The assessee had correctly interpreted the law related to the deduction of profit of DEPB under 80HHC of the Act. Hon'ble Apex court has taken the view which has strict consonance of assessee's claim.

The Id. CIT(A) relied on **Mepco Industries Ltd** (supra). We respectfully considered the judgment of the Hon'ble Apex Court held that issue raised related to subsidy which has no such straightjacket formula. The department erred to rectify the order related to debatable issue. Thesaidorder is factually distinguishable.

Accordingly, we find that the rejection of petition under section 154 is unjustified. We set aside the impugned appeal order; direct the Id. AO to allow the rectification petition filed by the assessee for deduction U/s 80HHC of the Act.

6. In the result, the appeal of the assessee bearing **ITA No.4659/Mum/2024** is allowed.

Order pronounced in the open court on 12<sup>th</sup> day of November 2024.

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER  
Mumbai,दिनांक/Dated: 12/11/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai