

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A' CHANDIGARH**

BEFORE SHRI H.L.KARWA, HON'BLE, VICE PRESIDENT
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

ITA Nos. 319 & 320/Chd/2012
Assessment Years: 2000-01 & 2001-02

M/s Jacob Export House,
Ludhiana

Vs The ACIT, Circle II,
Ludhiana

PAN No. AA AFJ8074F

(Appellant)

(Respondent)

Appellant By : Shri Sudhir Sehgal
Respondent By : Shri N.K. Saini

Date of hearing : 09.05.2012
Date of Pronouncement : 11.05.2012

ORDER

PER H.L.KARWA, VP

These two appeals filed by the assessee are directed against the separate orders of CIT(A)-I, Ludhiana dated 13.9.2011 relating to assessment years 2000-01 & 2001-02.

2. In these appeals, the assessee has taken the following common grounds:-

1. *That the Ld. CIT(A) while deciding the issue of deduction u/s 80HHC has erred in upholding and in not considering that the Assessing Officer had exceeded his jurisdiction in following the order of Bombay High Court against specific direction of Hon'ble Tribunal to*

decide the issue on the basis of Special Bench's judgment in the case of M/s Topman Exports.

2. *That the Ld. CIT(A) has even otherwise erred in not allowing the benefit of deduction u/s 80HHC on the DEPB/DFRC Licenses.*

3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. Firstly, we will take up assessee's appeal for assessment year 2000-01.

4. Briefly stated, the facts of the case are that the assessee filed the return for assessment year 2000-01 declaring net income at Rs. 1,11,247 on 31.1.0.2000. Later on the case was selected for scrutiny and order u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') was passed at an income of Rs. 4,97,206/- on 31.3.2003. While framing the assessment, the Assessing Officer disallowed the deduction claimed u/s 80HHC of the Act. While disallowing the deduction the Assessing Officer, in view of the amendment to Section 80HHC with retrospective effect from 1.4.1998, held that the profit on transfer of DEPB received by the assessee is covered under clause (iiid) of section 28 of the Act. The CIT(A) allowed the appeal of the assessee against which the Revenue came in appeal to ITAT. The Tribunal remanded the issue back to the file of Assessing Officer directing the Assessing Officer to take cognizance of the retrospective amendments in Section 28 and 80HHC in computation of deduction in section 80HHC. Again the order under section 143(3) was passed on 19.3.2007 in which the Assessing Officer disallowed

the deduction claimed by the assessee u/s 80HHC on the grounds that assessee does not fulfill the conditions mentioned in the 3rd provision to section 80HHC and assessed the income of the assessee at Rs. 2,50,02,250/-. The assessee went in appeal before CIT(A) Ludhiana who dismissed the appeal of the assessee. The assessee further filed appeal before the Tribunal and the Tribunal vide order dated 31.8.2009 in ITA No. 5/Chandi/2008 remanded the issue to the file of Assessing Officer to decide the same by following the decision of ITAT, Mumbai Special Bench in the case of M/s Topman Exports Vs ITO-14(2) in ITA No. 5769/Mum/2006 and in the case of M/s Kalapatru Colours & Chemicals, Mumbai Vs Addl. CIT 13(2), Mumbai in ITA No. 5851/Mum/2006 vide order dated 11.8.2009. However, the Assessing Officer framed the assessment vide order dated 24.12.2010 wherein he has again assessed the income at a figure of Rs. 2,50,02,250/- which was income assessed in the original assessment order.

5. On appeal, the CIT(A) rejected the claim of the assessee, observing as under:-

“7. I have perused the order of the Hon'ble High Court which in fact has been quoted by the Assessing Officer in the assessment order. A plain reading of the order shows that the Hon'ble Bench was in agreement with the Bombay High Court decision in the case of CIT v Kalpataru Colours and Chemicals and had accordingly directed the ITAT to pass the order in accordance with law. As such the Assessing Officer has correctly appreciated the judgment of Hon'ble Jurisdictional High Court and computed the deduction u/s 80HHC correctly.”

6. We have heard the rival submissions and have also perused the materials available on record. At the very outset, Shri Sudhir Sehgal, Ld. Counsel for the assessee submitted that the issue is no longer res-intgra. The Hon'ble Supreme Court in the case of M/s Topman Exports v CIT, Mumbai in Civil Appeal No. 1699 of 2012 (arising out of SLP (C) No. 26588 of 2010) & others vide judgment dated February 8, 2012, now reported in (2012) 67 DTR (SC) 185 set-aside the judgment and orders of Hon'ble Bombay High Court in the case of CIT V Kalapataru Colours and Chemicals (2010) 328 ITR 451, M/s Topman Exports and other connected appeals. A copy of the judgment of the Hon'ble Supreme Court was filed before us. Shri Sudhir Sehgal, Ld. Counsel for the assessee submitted that the issue may be restored to the file of the Assessing Officer with a direction to decide the same afresh in accordance with law following the ratio laid down by the Hon'ble Supreme Court in the case of M/s Topman Exports v CIT, Mumbai (supra) and compute the deduction u/s 80HHC on DEPB/DFRC licenses in this case as per judgment of the Hon'ble Supreme Court referred to above. We find substance in the above submissions of Shri Sudhir Sehgal and, therefore, we set aside the order of CIT(A) and remand the issue to Assessing Officer with a direction to decide the same afresh keeping in view the decision of Hon'ble Supreme Court in the case of M/s Topman Exports Vs CIT, Mumbai reported in (2012) 67 DTR (SC) 185. The Assessing Officer should give an opportunity of being heard to the assessee. For statistical purposes, the appeal is allowed.

7. In the result, appeal is allowed for statistical purposes.

8. **ITA No.320/Chd/2012**

In this case, while framing the assessment the Assessing Officer disallowed the deduction claimed u/s 80HHC of the Income Tax Act, 1961 (in short 'the Act'). While disallowing the deduction the Assessing Officer, in view of amendment to section 80HHC with retrospective effect from 1.4.1998 held that the profit on transfer of DEPB received by the assessee is covered under clause (iiid) of section 28 of Income Tax Act. The CIT(A) vide his order dated 6.2.2008 decided the issue with regard to allowability of deduction u/s 80HHC. As regards DEPB, the Ld. CIT(A) upheld the action of the Assessing Officer observing that the assessee had not fulfilled the relevant conditions contained in 3rd provision inserted by Taxation Laws(Amendment) Act, 2005. The Ld. CIT(A) upheld the action of the Assessing Officer in excluding 90% of the entire amount of DEPB claimed at Rs. 96,10,666/- from the profits of the business of the assessee for computing deduction u/s 80HHC of the Act. As regard, duty draw back, the Ld. CIT(A) directed the Assessing Officer to allow deduction u/s 80HHC in respect of duty drawback considering the same as export incentive. Further, as regards sale of quota license amounting to Rs. 1,09,040/-, the Ld. CIT(A) directed the Assessing Officer to allow deduction u/s 80HHC in respect of this income also in view of the decision of the ITAT, Chandigarh Bench in the case of ACIT Vs D.K. Knitwear, order dated 22.8.2005.

9. The assessee came in appeal before the Tribunal and the Tribunal vide its order dated 31.8.2009 in ITA No. 346/Chandi/2008 set aside the issue to the file of Assessing Officer to decide the same by following the decision of

ITAT, Mumbai Special Bench in the case of M/s Topman Exports Versus ITO-14(2) in ITA No. 5769/Mum/2006 and in the case of M/s Kalapatru Colours & Chemicals, Mumbai Vs Addl. CIT 13(2), Mumbai in ITA No.5851/Mum/2006 vide order dated 11.8.2009. However, the Assessing Officer framed the assessment vide order dated 27.12.2010 wherein he has again refused to grant deduction u/s 80HHC as claimed by the assessee in its return of income. On appeal, the CIT(A) rejected the claim of the assessee observing as under:-

“7. I have perused the order of the Hon'ble High Court which in fact has been quoted by the Assessing Officer in the assessment order. A plain reading of the order shows that the Hon'ble Bench was in agreement with the Bombay High Court decision in the case of CIT v Kalpataru Colours and Chemicals and had accordingly directed the ITAT to pass the order in accordance with law. As such the Assessing Officer has correctly appreciated the judgment of Hon'ble Jurisdictional High Court and computed the deduction u/s 80HHC correctly.”

10. The issue involved in this appeal is similar to that in ITA No.319/Chd/2012. Therefore, the decision given in ITA No. 319/Chd/2012 for the assessment year 2000-01 shall apply to this appeal also with equal force. This appeal is also allowed for statistical purposes.

11. In the result, both the appeals are allowed for statistical purposes

Order Pronounced in the Open Court on this 11th day of May, 2012

Sd/-

(T. R. SOOD)
ACCOUNTANT MEMBER
Dated : 11th May, 2012
Rkk

Sd/-

(H.L.KARWA)
VICE PRESIDENT

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

True Copy

By Order

Assistant Registrar