

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1915 OF 2012
(Arising out of SLP (C) NO. 16403 of 2011)

Vikas Kalra ... Appellant

Versus

The Commissioner of Income Tax-VIII,
New Delhi ... Respondent

WITH

CIVIL APPEAL No. 1916 OF 2012
(Arising out of SLP (C) NO. 20270 of 2011)

J U D G M E N T

A. K. PATNAIK, J.

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
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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

