

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4148 OF 2012

MADHUR INDUSTRIES LTD. Appellant (s)

VERSUS

COMMISSIONER OF INCOME TAX -II Respondent(s)

WITH

Civil Appeal NO. 4158 of 2012

Civil Appeal NO. 4198 of 2012

O R D E R

Mr. Gourab Banerji, learned Additional Solicitor General for the Revenue, fairly submits that in view of the decision of this Court in Topman Exports Vs. Commissioner of Income-Tax<sup>1</sup>, these Civil Appeals deserve to be allowed and the matters need to be sent back to the Assessing Officer.

2. In Topman Exports<sup>1</sup> this Court concluded as follows :-

"The aforesaid discussion would show that where an assessee has an export turnover exceeding Rs.10 crores and has made profits on transfer of DEPB under clause (d) of Section 28, he would not get the benefit of addition to export profits under third or fourth proviso to sub-section (3) of Section 80HHC, but he would get the benefit of exclusion of a smaller figure from "profits of the business" under Explanation (baa) to Section 80HHC of the Act and there is nothing in Explanation (baa) to Section 80HHC to show that this benefit of exclusion of a smaller figure from "profits of the business" will not be available to an assessee having an export turnover exceeding Rs.10 crores. In other words, where the

export turnover of an assessee exceeds Rs.10 crores, he does not get the benefit of addition of ninety per cent of export incentive under clause (iiid) of Section 28 to his export profits, but he gets a higher figure of profits of the business, which ultimately results in computation of a bigger export profit. The High Court, therefore, was not right in coming to the conclusion that as the assessee did have the export turnover exceeding Rs.10 crores and as the assessee did not fulfill the conditions set out in the third proviso to Section 80HHC (iii), the assessee was not entitled to a deduction under Section 80HHC on the amount received on transfer of DEPB and with a view to get over this difficulty the assessee was contending that the profits on transfer of DEPB under Section 28 (iiid) would not include the face value of the DEPB. It is a well-settled principle of statutory interpretation of a taxing statute that a subject will be liable to tax and will be entitled to exemption from tax according to the strict language of the taxing statute and if as per the words used in Explanation (baa) to Section 80HHC read with the words used in clauses (iiid) and (iiie) of Section 28, the assessee was entitled to a deduction under Section 80HHC on export profits, the benefit of such deduction cannot be denied to the assessee.

The impugned judgment and orders of the Bombay High Court are accordingly set-aside. The appeals are allowed to the extent indicated in this judgment. The Assessing Officer is directed to compute the deduction under Section 80HHC in the case of the appellants in accordance with this judgment...."

3. For the same reasons, the impugned judgment and order of the Gujarat High Court is set aside and the Assessing Officer is directed to compute the deduction under Section 80HHC of the Income Tax Act, 1961 in the light of the observations made by this Court in Topman Exports1 as noted above.

4. Civil Appeals are allowed as above with no order as to costs.

.....J.  
( R.M. LODHA )

NEW DELHI; .....J.  
MAY 8, 2013 ( KURIAN JOSEPH )

ITEM NO.42 COURT NO.4 SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4148 OF 2012

MADHUR INDUSTRIES LTD.

Appellant (s)

VERSUS

COMMISSIONER OF INCOME TAX -II

Respondent(s)

(With office report )

WITH

Civil Appeal NO. 4158 of 2012  
(With office report)

Civil Appeal NO. 4198 of 2012  
(With office report)

Civil Appeal NO. 4551 of 2012  
(With office report)

Date: 08/05/2013 These Appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Amar Dave, Adv.

Mr. P.S.Sudheer, Adv.  
Mr. Rishi Maheshwari, Adv.  
Mr. Vikramaditya Bhasker, Adv.  
Mr. Abu John Mathew, Adv.

For Respondent(s)

Mr. Gaurab Banerji, A.S.G.  
Mr. S.A. Haseeb, Adv.  
Ms. Tanushree Sinha, Adv.  
Mr. Sahil Tagotra, Adv.  
Mrs Anil Katiyar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Civil Appeal No. 4148 of 2012; Civil Appeal No. 4158 of 2012 and  
Civil Appeal No. 4198 of 2012

Civil Appeals are allowed in terms of the signed order.  
Civil Appeal No. 4551 of 2012

As regards this Appeal, Mr. Gourab Banerji, learned  
Additional Solicitor General, submits that since no vakalatnama and  
counter affidavit have been filed, he is not in a position to say  
whether this matter is identical to Topman Exports Vs. Commissioner  
of Income-Tax, [2012] 342 ITR 49 (SC) and the other three Appeals  
being Civil Appeal No. 4148 of 2012, Civil Appeal No. 4158 of 2012 and  
Civil Appeal No. 4198 of 2012 which have been disposed of by us today.  
This Appeal is, accordingly, de-tagged.

Vakalatnama and counter affidavit may be filed by the  
respondent within eight weeks.

List the matter thereafter.

|(Rajesh Dham)  
|Court Master

|(Renu Diwan)  
|Court Master

(signed order in Civil Appeal No. 4148 of 2012; Civil Appeal NO. 4158  
of 2012 and Civil Appeal NO. 4198 of 2012 is placed on the file)

