

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 788-787 OF 2014
(Arising out of SLP(C) Nos. 19947-48 of 2012)

|Milton Laminates Ltd. |.. APPELLANT |

Versus

|The Commissioner of Income Tax-II |.. RESPONDENTS |

O R D E R

1. Leave granted.

2. Mr. R.P. Bhatt, learned senior counsel for the Revenue submits that in view of the decision of this Court in Topman Exports vs. Commissioner of Income-Tax, (2012) 342 ITR 49 (SC), this Civil Appeals deserves to be allowed and the matter needs to be sent back to the Assessing Officer.

3. In Topman Exports (supra) this Court observed as under:-

"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...."

4. For the same reasons, the impugned judgment and order passed by the 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 Exports (supra).

5. The Civil Appeals are allowed, accordingly. No order as to costs.

.....J.
[H.L. DATTU]

.....J.
[S.A. BOBDE]

NEW DELHI;
JANUARY 20, 2014.

ITEM NO.62

COURT NO.3

SECTION IIIA

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

Petitions for Special Leave to Appeal (Civil) Nos.19947-19948/2012

(From the judgement and order dated 16/11/2011 in TA No.1788/2010,TA No.1789/2010 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

MILTON LAMINATES LTD

Petitioner(s)

VERSUS

COMMISSIONER OF INCOME TAX-II

Respondent(s)

Date: 20/01/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Rishi Maheshwari, Adv.
Mr. Anshul Gupta, Adv.
Mr. Raj Kumar Kaushik, Adv.
Mr. P.S.Sudheer, Adv.

For Respondent(s) Mr. R.P. Bhatt, Sr. Adv.
Ms. Shalini Kumar, Adv.
Mr. S. Wasim A Qadri, Adv.
Mrs Anil Katiyar, Adv.

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

Leave granted.

The appeals are disposed of in terms of the signed order.

| [Charanjeet Kaur] | | [Vinod Kulvi] |
| Court Master | | Asstt. Registrar |

[Signed order is placed on the file]

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