

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5866 OF 2012

M/S GLOBAL AGRO PRODUCTS P.LTD. Appellant (s)

VERSUS

INCOME TAX OFFICER Respondent(s)

## O R D E R

Delay condoned.

2. Learned counsel for the appellant submits that in view of the decision of this Court in Topman Exports Vs. Commissioner of Income-Tax1, this Civil Appeal deserves to be allowed and the matter needs to be sent back to the Assessing Officer.

3. On the other hand, the submission of the learned counsel for the Appellant is contested by Mr. R.P. Bhatt, learned senior counsel for the Revenue.

4. Having regard to the controversy involved in the matter, we are satisfied that this matter is squarely covered by the decision of this Court in Topman Exports1.

5. In Topman Exports1 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...."

6. 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 Exportsl as noted above.

7. Civil Appeal is allowed as above with no order as to costs.

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

NEW DELHI; .....J.  
AUGUST 5, 2013 ( MADAN B. LOKUR )  
ITEM NO.59 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

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M/S GLOBAL AGRO PRODUCTS P.LTD. Appellant (s)

VERSUS

INCOME TAX OFFICER Respondent(s)

(With appln(s) for condonation of delay in filing appeal. and office report ))

Date: 05/08/2013 This Appeal was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s)  
Ms. Minakshi Vij, Adv.

For Respondent(s) Mr. R.P. Bhatt, Sr. Adv.

Mr. S. Wasim A. Qadri, Adv.  
Ms. Gargi Khanna, Adv.  
Mrs Anil Katiyar, Adv.

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

Delay condoned.  
Civil Appeal is allowed with no order as to costs in terms  
of the signed order.

|(Rajesh Dham)  
|Court Master

| |(Renu Diwan)  
| |Court Master

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(signed order is placed on the file)