

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.25 of 2012  
Date of decision: 01-05-2012

M/s TRB Exports Pvt. Limited

...Appellant

Versus

Commissioner of Income Tax-II, Aayakar Bhawan, Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL  
HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA

Present: Mr. Rajiv Sharma, Advocate for the appellant.

Ms. Savita Saxena, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of ITA Nos.25 and 26 of 2012 as learned counsel for the parties are agreed that common questions of law and facts are involved in both the appeals.

2. The assessee has preferred ITA No.25 of 2012 under section 260A of the Income Tax Act, 1961 (in short, "the Act) against the order dated 30.9.2011, Annexure A.6 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for brevity, "the Tribunal") in ITA No.813/Chd/2011 for the assessment year 2001-02, claiming following substantial questions of law:-

- i) Whether ITAT was justified in dismissing the appeal of the appellant and thereby reversing its own earlier order by following the judgment of Special Bench of Mumbai ITAT in the case of M/s Topman by blindly following and confirming the judgment of Hon'ble Bombay High Court by holding that DEPB credit being an export incentive received by the assessee in proportion to the FOB value of its export has no face value and the amount received in

entirety on its transfer is to be considered while computing the profits allowable for deduction under Section 80HHC of the Act?

ii) Whether ITAT was justified in dismissing the appeal of the appellant by following the judgment of Hon'ble Bombay High Court in CIT v. Kalpataru whereas the decision in CIT v. Kalpataru being of non jurisdictional High Court was not applicable/binding on the Chandigarh not being judgment of the jurisdictional High Court?

iii) Whether ITAT was justified in dismissing the appeal of the appellant without considering that DEPB has a cost in view of the ratio laid down by the Apex Court in **Yasha Overseas v. CST & Others?**

iv) Alternatively, whether the ITAT Chandigarh was justified in concurring with the findings of Hon'ble Bombay High Court that the entirety of the sale consideration of DEPB falls within the purview of section 28(iiid) there being no face value of DEPB to be reduced from the total sale consideration for arriving at the profits on the transfer of DEPB?

v) Whether the orders of the Tribunal are legally unsustainable and bad in law and perverse?

3. Notice of motion. Ms. Savita Saxena, Standing counsel for the revenue-respondent, who is present in the Court, accepts notice.

4. In view of consensus between the parties, the appeals are taken up for final disposal today itself.

5. Learned counsel for the parties are agreed that the present appeals are squarely covered by judgment of this court in the case of **M/s Turbo Impex v. Commissioner of Income Tax II, Ludhiana** (ITA No.361 of 2011, decided on 20.3.2012) wherein a bunch of appeals in the light of the principles enunciated by the Apex court in the case of **M/s Topman Exports v. Commissioner of Income tax, Mumbai**, (2012) 3 SCC 593 have been allowed.

