

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 10.02.2011
Decision Delivered On: 18.02.2011

(1) ITA 404/2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

ARJAN IMPEX PVT. LTD.

. . .RESPONDENT

(2) ITA 708/2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

SPENTEX INDUSTRIES LTD.

. . .RESPONDENT

(3) ITA 793/2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

PHILCO EXPORTS.

. . .RESPONDENT

(4) ITA 927/2010

COMMISSIONER OF INCOME TAX

. . APPELLANT

VERSUS

PHILCO EXPORTS

. .RESPONDENT

(5) ITA 1080/2010

COMMISSIONER OF INCOME TAX

. . APPELLANT

VERSUS

SPENTEX INDUSTRIES LTD.

. .RESPONDENT

(6) ITA 1886/2010

COMMISSIONER OF INCOME TAX

. APPELLANT

VERSUS

NITIN KUMAR SADH

. .RESPONDENT

(7) ITA 1887/2010

COMMISSIONER OF INCOME TAX . . APPELLANT

VERSUS

KAPOOR INDUSTRIES. . .RESPONDENT

(8) ITA 1896/2010

COMMISSIONER OF INCOME TAX . . APPELLANT

VERSUS

FUL KANT JHA . . .RESPONDENT

(9) ITA 1899/2010

COMMISSIONER OF INCOME TAX . . . APPELLANT

VERSUS

PAL ENTERPRISES . .RESPONDENT

(10) ITA 1957/2010

COMMISSIONER OF INCOME TAX . . APPELLANT

VERSUS

PRAVEEN INDUSTRIES PVT. LTD. . .RESPONDENT

(11) ITA 1958/2010

COMMISSIONER OF INCOME TAX . . . APPELLANT

VERSUS

ZENELINI LEATHER WEAR . .RESPONDENT

(12) ITA 1959/2010

COMMISSIONER OF INCOME TAX . . . APPELLANT

VERSUS

RICHA APPARELS . .RESPONDENT

(13) 1960/2010

COMMISSIONER OF INCOME TAX . . . APPELLANT

VERSUS

KAPOOR INDUSTRIES . . .RESPONDENT

7

(14) ITA 1980/2010

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
AHUJA RADIOS	..RESPONDENT

(15) ITA 2074/2010

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
SHOREWALA OVERSEAS	...RESPONDENT

(16) ITA 14/2011

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
SANGEETA JAIN	...RESPONDENT

(17) ITA 15/2011

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
LEATHER TECH	...RESPONDENT

(18) ITA 67/2011

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
PUROLATOR INDIA LTD.	...RESPONDENT

(19) ITA 177/2011

COMMISSIONER OF INCOME TAX	.. APPELLANT
VERSUS	
BALDEV RAJ JAGGI	...RESPONDENT

2

(20) ITA 178/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

INDU GUPTA

. . . RESPONDENT

(21) ITA 181/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

SANGEETA JAIN

. . . RESPONDENT

(22) ITA 182/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

CLC CORPORATION

. . . RESPONDENT

(23) ITA 184/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

CLC CORPORATION

. . . RESPONDENT

(24) ITA 185/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

VIKAS KALRA

. . . RESPONDENT

(25) ITA 187/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

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ANUJ GOEL

. . . RESPONDENT

Judgment Reserved on: 10.02.2011
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(26) ITA 723/2009

COMMISSIONER OF INCOME TAX

. . . APPELLANT

9

· VERSUS

PRIYANKA OVERSEAS P. LTD.

. . .RESPONDENT

COUNSEL FOR THE REVENUE: Mr. Kamal Sawhney, Mr. Abhishek Maratha, Ms. Suruchi Aggarwal, Mr. Anupam Tripathi, Sr. Standing Counsel with Mr. Amit Srivastava, Advocate.

COUNSEL FOR THE ASSESSEES: Mr. Ajay Vohra, Advocate with Mr. Kavita Jha, Mr. Somnath Shukla, Mr. Prakash Kumar and Mr. Manish Kumar, Mr. O.P. Sapra, Mr. Amit Dayal, Mr. Pankaj Jain, Mr. D.K. Goyal, Mr. Vijay Nair and Mr. Manish Chaudhary, Dr. Rakesh Gupta, Advocate with Mr. RK. Aggarwal, Ms. Poonam Ahuja, Advocates.

CORAM :-

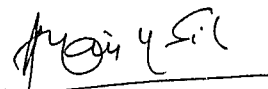
HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. For orders, see ITA 12 of 2011.


(A.K. SIKRI)
JUDGE


(M.L. MEHTA)
JUDGE

FEBRUARY 18, 2011,
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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 10.02.2011
Decision Delivered On: 18.02.2011

(1) ITA 12/2011

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

PARAMOUNT IMPEX PVT. LTD.

. . RESPONDENT

(2) ITA 404/2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

ARJAN IMPEX PVT. LTD.

. . .RESPONDENT

(3) ITA 708/2010

COMMISSIONER OF INCOME TAX

. . . APPELLANT

VERSUS

SPENTEX INDUSTRIES LTD.

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(4) ITA 793/2010

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VERSUS	
NITIN KUMAR SADH	..RESPONDENT
(8) <u>ITA 1887/2010</u>	
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KAPOOR INDUSTRIES.	..RESPONDENT
(9) <u>ITA 1896/2010</u>	
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CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. All these appeals involved common question of law. For the sake of convenience, we can reproduce the questions of law framed in one of these appeals:-

“(a) Whether on a correct interpretation of the relevant statutory provisions, Tribunal was justified in law in directing the Assessing Officer to allow deduction under section 80HHC of the Act in respect of “profit” on sale of DEPB?

(b) Whether on the facts of the present case, Tribunal was justified in law in impliedly holding that the assessee would be entitled to deduction as per the first proviso below sub-Section 3 of Section 80HHC in respect of DEPB Credit utilized by the assessee?”

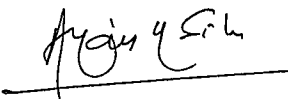
2. The orders passed by the Tribunal in all these cases are brief because of the reason that the Tribunal has simply followed (which it was supposed to) the decision of the ITAT Special Bench, Mumbai in the case of **Topman Export Vs. ITO** [ITA No. 5769/Mum./2006 decided on dated 11th August, 2009.]. By that judgment, the Special Bench of the

Tribunal has held that the face value of DEPB is chargeable to tax u/s 28 (iiib) at the time of accrual of income, that is, when the application for DEPB is filed with the competent authority pursuant to exports and profit in sale of DEPB representing the excess of sale proceeds of DEPB over its face value is liable to be considered u/s 28(iiid) at the time of its sale.

3. The Revenue had filed the appeal in the High Court Adjudicate at Bombay against the aforesaid decision of the Special Bench of the ITAT. The Bombay High Court has reversed the decision of the Tribunal and the judgment of the Bombay High Court is reported as **Commissioner of Income Tax Vs. Kalpataru Colours and Chemicals**, 328 ITR 451.

4. Since the Tribunal had simply followed Special Bench decision in **Topman Exports** (supra) which stands over ruled, we set aside the order passed by the Tribunal in all these cases and remit the cases back to the Tribunal to decide these appeals on merits after taking into account factual position in all these cases.

5. These appeals stand disposed of on above terms.


(A.K.SIKRI)
JUDGE


(M.L.MEHTA)
JUDGE

FEBRUARY 18, 2011,
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