



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

+ 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**



**(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**

**(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**

VERSUS

**ANUJ GOEL****...RESPONDENT**

Judgment Reserved on: 10.02.2011  
Decision Delivered On: 18.02.2011

**(26) ITA 723/2009**



· 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 :-**

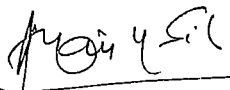
**HON'BLE MR. JUSTICE A.K. SIKRI**

**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

+

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

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VERSUS

SPENDEX INDUSTRIES LTD.

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(4) ITA 793/2010

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PHILCO EXPORTS.

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(27) ITA 723/2009

COMMISSIONER OF INCOME TAX

.. APPELLANT



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.

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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 11<sup>th</sup> August, 2009.]. By that judgment, the Special Bench of the

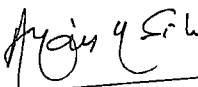


Tribunal has held that the face value of DEPB is chargeable to tax u/s 28(iiib) at the time of accrual of income, that is, when the application for DEPB is filed with the competent authority pursuant to exports and profit in sale of DEPB representing the excess of sale proceeds of DEPB over its face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