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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 671/2011

EASTMAN INDUSTRIES LIMITED Appellant
Through Mr. Somnath Shukla, Advocate.

versus

COMMISSIONER OF INCOME TAX Respondent
Through Mr. N.P. Sahni & Mr. Ruchesh
Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

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06.03.2012

CM No. 7782/2011

This is an application for condonation of delay of 785 days in re-filing of the appeal (it is incorrectly mentioned in the appeal that the delay in re-filing is 800 days). Filing stamp of the Registry shows that the appeal was originally filed on 5th December, 2007 and at the time of filing, the appeal was filed within the limitation period. Objections were raised by the Registry and the appeal was returned for removal of objections and to be re-filed. The stamps of the Registry show that the original appeal was repeatedly returned and in this process about 2 ½ years lapsed. The explanation given by the appellant in the application for condonation of delay is that their court clerk Gopal Arya, who was employed at that time had taken back the



appeal papers in the month of January, 2008 and kept them in their office. It is further stated that Gopal Arya went on leave of fifteen days, due to mishap in the family and did not resume office work for several months. He did not inform when he would join back. Ultimately, the law firm in question had to engage another court clerk as a stop gap arrangement. Later on it was realized that the said lapse was made by Gopal Arya and his services were terminated and a new court clerk Anand Singh was appointed. However, we notice that there is delay even after the new clerk was appointed. It is submitted that no one thereafter wanted to take the responsibility and accept their fault.

Keeping in view the said facts, we are inclined to condone the delay, subject to payment of cost of Rs.50,000/- to the Income Tax Department by way of a demand draft in the name of the CIT (Judicial). The cost will be paid within a period of four weeks from today. In case of failure to pay the said cost, the application for condonation of delay will be deemed to be dismissed and the consequential order passed in the appeal will be treated as void.

The application for condonation of delay is disposed of.

ITA No. 671/2011

Having heard the learned counsel for the parties, we frame



the following substantial question of law:

“Whether the Income Tax Appellate Tribunal was right in holding that the entire amount of Duty Entitlement Pass Book (DEPB) credit has to be excluded from the eligible profits of business for computing deduction under Section 80 HHC of the Income Tax Act, 1961?”

2. The present appeal by M/s Eastman Industries Limited pertains to assessment year 2003-04. The appellant-assessee is engaged in the business of export of cycle parts and light engineering goods. For the assessment year 2003-04, the appellant-assessee had filed their return declaring income of Rs.22,34,084/- after claiming deduction of Rs.2,61,70,949/- under Section 80 HHC of the Income Tax Act, 1961 (Act, for short).
3. The Assessing Officer vide order dated 14th February, 2006 excluded 90% of the DEPB credit from the gross amount as eligible profits under Section 80 HHC of the Act. The said direction was upheld by the CIT (Appeals). The tribunal by the impugned order dated 27th July, 2007 has held that the entire value of the DEPB should be excluded while computing eligible profits under Section 80 HHC of the Act.
4. Learned counsel for the parties agree that the aforesaid



substantial question of law is covered by the decision of the Supreme Court in *Topman Exports versus CIT*, Civil Appeal No. 1699/2012 and other cases, decided on 8th February, 2012. As per the said decision, the face value of the DEPB credit has to be treated as cash assistance under Section 28(iii b) of the Act and accordingly deduction under Section 80 HHC read with the proviso to sub section (3) of the said section shall be computed. Further, the premium received on the sale of the DEPB credit is to be included in the computation for deduction under Explanation (baa) to Section 80HHC of the Act in the year of receipt under Section 28(iii d) of the Act.

5. In view of the aforesaid position, the above mentioned question of law in aforesaid terms is answered in negative, i.e., in favour of the appellant-assessee and against the respondent-Revenue. The Assessing Officer will re-compute deduction under the said Section as per the ratio and law elucidated in *Topman Exports* (Supra).

The appeal is disposed of. No order as to costs.


SANJIV KHANNA, J.


R.V. EASWAR, J.

MARCH 06, 2012/VKR/NA