

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1399 of 2008****With****TAX APPEAL NO. 1400 of 2008****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR.JUSTICE M.R. SHAH **Sd/-**
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA **Sd/-**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | NO |
| 2 | To be referred to the Reporter or not ? | NO |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? | NO |
| 5 | Whether it is to be circulated to the civil judge ? | NO |

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COMMISSIONER OF INCOME TAX-III....Appellant(s)

Versus

BHAVANI SEA FOODS....Opponent(s)

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Appearance:

MR PRANAV G DESAI, ADVOCATE for the Appellant(s) No. 1

MRS SWATI SOPARKAR, ADVOCATE for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 30/11/2013

**ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.00. As common question of law and facts arise in both these appeals, and as such arising out of the common judgement and order passed by the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") passed in ITA No.36-37/Rjt/2007 with respect to same assessee but different year i.e. Assessment Years 2002-2003 and 2003-2004, both these appeals are heard, decided and disposed of by this common judgement and order.

2.00. At the outset, it is required to be noted that while admitting both these appeals, the Division Bench has framed the following substantial question of law :

“(i) Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal is right in directing the Assessing Officer to allow deduction to the assessee under section 80HHC after recomputing the same by taking into consideration the profit of the business under explanation (baa) of section 80HHC, 90% of the profits on the transfer of DEPB licence should be excluded?

(ii) Whether, on the facts and in the circumstances of the case and in law, the ITAT erred in ignoring the clear provisions of sections 28(iv) of the IT Act under which, inter alia, the value of any benefit arising from business shall be charged to tax, and therefore, whether the ITAT erred in not taking into account the whole credit received under DEPB Scheme as taxable under section 28(iv) and thus, whether the ITAT's interpretation renders the provisions of section 28(iv)

as redundant here?

(iii) Whether on the facts and in the circumstances of the case and in law, the ITAT erred in not giving a harmonious construction to the provisions of section 28 (iii d) and 28 (iv) of the IT Act by taking the ‘profit on transfer’ of DEPB as taxable under section 28 (iii d) and ignoring the whole credit under the DEPB Scheme as taxable under section 28(iv)?”

3.00. It is reported that the questions raised in both these appeals are squarely covered by the decision of the Hon'ble Supreme Court in the case of **Topman Exports Versus Commissioner of Income Tax**, reported in **[2012] 342 ITR 49 (SC)** against the revenue.

4.00. Mr.Desai, learned counsel appearing on behalf of the revenue is not disputing the above.

5.00. Applying the ratio laid down by the Hon'ble Supreme Court in the case of **Topman Exports** (supra), both these appeals deserve to be dismissed and are accordingly dismissed.

Sd/-
(M.R.SHAH, J.)

Sd/-
(R.P.DHOLARIA,J.)

Rafik.