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C.A.No. 4328 OF 2001
ITEM NO.104

COURT NO.9

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A.No. 4328/2001

Commissioner of Income Tax

Appellant

VERSUS

M/s. South India Sugar Ltd.

Respondent

(With office report)

Date: 18.12.2002. This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s) Mr. B.B.Ahuja, Sr. Adv.
Ms. Lamshmi Aiyangari, adv. for
Mr. B.V. Balram Das, adv.

For Respondent (s) Mr. Janarthana Raja, Sr. adv.
Mr. V. Ramasubramanian, adv.

UPON hearing counsel Court made the following
ORDER

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.SP2

Heard learned counsel appearing for both the
parties for twenty minutes.
The Appeal is disposed of.

.SP1

(Suman Wadhwa) (S.Malkani)
Court Master Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4328 OF 2001@@
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Commissioner of Income Tax

...Appellant

Vs.

M/s. South India Sugar Ltd.

...Respondent

ORDER@@
CCCCC

.SP2

26.4.1995 concluded the issue so far as the assessee was concerned and the assessee was not interested in reopening the matter in respect of that assessment year.

Learned counsel appearing on behalf of the appellant, however, contends that it is possible that on the basis of the Tribunal's order, the matter may have been reopened and the assessee allowed a double deduction as it were, by deduction of the excise duty from the computation

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of the cost of the closing stock as well as the deduction under Sec. 43-B of the Act. However, the learned counsel is not in a position to assert that any such order has been passed giving effect to the order of the Tribunal.

Having regard to the submissions of the parties we are of the view that this matter should be, and is, disposed of by observing that as far as the assessment year in question is concerned the assessment order dated 26.4.1995 shall be taken as the final assessment order. If the order of the Tribunal has been given effect to in respect of the assessment year in question, the same shall be modified and the order dated 26.4.1995 shall be operative. The issue as far as the assessment year in question is therefore really an academic one. Had the facts been pointed to the Tribunal it is unlikely that the Tribunal would have allowed the assessee to raise the issue in respect of the assessment year in question. We, therefore set aside the order of the High Court as well as the order of the Tribunal as far as this assessment year is concerned but we make it clear that it will be open to the assessee to raise the issue in respect of any future assessment in respect of any other year. As we are setting

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aside the order of the Tribunal on this limited ground, we do not think it appropriate to remand the matter to the High Court for determination of the question raised in respect of the particular assessment year in question.

The appeal is disposed of.

.SP1

.....J.
(RUMA PAL)

.....J.
(B.N.SRIKRISHNA)

New Delhi;
December 18, 2002.