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SLP(C)No. 495 OF 2001

ITEM No.205

Court No. 1

SECTION IIIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.495/2001

(From the judgement and order dated 25/10/1999 in ITA 272/99
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

COMMNR. OF INCOME TAX, SURAT

Petitioner (s)

VERSUS

M/S. ABHISHEK CORPORATION

Respondent (s)

(With Appln(s). for c/delay in filing SLP and office report)
(For Final Disposal)

Date : 29/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. Mukul Rohtagi,ASG.
Ms. Neera Gupta,Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent (s) Mr. H.A. Raichura,Adv.
Ms. S.H. Raichura,Adv.
Mr. Shailendra Singh,Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J

Delay condoned.

Leave granted.

The civil appeal is allowed.

No order as to costs.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8176 of 2001@@
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(Arising out of S.L.P. (C) No. 495 of 2001)

Commissioner of Income Tax, Surat ...Appellant (s)

Versus~

M/s. Abhishek CorporationRespondent (s)

O R D E R@@
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Delay condoned.
Leave granted.
The High Court declined to call for a reference, inter alia, of the following question:

.....L.....T.....T.....T.....T.....T.....T.....J

.SP1

"Whether on the facts and circumstances of the case, the ITAT, having held that assessee has received unaccounted receipts, was justified in law in holding that the assessing officer has to discharge onus in respect of on-money by showing that assessee has invested Rs.1,58,59.4000/- out of such receipts whereas claim of assessee for extra expenditure was found to be incorrect?"

.....L.....T.....T.....T.....T.....T.....T.....T.....T.....J

.SP2

It did so on an appreciation of evidence and based on certain judgments of that High Court.

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We have seen the relevant portions of the order of the Income Tax Appellate Tribunal from which the question has arisen. We think that the question does require the consideration of the High Court. We do not, however, express any view on the merits of the case on either side.

The civil appeal is allowed. The order under challenge is set aside, insofar as it relates to Question No.2 before the High Court. The said question (quoted above) shall stand referred to the High Court for its consideration and the Tribunal shall draw up an appropriate Statement of Case.

No order as to costs.

.SP1

.....CJI.@@
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.....J.@@
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(Shivaraj V. Patil)@@
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.....J.@@
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(Arijit Pasayat)@@
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New Delhi,
November 29, 2001.