

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(s).26084/2010

(From the judgment and order dated 05/01/2010 in ITA No.37/2006 of THE HIGH COURT OF HIMACHAL PRADESH)

M/S. TEKNIKA COMPONENTS TH:PARTNER

Petitioner(s)

VERSUS

C.I.T., SHIMLA

Respondent(s)

(With appln(s) for stay and permission to file additional documents)

Date: 23/09/2011

This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

HON'BLE MR. JUSTICE SWATANTER KUMAR

For Petitioner(s)

Mr. V. Giri, Sr. Adv.

Mr. A.V. Palli, Adv.

Ms. Rekha Palli, Adv.

For Respondent(s)

Mr. R.P. Bhatt, Sr. Adv.

Mr. Rahul Kaushik, Adv.

Mr. Gaurav Dhingra, Adv.

Mr. B.V. Balaram Das, Adv.

UPON hearing counsel the Court made the following

O R D E R

By consent, the matter is taken up for hearing.

Heard learned counsel on both sides.

Leave granted.

The civil appeal filed by the assessee stands disposed of.

Till the appeal is heard and disposed of by CIT (Appeals), the order passed by this Court on 5 th January, 2011 will continue to operate.

[T.I. Rajput]

A.R.-cum-P.S.

[Madhu Saxena]

Assistant Registrar

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8211 OF 2011

(Arising out of S.L.P. (C) No.26084 of 2010)

M/s. Teknika Components Thr. it's partner

...Appellant(s)

Versus

Commissioner of Income Tax, Shimla

...Respondent(s)

O R D E R

By consent, the matter is taken up for hearing.
Heard learned counsel on both sides.
Leave granted.

In the present case, the assessee had claimed deduction under Section 80IA of the Income Tax Act, 1961, ['Act', for short], which was allowed by the Assessing Officer. However, the Commissioner of Income Tax ['CIT' for short] passed an order under Section 263 of the Act, the effect of which was to disallow deduction granted under Section 80IA by the Assessing Officer. Aggrieved by the order of CIT, the assessee preferred an appeal to the Income Tax Appellate Tribunal ['Tribunal', for short]. That appeal was allowed by the Tribunal. The High Court, in the appeal preferred by the Department, came to the conclusion that the Tribunal had not answered some of the issues, which stood decided by the CIT under Section 263 of the Act. In the circumstances, the High Court set aside the order of the Tribunal.

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We are of the view that, instead of High Court itself answering those issues, it ought to have remitted the case to the Tribunal which has not been done in the present case.

Against the order of the High Court, the assessee approached this Court by way of special leave petition. On 5th January, 2011, this Court permitted the Department to proceed with re-assessment without prejudice to the rights and contentions of the parties. We are informed that the Assessing Officer has re-assessed and passed a fresh order on 5th May, 2011. This time, he has disallowed the claim for deduction under Section 80IA of the Act.

In the peculiar facts and circumstances of the case, since the assessee has preferred an appeal to CIT (Appeals) against the order of the Assessing Officer dated 5th May, 2011, we direct CIT (Appeals) to decide the matter uninfluenced by the earlier order of CIT under Section 263 of the Act as well as the impugned order passed by the High Court.

Accordingly, the impugned order is set aside and the civil appeal filed by the assessee stands disposed of.

Till the appeal is heard and disposed of by CIT (Appeals), the order passed by this Court on 5th January, 2011 will continue to operate.

.....CJI.
[S.H. KAPADIA]

.....J.
[K.S. RADHAKRISHNAN]

.....J.
[SWATANTER KUMAR]

New Delhi,
September 23, 2011.