(2001) 07 GUJ CK 0100

In the Gujarat High Court

Case No : IT Ref. No. 120 of 1986

Commissioner of Income Tax — APPELLANT

Vs

Shreyas Land Development Corpn. — RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 144B, 263

Citation : (2003) 184 CTR 607

Hon'ble Judges : D.A. Mehta, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Bharat Naik, for the Appellant; None, for the Respondent

Judgement

A.R. Dave, J.—At the instance of the Revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), by the Tribunal, Ahmedabad Bench ''C'' :

"Whether, on the facts and in the circumstances of the case and in law the Tribunal was right in coming to the conclusion that since the assessment order was passed by the ITO u/s 143(3) r/w Section 144B of the IT Act the order of the CIT u/s 263 was invalid ?"

2. Learned advocate Shri Bharat Naik has appeared for the applicant whereas nobody has appeared for the respondent-assessee, though the respondent has been served.

3. Learned advocate Shri Bharat Naik has submitted that the Tribunal, while passing the impugned order had referred to and relied upon the decision rendered by the Special Bench of the Tribunal in the case of CIT v. East Coast Marine Products (P) Ltd. and Anr. After taking into account the decision rendered by the Special Bench in the said case, wherein a similar legal question has been raised, the Tribunal came to the conclusion that the CIT was not empowered to take into revision an order passed by the AO u/s 143(3) r/w Section 144B of the

Act.

4. During the pendency of this reference, the decision which was rendered by the Special Bench was under scrutiny of Andhra Pradesh High Court. The Andhra Pradesh High Court has reversed the order passed by the Special Bench in case of Commissioner of Income Tax Vs. East Coast Marine Products (P.) Ltd. and Another, .

5. We have gone through the facts of the case and law laid down by the Andhra Pradesh High Court in case of CIT v. East Coast Marine Products (P) Ltd. and Anr., (supra). We are in respectful agreement with the judgment delivered in the said case and accordingly we also answer the question referred to us in the negative i.e., in favour of the Revenue and against the assessee.

The reference stands disposed of with no order as to costs.

