(2011) 09 SC CK 0171

In the Supreme Court Of India

Case No : Civil Appeal No. 8211 of 2011

Teknika Components APPELLANT

Vs

Commissioner of Income Tax, Shimla RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:
Income Tax Act, 1961 — Section 263, 80IA

Citation : (2012) 346 ITR 570 : (2011) 202 TAXMAN 623

Hon'ble Judges : S.H. Kapadia, C.J;Swatanter Kumar, J;K.S. Radhakrishnan, J

Bench : Full Bench

Advocate : V. Giri, A.V. Palli and Rekha Palli, for the Appellant; R.P. Bhatt, Rahul Kaushik, Gaurav Dhingra and B.V. Balaram Das, for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard Learned Counsel on both sides.

2. Leave granted.

3. In the present case, the Assessee had claimed deduction u/s 80-IA 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 u/s 263 of the Act, the effect of which was to disallow deduction granted u/s 80-IA 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 u/s 263 of the Act. In the circumstances, the High Court set aside the order of the Tribunal.

4. 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 the Court by way of special leave petition. On 5th January, 2011, the Court permitted

the Department to proceed with reassessment without prejudice to the rights and contentions of the parties. We are informed that the Assessing Officer has reassessed and passed a fresh order on 5th May, 2011. This time, he has disallowed the claim for deduction u/s 80-IA of the Act.

5. 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 5 th May, 2011, we direct CIT (Appeals) to decide the matter uninfluenced by the earlier order of CIT u/s 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 the Court on 5th January, 2011 will continue to operate.

