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% 30.11.2010

Present: Mr. Sanjeev Sabharwal, Advocate for the Appellant.

+ CM No.21097/2010 (Exemption).

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Exemption as prayed for is allowed subject to just exceptions.

CM stands disposed of.

ITA No. 1860/2010.

This appeal pertains to the Assessment Year 2001-2002. During the assessment proceedings, the Assessing Officer had allowed the deduction under Section 80HHC of the Act as well as Section 80 IA of the Income Tax Act independently Sub Section (9) of Section 80 IA of the ITAT provides that deduction allowed under Section 80 IA is to be reduced while computing the deduction under Section 80 HHC of the Act. When this fact was noticed by the Commissioner of Income Tax, he revised the order of the Assessing Officer under Section 263 of the Act. He was of the opinion that the benefit granted under Section 80IA of the Act was to be reduced while computing the benefit under Section 80IA of the Act was to be reduced while computing the deduction under Section 80 HHC of the Act. This order of the Commissioner of Income tax has been set aside by the ITAT on the ground that at the time of exercising jurisdiction under Section



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263 of the Act the matter was not free from doubt and there were conflicting views available at that time.

The aforesaid observations of the Income Tax Appellate Tribunal are factually correct. It is a matter of record that various benches of the Tribunal had given conflicting decisions. In view of this matter was referred to special bench consisting of 3 Members in the case of *Rogini Garments 108 ITD 49 (Chennai (SB))* which held the view in favour of the Revenue (which is a same view taken by the CIT while passing the order under Section 263 of the Act). However, some dispute still arose in spite of the aforesaid special bench decision particularly because of the judgment of Madras High Court in the case of *S.C.M. Creations vs. CIT, ITR 304 page 319* following that judgment again conflicting opinions were given by different benches of different Income Tax Tribunals. In these circumstances, the matter was referred to 5 Members bench in the case of ACIT vs. Hindustan Mint & Agro Products (p) Ltd. 119 ITD 107 (Delhi)(SB). Against that judgment also an appeal has been filed.

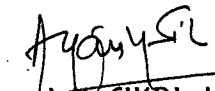
This Court in batch matters with lead case as *M/s. Great Eastern Exports vs. CIT* has decided the controversy by a judgment rendered only on 29.11.2010 upholding the view taken by the ITAT in Hindustan Mint Agro (Supra). Be that as it may, the aforesaid factual backdrop clearly reveals that there have been conflicting views and the matter was not free



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from doubt. In view thereof, in so far as the impugned order passed by the CIT under Section 263 is concerned, such an order merely on the basis that he held different views could not have been passed for this reason. We do not find any merit in this appeal and the same is dismissed.

  
A.K. SIKRI, J.

  
SURESH KAIT, J.

NOVEMBER 30, 2010  
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