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% 20.12.2010

Present: Ms. Prem Lata Bansal, Advocate for the appellant.
Mr. O.P. Mody, Advocate for the respondent.

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+ITA No.1142/2010

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The question of law which is raised by the Revenue in this appeal is as to whether the assessee would be entitled to claim the benefit of Section 10B of the Income Tax Act in respect of profit making unit without adjusting the losses thereagainst which were suffered by another unit of the same assessee, i.e., the loss making unit. We find that precisely this issue was raised before the Income Tax Appellate Tribunal (in short 'the Tribunal') also and it is pure legal issue touching upon the interpretation which is given in Section 10B of the Act. The Tribunal has, however, not decided the issue on merits and the appeal of the assessee herein has been allowed only on the ground that in previous years such a benefit was given, i.e., by following the principle of consistency.

We are of the opinion that in a matter like this, since the grant of benefit depends upon the interpretation to be given to Section 10B of the Act, the Tribunal should have decided the issue on merits rather than taking the aforesaid short route. In view of this, learned counsel for the respondent/assessee states that he has no objection if the matter is remitted back to the Tribunal for decision on merits.



We accordingly set aside the impugned order and remit the case back to the Tribunal with direction that the appeal preferred by the assessee before the Tribunal shall be decided on merits.

This appeal is disposed of in the aforesaid terms.

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A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'Suresh Kait', written in a cursive style.

SURESH KAIT, J.

DECEMBER 20, 2010

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