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Present : Mr Abhishek Maratha, Sr. Standing Counsel with Ms Anshul Sharma, Advocate for the Appellant/Revenue.
Mr. M. S. Syali, Sr. Advocate with Mrs Mahua Kalra, Mr Mayank Negi, Ms Madhvi Swaroop, Mr H. Syali & Mr Rahul Sateerja, Advocates for the respondent/ Assessee.

+ ITA No. 624/2011

* Admit.

In the facts and circumstances of the case following question of law arises for our consideration:

“Whether the CIT ought to have remanded the matter to be decided on merits by the Assessing Officer?”

This appeal pertains to two assessment years, i.e., assessment year 2001-02 and 2002-03. The judgment of the Tribunal, which is impugned by the revenue, is a common judgment dated 15.02.2008 for both assessment years. This is a judgment of the Tribunal comprising of the President and two Members.

We are informed by Mr Syali that till date in this matter no further orders have been passed by the A.O. even though there were directions issued by the special bench to pass assessment orders in line with the directions issued in the impugned judgment of the Tribunal.

After having heard the learned counsel for the revenue, as well as Mr Syali, learned counsel for the assessee, we find that the Tribunal has laid down principles which ought to be adhered to by the AOs in



determining whether expenses incurred qua software acquired by assessee are to be categorized in the field of capital account or revenue account, as the case may be. It appears that a reference was made to the special Bench in view of a cleavage in the decisions rendered by various benches of the Tribunal in a number of matters. This aspect has been referred to by the special bench in paragraph 64 of its order.

We also note that in the operative part (i.e., para 60) the Tribunal has directed that in view of the criteria laid down in the foregoing part of their judgment, the matter is restored to the file of the A.O. for re-examination as to whether the expenditure incurred by assessee on computer software is on capital or revenue account after giving due opportunity to the assessee. The relevant part of the directions issued by the Tribunal as contained in paragraph 60 of the impugned judgment is extracted hereinbelow for the sake of convenience:

"....60. Having laid down the criteria for determining the nature of expenditure incurred on acquisition of software, whether capital or revenue, we are of the view that these criteria need to be applied to determine the exact nature of expenditure incurred by the assessees in the present cases for acquiring different softwares. Since this exercise is required to be done in respect of each and every software independently having regard to the criteria laid down above, we are o the view that the matter needs to b restored back to the file of the Assessing Officer for doing such exercise. The AO shall examine the question whether expenditure on



computer software is capital or revenue in the light of the criteria laid down above after giving an opportunity of being heard to the assesseees.....”

Upon consideration of the matter we are of the view that the special bench of the Tribunal ought to have placed the matter(s) before a regular bench, i.e., the Division Bench for dealing with the matter(s) in accordance with the law, after they had answered the reference.

w There was, in our view, no occasion to restore the matter to the file of the A.O.

Mr Syali, who appears for the assessee, is satisfied if a direction is issued by us whereby the operative part of the judgment of the Tribunal (i.e., para 60) is substituted by our direction to the Tribunal to place the captioned appeal before a regular bench of the Tribunal.

We direct accordingly. The appeal is disposed of with the aforesaid directions.


SANJAY KISHAN KAUL, J.


RAJIV SHAKDHER, J.

SEPTEMBER 09, 2011
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