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% 13.07.2011

Present: Mr. R.M. Mehta, Advocate for the appellant/assessee.
Ms. Suruchi Agarwal, Advocate for the respondent/Revenue.

+ ITA 828/2011

This appeal pertains to assessment year 2005-06 and is filed against the orders of the Tribunal passed on 20th December, 2010 dismissing the appeal of the appellant and taking a view that interest income on account of FDR shall be excluded while calculating the deduction under Section 10-A/10-B of the Income Tax Act (hereinafter would be referred to as 'the Act')

Mr. Mehta, learned counsel appearing for the appellant submits that identical question had arisen in respect of assessment year 2004-05 which was decided by the Tribunal against the appellant. Against that order of the Tribunal, the appellant had filed appeal under Section 260-A of the Act being ITA 730/2010. The said appeal was disposed of vide orders dated 12th July, 2010 setting aside the order of the Tribunal and remitting the case back to the Tribunal for fresh adjudication with the directions that the Tribunal shall take the factual scenario into consideration and the law in the field and pass apposite and reasoned order.

Predicated on the aforesaid order of this Court, the appellant moved an application in the instant appeal also before the Tribunal for consolidation of the two appeals and requested for adjournment in the mean time. The grievance is that the Tribunal did not consider the prayer made in the said application which was *bona fide* and genuine and proceeded to decide the matter. It is contended that in the process the Tribunal fell into the same error as once again neither the facts are taken into consideration nor the law on the issue which the appellant wanted to rely upon and which



is noted by this Court in its order dated 12th July, 2011 passed in ITA 730/2010.

The impugned order passed by the Tribunal is silent about the filing of such an application for consolidation and adjournment of the case. There is no whisper about this application and, therefore, one is not able to discern as to whether such an application was pressed for hearing when the appeal was listed.

In these circumstances, we are of the opinion that appropriate course of action for the appellant would be to move an application under Section 254 (2) of the Act. The learned counsel for the appellant accordingly pressed for withdrawal of this appeal with the liberty to file that application and in case occasion arises, depending upon the order, that would be passed in the said application, approach this Court again challenging the impugned order.

The present appeal is dismissed as withdrawn with the aforesaid liberty to the appellant.


A.K. SIKRI, J.


M.L. MEHTA, J.

July 13, 2011
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