IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

MCA NO.851 OF 2013
IN
INCOME TAX APPEAL NO.1 OF 2013 (D)
The Commissioner of Income Tax-1, Aaykar Bhava, Nagpur
..vs..
M/s GSA Petroleum, Nagpur

....

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

....

Shri Anand Parchure, counsel for the applicant.

CORAM : B.P. DHARMADHIKARI & A.S. CHANDURKAR, JJ.
DATE : JANUARY 28, 2015.

(Per : B.P. DHARMADHIKARI , J.)

Heard.

Shri Anand Parchure, learned counsel for the applicant/department, submits that because of order dated 15.10.2012 of the Income Tax Appellate Tribunal (ITAT) which was impugned in Income Tax Appeal (ITL) No.1 of 2013, the liability of the assessee to make good the default in either not deducting or in not paying the TDS amount on the sums paid actually to the contractor before 31.3.2005 is wiped out.

He further submits that, though it was not pointed out to this Court while arguing the appeal, later on the Authority at Nagpur has learnt that the Judgment of the Special Bench has been stayed by the jurisdictional High Court i.e. Andhra Pradesh High Court. He also invites our attention to the statement made in that regard in paragraph No.9 of the review application.

When the appeal was disposed of, this Court had noted the arguments raised before the ITAT. The assessee had sought leave to raise additional contention and that additional ground was allowed to be argued. The D.R. has on the other hand raised the contention which is in consonance with the finding of the Special Bench.

Thus, before the ITAT and even before this Court, the correctness of view recorded by the Special Bench was not an issue. However, this Court while disposing of the that appeal, in this background, has found that the remand to assessing officer was only to record a finding on additional ground and after proper facts crystalize, all questions of law can be appropriately looked into.

When the assessing officer passes fresh order, all the questions of law can be again looked into by him and at that juncture, review applicant may point out the correctness or otherwise of the Judgment of the Special Bench of ITAT.

As such, we do not find any merit in the review application, the same is rejected. No costs.

JUDGE **JUDGE**

!! BRW !!