

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. NO.352 OF 2014

DATED: 24-06-2014

Between:

Commissioner of Income Tax-II,
Hyderabad

... Appellant

And

M/s Janapriya Engineers Syndicate

... Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. NO.352 OF 2014

JUDGMENT: (per Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

Mr. S. Ravi, learned senior advocate, appears in response to the pre-admission notice on behalf of the assessee. We have heard Mr. B. Narasimha Sarma, learned counsel for the appellant.

2. We admit the appeal for statistical purpose on the following substantial question of law.

“Whether the learned Tribunal was justified in law on the facts and circumstances of this case in passing order of remand for re-decision ignoring the Special Bench decision of the Tribunal on the issue though the appeal against the same is pending adjudication before the Hon'ble Court ?”

3. We find that the learned Tribunal taking note of the pendency of the appeal in this Court, preferred by the Revenue against the decision of the Special Bench of the Tribunal in *M/s. Marilyn Shipping & Transport* in I.T.A. No.477/Viz/2008 dated 29-03-2012, directed the Assessing Officer to re-decide the issue after the disposal of the appeal by this Court.

4. We are of the view that until and unless the decision of the Special Bench is upset by this Court, it binds smaller Bench and coordinate Bench of the Tribunal. Under the circumstances, it is not open to the Tribunal, as rightly contended by Mr. Narasimha Sarma, learned counsel, to remand on the ground of pendency on the same

issue before this Court, overlooking and overruling, by necessary implication, the decision of the Special Bench. We simply say that it is not permissible under quasi judicial discipline. Under the circumstances, we set aside the impugned judgment and order, and restore the matter to the file of the Tribunal which will decide the issue in accordance with law and it would be open to the Tribunal either to follow the Special Bench decision or not to follow. If the Special Bench decision is not followed, obviously remedy lies elsewhere.

5. The appeal is thus allowed only on the point of remand. We direct the Tribunal to decide the matter on remand afresh within a period of two months from the date of communication of this order. No costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

24-06-2014

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