

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4831 OF 2017  
(Arising out of S.L.P. (C) No. 25945 of 2015)

COMMISSIONER OF INCOME TAX, CENTRAL-4, MUMBAI Appellant(s)

Versus

M/S. NITCO TILES LIMITED

Respondent(s)

O R D E R

Leave granted.

2. We have heard learned counsel for the parties finally.

3. We notice from the impugned judgment of the High Court that the Income Tax Department had raised five questions, as substantial questions of law, for determination by the High Court. The High Court has, however, admitted the appeal only in respect of Question No.4.

4. In so far as Question Nos. 1 to 3 and 5 are concerned, the High Court noted that these questions were considered in its earlier decision titled as DCIT versus Reliance Industries in ITA No. 4045/M/91 against the revenue and, therefore, there is no need to admit the appeal on those questions.

5. We find that against the judgment of the High Court in Reliance Industries case, the Department has preferred the special leave petition, which was granted and ultimately appeal was allowed by this Court, vide its judgment dated 2<sup>nd</sup> December, 2011 titled as CIT versus Reliance Industries Limited, remitting the case back to the High Court on the ground that the appeal of the Department was dismissed without considering the following question :-

"Whether on the facts and circumstances of the case and in law the Hon'ble Tribunal was right in holding that sales tax incentive is a Capital Receipt?"

6. Since the judgment in Reliance Industries case was relied upon, and in that case, the matter is remitted back to the High Court for fresh consideration, following the aforesaid course of action, we allow this

appeal as well. On the aforesaid question, as formulated, the High Court shall admit the appeal and decide the same on merits.

.....J.  
(A.K. SIKRI)

.....J.  
(ASHOK BHUSHAN)

New Delhi,  
April 03, 2017

