



ITA NO. 28 OF 2023

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2024:KER:80349

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 28TH DAY OF OCTOBER 2024 / 6TH KARTHIKA, 1946

ITA NO. 28 OF 2023

ORDER DATED 24.04,2023 OF THE INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH IN ITS NO.25/COCH/2017 FOR ASSESSMENT YEAR 2011-12

APPELLANT/APPELLANT:

KINGS INFRA VENTURES LTD
A-1, 1ST FLOOR, ATRIA APARTMENT, OPP. GURUDWARA TEMPLE,
PERUMANUR ROAD, THEVARA, KOCHI PAN-AACCV3411D,
PIN - 682013

BY ADVS.
SRI.ABRAHAM JOSEPH MARKOS
SRI.ALEXANDER JOSEPH MARKOS
SRI.P.G.CHANDAPILLAI ABRAHAM
SRI.AIBEL MATHEW SIBY
SRI.ISAAC THOMAS
SRI.SHARAD JOSEPH KODANTHARA
SRI.JOHN VITHAYATHIL

RESPONDENT/RESPONDENT:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE -1 (2), KOCHI,, PIN - 682018

BY SRI. JOSE JOSEPH, SC

THIS INCOME TAX APPEAL HAVING COME UP FOR FINAL HEARING ON
28.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This appeal is preferred against the order dated 24.04.2023 of the Income Tax Appellate Tribunal, Cochin Bench in ITA.No.25/COCH/2017 for the assessment year 2011-12.

2. The brief facts necessary for the disposal of this Income Tax Appeal are as follows:

The appellant is engaged in the business of aqua farm culture and the sale of its proceeds. Until 2007, the company functioned in the name of M/s.Victory Aqua Farm Limited later changed its name to M/s.Kings Infra Ventures Limited and ventured into construction business also. During the assessment year 2011-12, the appellant filed its return of income disclosing nil income. While filing the return, the appellant made a claim of Rs.1,52,76,459/- towards carried forward loss, which included depreciation loss of Rs.1,88,52,496/- (Pertaining to assessment years 1996-97 to 2009-10) and loss amounting to Rs.35,85,037/- (pertaining to assessment years 1996-97 and 1997-98). The total loss of Rs.1,52,76,459/- was adjusted against the taxable income of Rs.35,85,037/- for the assessment year 2011-12, and thereby the taxable income came to be nil. The claim for carried forward depreciation was based on the claim for depreciation made for the previous assessment years 1996-97 to 2009-10 in the returns filed by the appellant for those years.

3. The assessing authority disallowed the set off of loss claimed to



the tune of Rs.35,85,037/- and assessed the same to tax for the assessment year 2011-12 under Section 143(3) of the Income Tax Act. The appellant, therefore, preferred an appeal before the First Appellate Authority, who partly allowed the appeal, and allowed the set-off claimed in respect of brought forward unabsorbed depreciation pertaining to assessment years 1996-97 and 1997-98 against the taxable income relating to assessment years 2010-11, 2011-12 and subsequent years. The brought forward unabsorbed depreciation relating to assessment years 1998-99 to 2009-2010 was not allowed to be set off against the taxable income relating to assessment years 2012-13 onwards. The First Appellate authority further directed the assessing authority to reopen the assessment proceedings for the assessment year 2010-11 and from 2012-13 onwards to disallow the set off of the claim of unabsorbed depreciation computed from 1998-99 onwards.

4. Aggrieved by the action of the First Appellate Authority in issuing directions in respect of assessment years other than the assessment year under consideration (2011-12) and aggrieved by the direction of the First Appellate Authority to reopen assessments for the assessment year 2010-11 and 2012-13 onwards, the appellant filed a rectification application to correct the mistakes that had occurred in the order of the First Appellate Authority. The Rectification Application, however, was disposed by the First Appellate Authority by merely allowing the carry forward of unabsorbed depreciation for the assessment year 1998-1999 also. The other aspects were not dealt with by the First Appellate Authority.

5. In a further appeal before the Appellate Tribunal, the Appellate Tribunal confirmed the findings of the First Appellate Authority. The appellant



therefore approached this Court through an Income Tax Appeal, which was disposed by Annexure-F judgment setting aside the impugned order of the Tribunal and directing the Tribunal to reconsider afresh all aspects regarding the directions given by the First Appellate Authority to the Assessing Officer to reopen the assessments for the years 2010-2011 and 2012-13 onwards.

6. In the *de novo* proceedings, the Appellate Tribunal through the impugned order, which challenges a reader trying to comprehend it, once again confirmed the findings of the First Appellate Authority and dismissed the appeal preferred by the appellant. It is against the said order of the Appellate Tribunal that the appellant is before us through the Income Tax Appeal, wherein the following substantial questions of law have been raised for our consideration:-

(a) Whether on the facts and circumstances of the case the Appellate Tribunal is right in holding that the first appellate authority did not exceed his jurisdiction when it directed reopening of assessment for assessment years which were not in appeal before him?

(b) Whether on the facts and circumstances of the case the Appellate Tribunal was correct in confirming the reopening of assessments for different assessment years, in the appeal filed by the assessee for the assessment year 2011-12, in the absence of any challenge from the Department, in respect of the years in which reassessment was directed to be made by the 1st appellate authority?

(c) Whether on the facts and circumstances of the case the appellant is entitled to carry forward and set off unabsorbed



depreciation for Assessment Years 1999-00 to 2009-10 in the absence of any order either under section 143(1) or 143(3) denying the claim for depreciation made in the return filed by the Appellant in each of the said assessment years?

(d) Whether on the facts and circumstances of the case there is any evidence or material on record to justify the finding of the Appellate Tribunal that there is no claim for depreciation by the Appellant or orders actually allowing the depreciation for Assessment Years 1999-00 to 2009-10 and are not the said findings perverse in the light of the documents and copies of returns and orders passed thereon being placed on record by the Appellant?

(e) Whether on the facts and circumstances of the case there is any evidence or materials on record to justify the finding of the Appellate Tribunal that the Commissioner of Income Tax (Appeals) could have given a direction to reopen assessment which had attained finality?

(f) Whether on the facts and circumstances of the case the appellant Tribunal is right in finding that carry forward of a claim could only be where the same stands assessed and determined for an earlier year?

(g) Whether the Appellate Tribunal is right in observing that the CIT(A) had allowed the set-off of unabsorbed depreciation for AYs 1996-97 and 1997-98 when in fact by the rectification order the CIT(A) had also allowed set-off of unabsorbed depreciation for Ay 1998-99 also?

(h) Whether the findings of fact by the Appellate Tribunal regarding the claims and contentions of the Appellant erroneous and perverse?



(I) Whether on the facts and in the circumstances of the case ought not the Appellant Tribunal have held that the assets were kept ready for use in the said assessment years and the observations that there is no challenge to the same by the Appellant erroneous and perverse?

7. We have heard the learned Senior counsel Sri.Abraham Joseph Markose assisted by the learned counsel Sri.Alexander Joseph Markos and Sri.Jose Joseph the learned Standing counsel for the Income Tax Department.

8. On a consideration of the facts and submissions made before us by the learned counsel, we find that the appellant is not aggrieved by the findings rendered by the First Appellate Authority, that were confirmed by the Appellate Tribunal in appeal, as regards the outcome of the assessment proceedings for the assessment year 2011-12. The First Appellate Authority had effectively granted the relief of permitting a set off of unabsorbed depreciation computed during the assessment years 1996-97, 1997-98 and 1998-99 against the income for the assessment year 2011-12. This effectively resulted in there being no income liable to be taxed in the hands of the appellant for the assessment year in question. The grievance of the appellant is essentially with regard to the other findings entered into by the First Appellate Authority that were sustained by the Appellate Tribunal in appeal. The said findings virtually tantamount to reopening the assessments for the assessment years 1999-2000 to 2009-10 without even going into the issue as to whether or not the claim for depreciation, as also set-off of unabsorbed depreciation, made by the appellant in its returns filed during the said years



were accepted by the department or not. It is submitted by the learned Senior counsel for the appellant that during the said years returns were filed that were acknowledged by the department but no formal orders of assessment were passed. Under such circumstances, we fail to understand how the assessing authority, as well as the First Appellate Authority, while considering assessment proceedings for the assessment years 2011-12 could have embarked upon an enquiry with regard to the nature and extent of business that was carried on by the appellant during the assessment years from 1999-2000 to 2009-10. Even without any enquiry as regards the assessments for those years and based on no material whatsoever, the First Appellate Authority while considering the appeal against the assessment order for the assessment year 2011-12 appears to have found, that the appellant was not carrying on any business during those assessment years. The First Appellate Authority thereafter went on to hold that the claim for depreciation, as also the claim for set-off of unabsorbed depreciation, could not have been made during the said assessment years, and also directed the reopening of any assessment wherein the appellant had actually made a claim for set-off of such unabsorbed depreciation that was brought forward from earlier years.

9. In our view, such an exercise on the part of the First Appellate Authority could not have been legally sustained by the Appellate Tribunal. Without determining the fate of the assessments made on the appellant during the assessment years 1999-2000 to 2009-10, the issue of allowance of a claim for depreciation on a claim for set-off of unabsorbed depreciation of earlier years could not have been gone into, or any directions given in regard thereto, by the First Appellate Authority. We, therefore, set aside the impugned order



of the Tribunal, to the extent it confirms the order of the First Appellate Authority that issued directions in relation to assessment years 2010-11 and for the assessment years succeeding 2012-13 onwards, as also to the extent it renders findings regarding the disallowance of claims of unabsorbed depreciation losses pertaining to assessment years 1999-2000 to 2009-2010. We make it clear that we have not interfered with the order of the Tribunal to the extent it sustains the findings of the First Appellate Authority with regard to completion of the assessment for the assessment year 2011-12.

The Income Tax Appeal is thus allowed to the above extent by answering the questions of law raised in favour of the assessee and against the revenue.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

APPENDIX OF ITA 28/2023

PETITIONER ANNEXURES

- Annexure A THE TRUE COPY OF THE ASSESSMENT ORDER DATED 25.02.2014 PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(2), KOCHI FOR THE ASSESSMENT YEAR 2011-12
- Annexure B THE TRUE COPY OF THE ORDER DATED 24.11.2016 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-1, KOCHI FOR THE ASSESSMENT YEAR 2011-12
- Annexure C THE TRUE COPY OF THE ORDER DATED 09.05.2017 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-1, UNDER SECTION 154 READ WITH SECTION 250
- Annexure D TRUE COPY OF THE APPEAL MEMORANDUM (WITHOUT ANNEXURES) DATED 27.01.2017 FILED BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH
- Annexure E TRUE COPY OF THE ORDER DATED 14.07.2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, KOCHI FOR THE ASSESSMENT YEAR 2011-12
- Annexure F TRUE COPY OF THE JUDGMENT DATED 17.11.2021 OF THIS HONOURABLE COURT IN ITA NO.11/2018
- Annexure G TRUE COPY OF WHICH ALONG WITH COVERING LETTER ACKNOWLEDGED BY THE ITAT
- Annexure H TRUE COPY NOTES ON SUBMISSIONS DATED 02-02 2023 FILED BY THE APPELLANT BEFORE ITAT, COCHIN BENCH IN ITA NO.25/COCH/2017
- Annexure I TRUE COPY OF THE IMPUGNED ORDER DATED 24.04.2023 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, KOCHI IN ITA NO.25/COCH/2017