



2024:KER:68302

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 6TH DAY OF SEPTEMBER 2024 / 15TH BHADRA, 1946

WP(C) NO. 24927 OF 2024

PETITIONER:

ALAPATT JEWELLERS
(REPRESENTED BY SRI. ANTONY FRANCIS ALAPATT,
PARTNER, AGED 41 YEARS)
ALAPATT HERITAGE., M.G. ROAD NORTH END.,
ERNAKULAM, PIN - 682 035.

BY ADVS.

K.N.SREEKUMARAN
P.J.ANILKUMAR (A-1768)
N.SANTHOSHKUMAR

RESPONDENTS:

- 1 DEPUTY COMMISSIONER OF INCOME TAX,
NON CORP 1(1), AAYKAR BHAVAN, I.S.PRESS ROAD,
ERNAKULAM, PIN - 682 018.
- 2 DEPUTY DIRECTOR OF INCOME TAX,
CENTRALIZED PROCESSING CENTER,
INCOME TAX DEPARTMENT, ELECTRONIC CITY,
BANGALORE, PIN - 560 500.
- 3 CENTRAL BOARD OF DIRECT TAXES
(REPRESENTED BY ITS CHAIRMAN),
NORTH BLOCK, NEW DELHI, PIN - 110 002.

BY ADVS.

SRI. JOSE JOSEPH (SR SC).
SRI. CYRIAC TOM (SC)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06.09.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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JUDGMENT

The petitioner is an assessee under the Income Tax Act, 1961 (hereinafter referred to as the '1961 Act'). For the assessment year 2023 – 2024, the petitioner filed its return of income, which was processed under Section 143(1) of the 1961 Act. Ext.P2 is the intimation received by the petitioner. According to the petitioner, though it had claimed a carry forward loss of Rs.1,14,60,832/-, only an amount of Rs.21,71,999/- was allowed, as can be seen from Ext.P2. It is submitted that the amount of Rs.1,14,60,832/- forms part of unabsorbed depreciation, as can be seen from the Annexure forming part of Ext.P2. The petitioner filed an application for rectification under Section 154 of the 1961 Act, claiming that full set off of the unabsorbed depreciation had to be granted and the denial of that benefit to the petitioner is illegal. The petition filed by the petitioner has been rejected by Ext.P6 finding no ground for rectification. The petitioner is thus before this Court seeking the following reliefs:

- i. *“call for the records leading to Ext-P6 order and quash the same by issuance of a writ of certiorari or any other appropriate writ, direction or order*



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found fit and proper by this Honorable Court.

- ii. direct the 2nd respondent to quash the Ext-P6 order and to reconsider Ext:P3 rectification petition filed against Ext-P2 intimation by considering the grounds in Ext-P4 petition after affording a personnel hearing through VC.*
- iii. direct the 2nd respondent to quash the Ext-P2 intimation u/s.143(1) and allow the claim of the petitioner in accordance with law by considering the documents available on the portal.*
- iv. Issue any other appropriate writ, direction or order found fit and proper by this Honourable Court on the facts and in the circumstances of the case”.*

2. The learned counsel appearing for the petitioner refers to the provisions of Section 32(2) of the 1961 Act to contend that where in the assessment of an assessee, full effect cannot be given to any allowance under sub-section (1) (depreciation allowance) in any previous year, the said depreciation allowance is permitted to be carried forward to the next year. It is submitted that a reading of Section 72 of the 1961 Act will indicate that where such loss in the form of depreciation is carried forward to the next year, the same can be set off even against income arising from heads other than ‘profits or gains of business or profession’. It is submitted that the denial of

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such set off cannot be sustained and therefore Ext.P6 order under Section 154 of the 1961 Act is liable to be set aside and the matter is to be remitted for fresh consideration of the Assessing Authority.

3. Sri. Jose Joseph, the learned Senior Standing Counsel appearing for the Income Tax Department, would submit that Section 32 of the 1961 Act forms part of the provisions that deal with the computation of income from profits and gains of business or profession. It is submitted that though the provisions of sub-section (2) of Section 32 of the 1961 Act permit the carry forward of such depreciation allowance where it cannot be fully set off owing to there being no profit or gains in any particular year, the provisions of Section 72 of the 1961 Act clearly indicate that even if such depreciation allowance is to be termed a loss in terms of Section 71 of the 1961 Act, the same can be set off only against income or gains from business or profession and not against any other head. It is submitted that in such circumstances, there is absolutely no mistake in the order passed under Section 154 of the 1961 Act and the petitioner has not made out any ground to set aside the said order.



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4. The learned counsel appearing for the petitioner, in reply, would refer to the provisions of Section 71(2) and (2A) of the 1961 Act to contend that where there is any loss arising out of business or profession including depreciation allowance the same can be set off against any other head of income and the provisions of Section 72 of the 1961 Act are always subject to the provisions of Section 71 of the 1961 Act.

5. Having heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the Income Tax Department, I am of the view that the petitioner has not made out any case for grant of relief. Section 29 of the 1961 Act reads as follows:

"29. Income from profits and gains of business or profession, how computed.—The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43D".

Section 32 of the 1961 Act, which deals with depreciation, thus forms part of the provisions for computation of income from profits and gains of business or profession. Sub-section (2) of Section 32 of the 1961 Act reads thus:

**“32. Depreciation.—**

(1) XXXX XXXX XXXX

(2) *Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years”.*

Thus it is clear that the right under Section 32(2) is specifically made subject to the provisions of Sections 72(2) and 72(3) of the 1961 Act. The provisions of Section 72 of the 1961 Act read thus:

“72. Carry forward and set off of business losses.—

(1) *Where for any assessment year, the net result of the computation under the head “Profits and gains of business or profession” is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against*



income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or, where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year;

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on:

Provided that where the whole or any part of such loss is sustained in any such business as is referred to in section 33B which is discontinued in the circumstances specified in that section, and, thereafter, at any time before the expiry of the period of three years referred to in that section, such business is re-established, reconstructed or revived by the assessee, so much of the loss as is attributable to such business shall be carried forward to the assessment year relevant to the previous year in which the business is so re-established, reconstructed or revived, and—

(a) it shall be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year; and

(b) if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to



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be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding.

(2) Where any allowance or part thereof is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.

(3) No loss other than the loss referred to in the proviso to sub-section (1) of this section shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed”.

It is clear from the reading of the provisions of Section 72 of the 1961 Act that even if the depreciation allowance under Section 32 of the 1961 Act, which was carried forward in terms of sub-section (2) of Section 32, is deemed to be a business loss for the purposes of Sections 71 and 72, it can be set off only against profits or gains of any business or profession and it cannot be set off against income from any other sources. Though the learned counsel for the petitioner took considerable efforts to establish that Section 72 is always subject to the provisions of Section 71 going by the express provisions in sub-section (2) of Section 32 permitting the carry



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forward of depreciation allowance subject to the provisions of Section 72 of the 1961 Act, I find no merit in the said contention taken by the learned counsel for the petitioner. In that view of the matter, there is absolutely no error in Ext.P6 warranting the exercise of jurisdiction under Article 226 of the Constitution of India.

Writ petition fails and it is accordingly dismissed.

**Sd/-
GOPINATH P.
JUDGE**

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APPENDIX OF WP(C) 24927/2024

PETITIONER'S EXHIBITS

- Exhibit-P 1** TRUE COPY OF THE INCOME TAX RETURN FILED ON 31.10.2023 VIDE E-ACKNOWLEDGEMENT NUMBER-492720681311023 ALONG WITH COMPUTATION OF INCOME.
- Exhibit-P 2** TRUE COPY OF THE INTIMATION U/S. 143(1) DATED 30.05.2024 ISSUED BY THE 2ND RESPONDENT WITH DIN:CPC/2324/A5/42051369.
- Exhibit-P3** TRUE COPY OF THE RECTIFICATION REQUEST FILED BEFORE THE 2ND RESPONDENT ON 03.06.2024 VIDE REFERENCE NUMBER 389114360030624.
- Exhibit -P4** TRUE COPY OF THE GRIEVANCE PETITION FILED THROUGH INCOME PORTAL ON 10.06.2024 VIDE REFERENCE NUMBER 17014579.
- Exhibit-P 5** TRUE COPY OF THE GRIEVANCE RESOLUTION PASSED BY THE RESPONDENTS AND ISSUED THROUGH PORTAL DATED 18.06.2024 AGAINST EXT-P3.
- Exhibit-P6** TRUE COPY OF THE RECTIFICATION ORDER PASSED U/S.154 OF THE INCOME TAX ACT DATED 01.07.2024 WITH DIN:CPC/2324/U5/429621804.