

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY ,THE 07TH DAY OF JANUARY 2019 / 17TH POUSHA, 1940

ITA.No. 74 of 2008

AGAINST THE ORDER/JUDGMENT IN ITA 45/2006 of
I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/S:

SOUTH INDIA CORPORATION LTD.
RANI MEYYAMMAI BUILDING, KPK MENON, ROAD,
WILLINGDON ISLAND, ERNAKULAM,, COCHIN-03.

BY ADVS.
SMT.LATHA ANAND
S.SRIDHAR

RESPONDENT/S:

ASST. COMMISSIONER, INCOME TAX
ERNAKULAM, COCHIN.

OTHER PRESENT:

JOSE JOSEPH,SC

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
07.01.2019, ALONG WITH ITA.75/2008, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

MONDAY ,THE 07TH DAY OF JANUARY 2019 / 17TH POUSHA, 1940

ITA.No. 75 of 2008

AGAINST THE ORDER/JUDGMENT IN ITA 455/2006 of
I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/S:

M/S.SOUTH INDIA CORPORATION LTD.
RANI MAYYAMMAI BUILDING, KPK MENON ROAD,
WILLINGDON ISLAND, ERNAKULAM, COCHIN-03.,

BY ADVS.
SRI.B.S.KRISHNAN (SR.)
SMT.LATHA ANAND
SRI.K.ANAND (SR.)

RESPONDENT/S:

THE COMMISSIONER OF INCOME TAX,
ERNAKULAM, COCHIN.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
07.01.2019, ALONG WITH ITA.74/2008, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

JUDGMENT

I.T.A.Nos. 74 of 2008 and 75 of 2008

Vinod Chandran, J

A common question arise in both the appeals for the years 2002-03 and 2003-04 and a separate question also arise in each of the said years. The common issue is with respect to the claim under Section 80 IA of the Act. The assessee admittedly established a wind mill in an earlier year and started claiming deduction under Section 80 IA from 2002-03 onwards. It is an admitted fact that the loss incurred by the assessee on installation of wind mill and absorbed by the other businesses of the assessee has to be notionally carried forward for the purpose of claiming the deduction under Section 80 IA. There is no dispute on that aspect. But however, the Tribunal found that such carry forward has to be from the date of inception

of the wind mill, which is the commencement of the business.

2. As of now, the question stands covered in favour of the assessee by virtue of Circular No.1/2016 dated 15.02.2016 issued by the Central Board of Direct Taxes (CBDT). The CBDT had extracted sub-section (5) of Section 80 IA and declared so which is binding on the department and its officers:

"The matter has been examined by the Board. It is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction under Section 80 IA has the option to choose the initial/first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction under Section 80

IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfilment of conditions prescribed in the section. Hence the term "initial assessment year" would mean the first year opted for by the assessee for claiming deduction under Section 80 IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity."

3. Hence the question of law has to be answered in favour of the assessee and against the Department. The initial year for the purpose of Section 80 IA, is the initial assessment year from which the claim of deduction is commenced and the assessee is entitled to the notional carry forward from that particular year. The order of the Tribunal is reversed to that extent.

4. One other question arising in the year 2002-03 is as to the claim under Section 41(1) of the Income Tax Act. The assessee had in an earlier year paid up an amount of Rs.88,44,425/- as sales tax liability which was refunded to them in the subject assessment year by virtue of a decision of the jurisdictional High Court. The assessee claimed that it has to be kept as a contingent liability since an appeal is pending before the Hon'ble Supreme Court. The Tribunal found that as and when and if the Supreme Court decides against the assessee, the assessee would be able to claim the amount again as expenditure. We find that sufficient safeguards have been made by the Tribunal to that end and we find no reason to interfere with the directions of the Tribunal. The question stands answered against the assessee.

5. In the year 2003-04 the question is as to whether the expenditure incurred insofar as carrying out repairs of the office of the assessee should be a revenue expenditure or a capital expenditure. The

expenditure incurred was insofar as making repairs of the office building itself, by using Plaster of Paris. The same having an enduring benefit to the business of the assessee has to be treated as capital expenditure and hence we find no reason to interfere with the order of the Tribunal. The question of law raised is answered in favour of the Revenue and against the assessee.

The appeals would stand partly allowed. No order as to costs.

Sd/-
K.VINOD CHANDRAN
Judge

Sd/-
ASHOK MENON
Judge

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APPENDIX OF ITA 74/2008

PETITIONER'S/S EXHIBITS:

ANNEXURE-1	TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 2002-2003.
ANNEXURE-2	TRUE COPY OF APPELLATE ORDER DATED 11/05/2006 OF THE COMMISSIONER OF INCOME TAX (APPEALS) .
ANNEXURE-3	TRUE COPY OF ORDER DATED 18/01/2008 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.

APPENDIX OF ITA 75/2008

PETITIONER'S/S EXHIBITS:

ANNEXURE-1	TRUE COPY OF ASSESSMENT ORDER FOR THE YEAR 2003-04.
ANNEXURE-2	TRUE COPY OF APPELLATE ORDER DATED 11/5/06 OF THE COMMISSIONER OF INCOME TAX (APPEALS)
ANNEXURE-3	TRUE COPY OF ORDER DATED 18/1/2008 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.