

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE ASHOK MENON

MONDAY, THE 18TH DAY OF FEBRUARY 2019 / 29TH MAGHA, 1940

ITA.No.226 of 2014

AGAINST THE ORDER IN ITA NO.750/COCH/2013 DATED 06.06.2014  
OF I.T.A.TRIBUNAL, COCHIN BENCH, COCHIN  
[ASSESSMENT YEAR 2006-07]

APPELLANT/RESPONDENT/ASSESSEE:

M/S.COVEMA FILAMENTS LTD.,  
14B,COCHIN EXPORT PROCESSING ZONE,  
KAKKANAD, KOCHI-682030,  
REPRESENTED BY ITS DIRECTOR ADARSH DEVA.

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.JOSON MANAVALAN  
SRI.K.JOHN MATHAI  
SRI.KURRYAN THOMAS  
SRI.P.BENNY THOMAS  
SRI.P.GOPINATH (SR.)

RESPONDENT/APPELLANT/REVENUE:

COMMISSIONER OF INCOME TAX,  
C.R.BUILDINGS, I.S.PRESS ROAD, COCHIN-18.

BY SRI.JOSE JOSEPH, STANDING COUNSEL, GOI (TAXES).

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
18.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Vinod Chandran, J.

The appeal of the assessee is from the order of the Income Tax Appellate Tribunal [for brevity "the Tribunal"] for the assessment year 2006-07.

2. The first question is with respect to the unabsorbed depreciation/business loss; the lower of which was to be granted deduction while computing tax under Section 115JB of the Income Tax Act, 1961 [for brevity "the Act"]. Whether the figures are to be taken as per the books of accounts or as permissible under the Income Tax Rules; is the question raised. The Tribunal found that there is no restriction as provided under 115JB and that it has to be from the books of accounts. The issue was remanded to the Assessing Officer [for brevity "AO"] for consideration. The assessee has raised a question on this in the present appeal only because the remand report of the AO had specifically indicated the facts. In any event, the last fact finding authority, the Tribunal, having remanded the matter, holding the issue in favour of the assessee, and there is no appeal by the Revenue; we would not interfere such consideration by the AO in accordance with the order of the Tribunal. There is no question of law arising from the aforesaid issue.

3. The next issue is on the provision for interest in a Bank loan made for the earlier years; from 2000-01 to 2005-06, being permissible as a deduction under Explanation 1(i) to Section 115JB(2). On facts, it has to be noticed that the assessee's specific claim was that though the interest was shown as a provision in the earlier years, the same was disallowed under Section 43B. It is also contended that in computation of the MAT under Section 115JB, this amount was added back as an unascertained liability in the earlier years. The assessee had been communicating with the Bank as to a One Time Settlement [OTS] during the said period. Eventually in the previous year relevant to the subject year, 2006-07, the matter was settled with the Bank. The entire interest was waived by the Bank and also a portion of the principal. The interest so debited to the profit and loss account for the earlier years was, hence, debited from the reserve and credited to the profit and loss account for the subject year. The same had to be deducted under Explanation (i) to Section 115JB(2).

4. The Tribunal, however, found that the interest is an unascertained liability and ought not to have been disallowed in the earlier years. When the AO as per the remand report at Annexure-C specifically states that it is

disallowed under Section 43B, it was not proper for the Tribunal to have taken such a view. The learned Standing Counsel, Government of India (Taxes) also argues that as of now it is not clear as to whether the same was added back under Section 115JB. In such circumstances, the earlier issue having been remanded, it is only proper that the AO considers this issue also looking at the facts. However, we make it clear that the question of law raised as to whether the same was unascertained liability or ascertained liability is answered in favour of the assessee; if the same has been disallowed under Section 43B as an unascertained liability in the earlier years.

The appeal is partly allowed and the issues remanded for consideration; one in accordance with the findings of the Tribunal and the other in accordance with what has been held by this Court. Parties are left to suffer their respective costs.

Sd/-  
K.VINOD CHANDRAN  
JUDGE

Sd/-  
ASHOK MENON  
JUDGE

**APPENDIX****APPELLANT'S ANNEXURES:**

ANNEXURE A	TRUE COPY OF ORDER DATED 13.04.2009 PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX.
ANNEXURE B	TRUE COPY OF THE ORDER DATED 7.8.2013 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-II, KOCHI.
ANNEXURE C	TRUE COPIES OF THE REMAND REPORT NO.ACIT/CIR-1/(1)/REM REP1/2013-14 DATED 17.7.2013 OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), KOCHI.
ANNEXURE D	TRUE COPIES OF THE REMAND REPORT NO.ACIT/CIR-1/(1)/REM REP2/2013-14 DATED 16.8.2013 OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), KOCHI.
ANNEXURE E	TRUE COPY OF THE APPEAL MEMORANDUM NO.ITAT-24/CIT-1/CHN DATED 20.9.2010 FILED BY THE DEPARTMENT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.
ANNEXURE F	TRUE COPY OF THE WRITTEN SUBMISSIONS (WITHOUT ANNEXURES).
ANNEXURE G	TRUE COPY OF THE ORDER IN ITA NO.750/COCH/2013 (ASSESSMENT YEAR 2006-07) DATED 6.6.2014 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

Vku/-

[ true copy ]