IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 29TH DAY OF JULY 2021 / 7TH SRAVANA, 1943

ITA NO. 103 OF 2013

AGAINST THE ORDER IN ITA 378/2009 OF I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

THE COMMISSIONER OF INCOME TAX-I
COCHIN.

BY ADVS.
SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX
SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT
SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

RESPONDENT/S:

APOLLO TYRES LTD.,
6TH FLOOR, CHERUPUZHPAM BUILDING, SHANMUGHAM ROAD,
KOCHI-682031.

BY ADVS.
SRI.V.ABRAHAM MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ABRAHAM JOSEPH MARKOS
SRI.ABRAHAM VARGHESE THARAKAN
SRI.BINU MATHEW
SRI.JOSEPH MARKOSE SR.
SRI.TOM THOMAS KAKKUZHIYIL

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 29.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

S.V.Bhatti, J.

Heard learned Standing Counsel Mr. Christopher Abraham and learned Senior Counsel Mr. Joseph Markos for parties.

2. The Commissioner of Income Tax/Revenue is the appellant. M/s.Apollo Tyres Ltd., Kochi/Assessee is the respondent. The subject appeal is at the instance of Revenue from the order of Income Tax Appellate Tribunal (for short 'the Tribunal'), Cochin Bench in ITA No.378/Coch/2009 dated 24.08.2012. The appeal deals with the Assessment Year 2003-04. The following substantial questions of law are stated for consideration in this appeal:

> "1. Whether, on the facts and in the circumstances of the case and also in the light of /Section 43B of the IncomeTax Act, the Tribunal is right in allowing the deduction for the bonus in

the Asst. Year 2003-04 claimable and paid in the Assessment Year 2002-03?

2. Whether, on the facts and in the circumstances of the case and for the reasons stated in the grounds, the Tribunal is right in law allowing the claim of Rs. 2,32,93,575/- stating that it was spent for acquisition of revenue items and is allowable under Section 37 of the Act as current expenses?

3. Whether, on the facts and in the circumstances of the case the Tribunal is right in law and fact in holding that DG Power Generation Units 1 and II constituted an "undertaking" under Sec. 80 IA of the Income tax Act?

4. Whether DG Power Generation units 1 and II are entitled to the benefit of Sec. 80 1A of the Income tax Act?

3. At the hearing of appeal, question nos.3 and 4 alone are pressed for consideration. It is also stated, as a matter of fact, that the questions raised in this appeal, namely question nos. 3 and 4 are similar to the questions raised by the Revenue in ITA No. 69/2011 and ITA No.70/2011 for the Assessment Year 2002-03. On 27.02.2019 the appeals filed by the Revenue were

dismissed. Our attention has been drawn to the reasoning and conclusion recorded by this Court on similar questions framed in ITA Nos.69 and 70 of 2011.

By following the reasoning and conclusion recorded in ITA Nos.69 and 70/2011, the substantial questions of law raised as question nos.3 and 4 are answered in favour of the assessee and against the Revenue. The appeal is dismissed. No order as to costs.

Sd/-
S.V.BHATTI
JUDGE

Sd/-
BECHU KURIAN THOMAS
JUDGE

jjj

APPENDIX OF ITA 103/2013

PETITIONER ANNEXURE

ANNEXURE A	COPY OF THE ASSESSMENT ORDER U/S.143(3) PASSED BY THE ASSESSING OFFICER ON 27.3.2006 FOR AY 2003-04.
ANNEXURE B	COPY OF THE ASSESSMENT ORDER U/S.143(3) R.W.S. 147 DATED 12.12.2008.
ANNEXURE C	COPY OF CIT (A)'S ORDER DATED 25.4.2006.
ANNEXURE D	COPY OF CIT THE (A)'S ORDER DATED 30.3.2009.
ANNEXURE E	ORDER OF THE ITAT, IN ITA NO.430/COCH/2006 & 378/COCH/2009 DATED 24.8.2012.