

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE S.V.BHATTI**

**&**

**THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

**MONDAY, THE 2<sup>ND</sup> DAY OF AUGUST 2021 / 11TH SRAVANA, 1943**

**ITA NO. 87 OF 2014**

**AGAINST THE ORDER IN ITA 616/2011 OF I.T.A.TRIBUNAL,COCHIN BENCH,**

**ERNAKULAM**

**APPELLANT/S:**

THE COMMISSIONER OF INCOME TAX-II  
COCHIN.

BY ADVS.

SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT  
SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

**RESPONDENT/S:**

M/S.APPOLO TYRS LTD  
CHERUPUZHAPAM BUILDING, SHANMUGHAM ROAD, KOCHI-682 031.

BY ADVS.

SRI.V.ABRAHAM MARKOS  
SRI.V.ABRAHAM MARKOS  
SRI.ABRAHAM JOSEPH MARKOS  
SRI.BINU MATHEW  
SRI.ISAAC THOMAS  
SRI.JOSEPH MARKOSE SR.  
SRI.NOBY THOMAS CYRIAC  
SRI.TOM THOMAS KAKKUZHIYIL

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 02.08.2021,  
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.616/Coch/2011 dated 20.12.2013. The controversies canvassed in the appeal relate to the Assessment Year 2007-08.

3. The appeal deals with the controversy on availing 50% of depreciation, unavailed under Section 32(1)(iia) in the previous year, whether could be allowed in the subsequent year or not; the correctness of the order of Tribunal in setting aside the disallowance of the balance investment of the assessee amounting to

Rs.51,80,000/- in Gujarat Perstop Electornics Ltd. (GPEL); and availing deduction under Section 80-IA for the DG Power Generation Units 1 and II, treating them as 'undertaking'.

4. Substantial question nos.1 and 2 read as follows:

“1. Whether, on the facts and in the circumstances of the case and on an interpretation of Sec. 32(1)(iia) read with the second proviso the Tribunal is right in law in holding that "the balance 50% of the depreciation has to be allowed in the subsequent year" and is not the above finding against law and perverse?

2. Whether, on the Tribunal is right in law in holding that "the second proviso to section 32(1)(ii) is to mean that 10% should be allowed in the year in which the machinery is acquired and installed and the balance 10% has to be impliedly allowed in the subsequent year" and is not the above interpretation against law and the intention of the legislature?”

4.1 The circumstances leading to the disagreement between the Revenue and the assessee are not in dispute and the fact that the assessee at the first instance availed 50% of additional depreciation allowed under Section 32(1)(iia) of the Act. The assessee could avail 50% of the allowed depreciation on account of

the fact that the equipment for which depreciation was claimed was not used was not used for more than 180 days in the previous year 2006-07. Thus, the assessee claimed 10% of permissible 20% depreciation in the previous year 2006-07 and claimed balance 50%, i.e., 10% of 20%, in the Assessment Year 2007-08. The Tribunal held that there is no restriction in the Income Tax Act that balance of one-time-incentive in the form of additional sum of depreciation cannot be availed in the subsequent year.

4.2 Learned Senior Counsel appearing for the assessee refers to and relies on the judgments in *Commissioner of Income-tax, Madurai v. T P Textiles (P) Ltd.*<sup>1</sup> and *Commissioner of Income-tax, Bangalore v. Rittal India (P) Ltd*<sup>2</sup> for sustaining the view taken by the Tribunal. It is also argued that the clarificatory amendment made to Section 32(1)(ii) with effect from 01.10.2016 supports the deduction claimed by the assessee. The amendment, no doubt, was introduced with effect from 01.10.2016, is a clarificatory amendment. The decisions

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1 (2017) 79 taxmann.com 411 (Madras)

2 (2016) 66 taxmann.com 4 (Karnataka)

relied on by the assessee are directly on the point and we are in full agreement with the view taken by the Madras and Karnataka High Courts. The propositions stated in the reported judgment applies in all fours. By following the reasons and principles laid down in *T P Textiles (P) Ltd.* and *Rittal India (P) Ltd* (supra), question nos.1 and 2 are answered against the Revenue and in favour of the assessee.

5. Counsel appearing for the parties, after taking note of substantial question nos.3(a) and 3(b), suggested to the Court for reframing the questions and the reframed question reads as follows:

“3. Whether on the facts and circumstances of the case the Appellate Tribunal is right in setting aside the Order of the Assessing Officer disallowing the balance investment of the Appellant amounting to Rs.51,80,000/- in Gujarat Perstop Electronics Ltd. (GPEL)”

5.1 The reframed question has bearing on the view expressed by this Court on a similar question stated in the Assessment Year 2002-03 and the judgment is reported in

*Commissioner of Income-Tax v. Apollo Tyres Ltd*<sup>3</sup> . Point no.3 in the reported judgment deals with these aspects of the matter and by following the judgment in *Apollo Tyres Ltd (supra)*, the question is answered in favour of the assessee and against the Revenue.

6. Substantial question nos.4 and 5 read thus:

“4. 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. 801A of the Income tax Act?

5. Whether DG Power Generation units I and II are entitled to the benefit of Sec. 801A of the Income Tax Act?”

6.1 It is also stated, as a matter of fact, that the questions raised in this appeal, namely question nos.4 and 5 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.

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3 (2019) 419 ITR 100

By following the reasoning and conclusion recorded in ITA Nos.69 and 70/2011, the substantial questions of law raised as question nos.4 and 5 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

APPENDIX OF ITA 87/2014

PETITIONER ANNEXURE

ANNEXURE A

COPY OF THE ASSESSMENT ORDER U/S.143(3) RWS 144C DATED 21/10/2011 PASSED BY THE ASSESSING OFFICER FOR AY 2007-08.

ANNEXURE B

COPY OF THE ITAT'S ORDER NO.616/COCH/2011 DATED 20/12/2013.