



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

FRIDAY, THE 31ST DAY OF OCTOBER 2025 / 9TH KARTHIKA, 1947

ITA NO. 63 OF 2024

APPELLANT:

M/S. APOLLO TYRES LTD.,
3RD FLOOR, AREEKAL MANSION, NEAR MANORAMA JUNCTION,
PANAMPILLY NAGAR, KOCHI PAN - AAACA6990Q, PIN - 682036.

BY ADVS.
SHRI.ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ISAAC THOMAS
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.JOHN VITHAYATHIL
SRI.P.G.CHANDAPILLAI ABRAHAM

RESPONDENT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
OFFICE OF THE COMMISSIONER OF INCOME TAX, 6TH,
KANDAMKULATHY TOWERS, ERNAKULAM KOCHI, PIN - 682018.

BY SRI.JOSE JOSEPH, STANDING COUNSEL

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 31.10.2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Harisankar V. Menon, J.

The appellant, an assessee under the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), had claimed deduction under the provisions of Section 32AC of the Act for the assessment year 2014-15 as regards the new assets acquired and installed during the financial year 2013-14 relevant to the assessment year concerned. The appellant contends that the Assessing Officer (hereinafter referred to as 'AO') had raised various queries as regards the claims made in the returns, and one such query was the eligibility for deduction under Section 32AC of the Act. The appellant points out to Annexures C and D, letters dated 12.12.2017 and 15.12.2017, explaining the position, on account of which AO did not proceed further as regards the claim made under Section 32AC of the Act, thereby accepting the same; as evidenced by Annexure A, the assessment order dated 23.10.2018. The respondent herein later sought to invoke the



suo motu revisional power under Section 263 of the Act, since according to him, a major portion of the assets purchased were prior to 01.04.2013, which was omitted to be noticed by AO while allowing the claim made by the appellant. Rejecting the explanations offered by the appellant-assessee, the respondent herein issued Annexure G order dated 29.03.2021, concluding that AO has incorrectly assumed the facts of the case and incorrectly applied the law to the case at hand. It is further held that the assessment order reflects total non-application of mind and enquiry. Hence, the assessment order is *set aside* for *de novo* examination and for the passing of a speaking order in accordance with law. The appeal against the afore order instituted by the appellant-assessee is rejected by the Income Tax Appellate Tribunal, Cochin Bench, by Annexure I order dated 10.05.2024. It is in such circumstances that the appellant-assessee has instituted the captioned appeal.

2. The following questions arise for our consideration in this appeal:



- i. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the Commissioner was justified in invoking the revisionary jurisdiction under Section 263 of the Income Tax Act?
- ii. Whether on the facts and in the circumstances of the case and in the light of the assessment proceedings, there was any evidence or material before Appellate Tribunal to justify its finding that the Assessing Officer has not made any enquiry with respect to the issue in question, and therefore the Commissioner was justified in invoking the jurisdiction under Section 263 of the IT Act?

3. Heard Sri.Joseph Markose, the learned senior counsel for the appellant–assessee, and Sri.Jose Joseph, the learned Standing Counsel for the respondent - revenue.

4. The assessee, as noticed earlier, had claimed the benefits under Section 32AC of the Act. Section 32AC provides for deductions with respect to investments made by a company in “new plant or machinery” after 31.03.2013 but before 01.04.2015, provided the aggregate amount of actual cost of new assets exceeding Rs. 100 Crores, in the manner



prescribed thereunder. A perusal of Annexure C clarification provided by the assessee, upon which much reliance is placed by it, shows that the assessee was required to provide clarifications as regards its claim under section 32AC of the Act by AO and that the assessee has provided the same also with specific reference to the statute and the investments made by it. The question of exercising the *suo moto* revisional power under Section 263 of the Act arises only when the order is both “erroneous” and “prejudicial to the interests of the revenue”.

5. The *suo motu* steps have been initiated, as noticed earlier, since a major portion of the purchases entitling the deduction were made prior to the cut-off date (01.04.2013). However, the proviso to Section 32AC(1A) of the Act provided for extension of the benefits with reference to the year in which the “installation” has taken place of the assets, as rightly contended by the learned senior counsel for the assessee. The Tribunal has also, in paragraph 5.2 of its order, noticed the above, with particular emphasis on the above



proviso, however, not providing any finding as regards its applicability.

6. Therefore, on the face of the afore provisions and the explanations provided by the assessee to the AO as borne out of the letter dated 12.12.2017 (Annexure C), we are of the opinion that it cannot be said that there was no inquiry/verification by the AO before he passed the assessment order dated 23-10-2018 (Annexure A).

7. The Apex Court in **Principal Commissioner of Income-Tax v. V-con Integrated Solutions Pvt. Ltd. [(2025) 476 ITR 526]** has held as under:-

"3. The assessee does not have control over the pen of the Assessing Officer. Once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.

4. In such cases, it would be wrong to say that the Revenue is remediless. The power under section 263 of the Income-tax Act, 1961, can be exercised by the Commissioner of Income-tax, but by going into the merits and making an addition, and not by way of a remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation



and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by the Commissioner of Income-tax with a decision on the merits and by making an addition or disallowance.”

Thus, merely for the reason that AO extended the deduction claimed after carrying out investigations, exercise of the power under Section 263 of the Act is not required. At worst, the revisional authority can correct the error, if any, committed by the AO, by holding that the extension of the benefit of deduction was erroneous, with reference to the purchase of the assets during the previous years. The authority could also consider the issue as to the applicability of the proviso to Section 32AC(1A), introduced by the Finance Act, 2016, with only a prospective effect, as not applicable for the year under assessment. True, the learned senior counsel for the assessee has a case that the said amendment, being clarificatory in nature, should have retrospective operation. However, since there was no consideration of the afore aspect at the hands of the respondent herein, we refrain from rendering any finding thereon.



8. Thus, we are of the opinion that the Tribunal went wrong in confirming the exercise of the *suo motu* revisional power in the case at hand. In view of the law laid by the Apex Court in **V-con Integrated Solutions Pvt. Ltd.** (*supra*), we are of the opinion that the matter requires to be remitted to the respondent (revisional authority) for *de novo* disposal.

Resultantly, this appeal would stand allowed by setting aside the impugned order of the Tribunal and remitting the matter to the respondent/Principal Commissioner of Income Tax, for fresh disposal in accordance with law, after affording the assessee an effective opportunity of being heard.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

Sd/-
HARISANKAR V. MENON
JUDGE

In



APPENDIX OF ITA 63/2024

APPELLANT'S ANNEXURES:

- ANNEXURE A** TRUE COPY OF THE ASSESSMENT ORDER DATED 23.10.2018 FOR ASSESSMENT YEAR 2014-15.
- ANNEXURE B** TRUE COPY OF THE RELEVANT PAGES OF TAX AUDIT REPORT IN FORM 3CA DATED 27.11.2014.
- ANNEXURE C** TRUE COPY OF THE LETTER DATED 12.12.2017 SENT BY THE APPELLANT TO THE ASSESSING OFFICER.
- ANNEXURE D** TRUE COPY OF THE LETTER DATED 15.12.2017 SENT BY THE APPELLANT TO THE ASSESSING OFFICER.
- ANNEXURE E** TRUE COPY OF NOTICE DATED 15.03.2021 ISSUED BY THE RESPONDENT.
- ANNEXURE F** TRUE COPY OF THE REPLY DATED 25.03.2021 FILED BY THE APPELLANT BEFORE THE RESPONDENT.
- ANNEXURE G** TRUE COPY OF THE ORDER DATED 29.03.2021 OF THE RESPONDENT.
- ANNEXURE H** TRUE COPY OF THE APPEAL DATED 06.05.2021 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.
- ANNEXURE I** CERTIFIED COPY OF THE IMPUGNED ORDER DATED 10.05.2024 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH