

Cit Vs. Kalpetta Estates Ltd.

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Court : Kerala

Decided On : Nov-07-2003

Reported in : [2004]135TAXMAN413(Ker)

Appeal No. : I.T. Appeal No. 48 of 2000 7 November 2003

Appellant : Cit

Respondent : Kalpetta Estates Ltd.

Advocate for Pet/Ap. : P.K.R. Menon and George K. George, *for the Revenue*
Anil D. Nair, *for the Assessee*

Judgement :

K.S. Radhakrishnan, J.

This appeal is preferred by the Commissioner of Income Tax, Trivandrum. The following questions of law have been came up for consideration :

1. Whether on the facts and in the circumstances of the case, is the assessee entitled to carry forward and set off Rs. 1,73,242 being the difference between the income computed under section 115J of the Income Tax Act and that computed under the normal provisions of assessment for assessment year 1990-91 against the income for assessment year 1991-92 ?

2. Whether on the facts and in the circumstances of the case, is there any provision under the Income Tax Act under which the assessee could carry forward and set off the income determined under section 115J of the Income Tax Act

2. When the matter came up for hearing either sides submit that the question has been dealt with by the Apex Court in Karnataka Small Scale Industries Development Corpn. Ltd. v. CIT (2002) 258 ITR 770. The Apex Court in Karnataka Small Scale Industries Development Corpn. Ltd.'s case (supra) affirmed the decision of the Karnataka High Court in Widia (India) Ltd v. CIT : [2000]242ITR678(KAR) . Referring to the various circulars issued by the department and after examining the scope of section 115J of the Income Tax Act the apex court held that section 115J involves two processes. Firstly, an assessing authority has to determine the income of the company under the provisions of the Income Tax Act. Secondly, the book profit is to be worked out in accordance with the Explanation to section 115J(1) and it is to be seen whether the income determined under the first process is less than 30 per cent of the book profit. It was noticed that section 115J would be invoked if the income determined under the first process is less than 30 per cent of the book profit. The explanation to sub-section (1) of section 115J gives the definition of 'book profit' by incorporating the requirement of section 205 of the Companies Act in the computation of the book profit. Considering the various other decisions, ultimately, the apex court held that all that section 115J(2) does is to carry forward the balance of the unabsorbed deductions in the relevant previous year to the next year. The court held that section 115J allows only the unabsorbed losses, depreciation, investment allowances etc. which could otherwise have been carried forward to be carried forward. The court held that the allowances need not have been quantified under sub-section (1) of section 115J to be carried forward under sub-section (2). This being the legal position, we are inclined to allow the appeal and the appeal is answered in favour of the revenue and against the assessee. Order be communicated to the Tribunal.

The appeal is allowed as above.