2024:KER:58694

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946

ITA NO. 325 OF 2019

AGAINST THE ORDER/JUDGMENT DATED 18.06.2019 IN ITA NO.115 OF 2019 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/APPELLANT/RESPONDENT/REVENUE

THE PRINCIPAL COMMISSIONER OF INCOME -TAX THIRUVANANTHAPURAM

BY ADV SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE

KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD KESTON ROAD, KOWDIAR, TRIVANDRUM-695 003 (PAN AAACK9434D)

BY ADVS.
SRI.T.M.SREEDHARAN (SR.)
SMT.NISHA JOHN
SRI.V.P.NARAYANAN
SMT.DIVYA RAVINDRAN
SRI.R.BHASKARA KRISHNAN

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 05.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J U D G M E N T

Dr. A.K.Jayasankaran Nambiar, J.

It is agreed by both sides that the issue as to whether in the context of Section 36(1)(viii) and Section 41(4A) of the Income Tax Act ('the Act' for short), a withdrawal from a special reserve, in respect of which a deduction had been allowed under Section 36(1)(viii) of the Act, would attract the provisions of Section 41(4A) of the Act, so as to deem the withdrawn amount as profits and gains of business or profession, has been decided by this Court in the judgment dated 05.04.2019 in I.T.Appeal No.69 of 2014 and connected cases, wherein this Court found in favour of the assessee in almost similar circumstances. In that case, it was also observed that the question as to whether the assessee had withdrawn any amount from the special reserve created and maintained during the relevant year, was more a question of fact and not a substantial question of law for the purposes of maintaining an I.T. Appeal before this Court.

Following the said judgment of this Court

therefore, we dismiss the I.T.Appeal preferred by the revenue by finding that it does not raise any substantial question of law to be considered by this Court.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE

smm

APPENDIX OF ITA 325/2019

PETITIONER ANNEXURES

ANNEXURE A	**TRUE COPY OF THE ORDER U/S 143(3) R.W.S. 263 OF THE INCOME TAX ACT, 1961 OF THE ASSESSING OFFICE FOR THE AY 2010-11 DATED 11/03/2016.**
ANNEXURE B	**TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) TRIVANDRUM DATED 30/11/2018.**
ANNEXURE C	**TRUE COPY OF THE ORDER OF THE ITAT IN IT NO. 115/COCH/2019 FOR THE AY 2010-11 DATED 18/06/2019.**