2026 INSC 359

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7796 OF 2012

ASPINWALL AND CO. LTD. … Appellant (s)

VERSUS

INSPECTING ASSISTANT COMMISSIONER … Respondent(s)

WITH

CIVIL APPEAL NO. 6617 OF 2019

CIVIL APPEAL NO. 13454 OF 2015

CIVIL APPEAL NO. 13455 OF 2015

CIVIL APPEAL NO.19865 OF 2017

J U D G M E N T

Rajesh Bindal, J.

1. This order will dispose of five appeals.

FACTS OF THE CASES

2. In Civil Appeal No.7796 of 2012 challenge is to the order dated 23.09.2011 passed by the High Court[1] in OTC No.3 of 2011 whereby order dated 22.03.2011 passed in AITA Nos.2/2010 by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal[2], Addl. Bench, Ernakulam, was upheld.

2.1 In Civil Appeal No.19865 of 2017 challenge is to the order dated 27.07.2017 passed by the High Court in OTC No.11 of 2013 wherein order dated 30.11.2012 passed in AITA No.1/2011 by the Tribunal, was upheld.

2.2 In Civil Appeal No.13454 of 2015 challenge is to the order dated 27.07.2015 passed by the High Court in OTC No.1 of 2015 wherein order dated 19.02.2015 passed in AITA Nos.2 & 3 /2012 by the Tribunal, was upheld.

2.3 In Civil Appeal No.13455 of 2015 challenge is to the order dated 27.07.2015 passed by the High Court in OTC No.2 of 2015 wherein order dated 19.02.2015 passed in AITA Nos. 2 & 3/2012 by the Tribunal, was upheld.

2.4 In Civil Appeal No.6617 of 2019 challenge is to the order dated 24.05.2019 passed by the High Court in OTC No.1 of 2019 wherein order

[1] High Court of Kerala at Ernakulam

[2] Hereinafter referred to 'Tribunal'

dated 30.08.2018 passed in AITA Nos.2-4/2016 by the Tribunal, was upheld.

3. All the appeals are being taken up together, as common questions of fact and law are involved in these appeals. Facts are being noticed from Civil Appeal No.7796 of 2012.

4. A company named 'Pullangode Rubber & Produce Co. Ltd.[3] was amalgamated with the appellant company[4]. The scheme of amalgamation was sanctioned in November 2006. The appointed date was fixed as 01.01.2006. As there were accumulated losses in the balance sheet of amalgamating company, the issue is, as to whether the same could be claimed as a set-off against the income of the amalgamated company.

5. The argument raised by Mr. S. Ganesh, learned senior counsel for the appellant is that in terms of the provisions of Section 54 of the Kerala Agricultural Income Tax Act, 1991[5], the amalgamated company as successor of the amalgamating company shall be entitled to set-off of the losses suffered. In terms of Section 12 of the Kerala Act, the losses suffered by an assessee can be carried forward for a period of 8 years for set-off against the income of subsequent years. Relying upon the

[3] Hereinafter referred to 'amalgamating company'
[4] Hereinafter referred to 'amalgamated company'
[5] Hereinafter referred to 'the Kerala Act'

judgment of this Court in ***Dalmia Power Ltd. and Another v. Assistant Commissioner of Income-Tax***[6]***,*** it was submitted that once the scheme of amalgamation is approved, all the clauses contained therein stand approved. The rights of the parties flow therefrom. In the aforesaid judgment, no objection was raised by the Income Tax Department to various clauses of the scheme. Hence, the same were held to be binding. In the case in hand as well, no objection was raised to the scheme of amalgamation. Clause 14(2) thereof clearly provides for set-off of losses incurred by amalgamating company against the profits of the amalgamated company. The findings recorded by the High Court in the impugned order are erroneous and are totally contrary to the law laid down in ***Dalmia Power Ltd.'s case (supra).*** In fact, the judgment of the High Court was delivered prior to the judgment of this Court in the aforesaid case. The prayer is for setting aside the judgment of the High Court and allowing the appellant's claim for setting off accumulated losses of the amalgamating company with the profits of the amalgamated company.

6. In response, Mr. Pallav Shishodia, learned senior counsel appearing for the respondent submitted that reliance on the judgment of this Court in ***Dalmia Power Ltd.'s case (supra)*** is totally misplaced. The core argument raised by the appellant, is that once the scheme of

[6] 2019 INSC 1410 : (2020) 420 ITR 339

amalgamation has been approved with no objection raised by the respondents therein, the terms and conditions contained therein have to be given full effect thereto. It was submitted that in the aforesaid case, this Court has specifically noticed that despite notice, the Income Tax Department had not raised any objection to any of the terms contained in the scheme of amalgamation whereas in the case in hand, State of Kerala was never issued noticed during the process of amalgamation.

6.1 It was further submitted that in terms of provisions of the Section 12 of Kerala Act, set-off of accumulated losses can be claimed only by the assessee who suffered the losses. As the appellant/amalgamated company had not suffered those losses, no set-off can be claimed. In any case, in ***Dalmia Power Ltd.'s case (supra)***, the only issue was regarding filing of returns which was allowed. The issue on merit regarding entitlement of the relief was not gone into. Even as per the conditions laid down in the scheme of amalgamation, especially Clause 17.1, the amalgamating company stands dissolved without winding up. Meaning thereby, the assessee under the Kerala Act, who had suffered the losses, is no longer in existence to claim any set-off.

6.2 Mr. Pallav Shishodia, learned senior counsel for the respondent further submitted that the language of Section 72A of the

Income Tax Act, 1961[7] is altogether different when compared with the provisions of the Kerala Act. Section 2(7) of the Kerala Act defines an assessee. Section 2(20) defines a person whereas Section 3 thereof is the charging section. Section 12 thereof deals with carry forward of losses, whereas Section 48 deals with legal representatives of a person who dies. Section 54, which talks about succession of a business, also does not come to the rescue of the appellant as nothing contained therein provides that amalgamated company/appellant can claim set-off of the losses suffered by amalgamating company. Proviso to the aforesaid section provides that if there is any existing tax demand against the amalgamating company, the same can always be recovered from successor, namely, the amalgamated company, but no other benefit accrues. Sections 57 to 59 of the Kerala Act deal with the assessment of a person transferring property, assessment in case of discontinued business of a company, firm or association and assessment of the firm/association which has been dissolved or has discontinued its business. Section 60 of the Kerala Act deals with a case where a company is in liquidation.

6.3 As the amalgamating company has ceased to exist, the appellant cannot claim any set-off of the losses suffered by it. In support

[7] Hereinafter referred to 'the 1961 Act'

of the arguments, reliance was placed upon the judgment of this Court in ***General Radio & Appliances Co. Ltd. v. M.A. Khader,***[8] ***Saraswati Industrial Syndicate Ltd. v. CIT***,[9] ***Singer India Limited v. Chander Mohan Chadha and Others,***[10] ***CIT v. Maruti Suzuki (India) Ltd.***,[11] and ***Religare Finvest Ltd. v. State (NCT of Delhi)***.[12]

6.4 He further referred to the impugned order dated 23.09.2011 passed by the High Court where a specific finding has been recorded that the losses for which the set-off is sought to be claimed by the appellant/amalgamated company pertains to a period beyond 8 years, which otherwise also is not permissible in terms of Section 12 of the Kerala Act.

7. Heard learned counsel for the parties and perused the relevant referred record.

8. The provisions of the Kerala Act which are relevant for consideration of the arguments raised by learned counsel for the parties are extracted below:

> "**Section 2. Definitions. – In this Act unless the context otherwise requires**,

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[8] 1986 INSC 85 : (1986) 2 SCC 656

[9] 1990 INSC 266 : 1990 Supp SCC 675

[10] 2004 INSC 447 : (2004) 7 SCC 1

[11] 2019 INSC 815 : (2020) 18 SCC 331

[12] 2023 INSC 819 : (2024) 1 SCC 797

x x x

(7) “assessee” means a person by whom any tax or any other sum of money is payable under this Act, and includes:

(i) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person; or of the amount of refund due to him or to such other person;

(ii) every person who owns or possesses any land in which any crop is grown, the agricultural income of which is liable to tax under the provisions of this Act either on his own account or on account of others;

(iii) every person who is deemed to be an assessee under any provision of this Act;

(iv) every person who is deemed to be an assessee in default under any provision of this Act;

(20) “person” means any individual or association of individuals owning, possessing or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, possessor, trustee, receiver, common manager, administrator or executor or any capacity and includes a firm or a company, an association of individuals, whether

incorporated or not, and any institution capable of holding property;

x x x

Section 3. Charge of agricultural income tax.- (1) Tax at the rate or rates specified in the Schedule to this Act shall be charged for each assessment year in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person.

Provided that no tax shall be charged on any person other than a company registered under the Companies Act, 1956 (Central Act 1 of 1956) with effect from 1st April, 2013.

x x x

Section 12. Carrying forward of loss. –

Where any person sustains a loss as a result of computation of agricultural income any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly set off, the amount of loss not so set off, shall be carried forward to the following year and so on, but no loss shall be carried forward for more than eight years.

x x x

Section 48. Legal Representative:-

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay under this Act if he had not

died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, re-assessment or recomputation under chapter VII), of the agricultural income of the deceased and for the purpose of levying any sum at the hands of the legal representative in accordance with the provisions of sub-section (1)

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly,

(3) The legal representative of the deceased shall for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative, if, while his liability for tax remains undercharged, he creates a charge on or disposes of or parts with any assets of the estate of the

deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with in respect of these assets.

(5) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) be limited to the extent to which the assets of the deceased is capable of meeting the liability.

x x x

Section 54. Succession to business:-

Where a person carrying on any business in the course of which agricultural income is received, has been succeeded in such capacity by another person, such person and such other person, shall each be assessed in respect of his actual share of the agricultural income of the previous year:

Provided that when the persons succeeded in the business cannot be found, the assessment of the agricultural income or the year in which the succession took place upto the date of succession, and for the years preceding that year shall be made on the person succeeding him, in like manner and to the same extent, as it would have been made on the person succeeded or when the tax in respect of the assessment made for such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding and such person

shall be entitled to recover from the person succeeded the, amount of any tax so paid.

AND

Income Tax Act, 1961

"Section 72A. Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

(1) Where there has been an amalgamation of—

(a) a company owning an industrial undertaking or a ship or a hotel with another company; or

(b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or

(c) one or more public sector company or companies with one or more public sector company or companies; or

(d) an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the previous year in which the restriction

on amalgamation in the share purchase agreement ends,]then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly:

Provided that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be the loss or, as the case may be, the allowance for unabsorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment.

Explanation.—For the purposes of clause (d),—

(i) "control" shall have the same meaning as assigned to in clause (27) of section 2 of the Companies Act, 2013 (18 of 2013);

(ii) "erstwhile public sector company" means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government;

(iii) "strategic disinvestment" means sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below fifty-one per cent along with transfer of control to the buyer."

9. From a perusal of the aforesaid provisions it is evident that Section 2(7) defines an assessee to mean a person liable to pay tax under the Kerala Act. Section 2(20) defines a person to mean an individual etc. owning, possessing or holding property which includes a corporate as well. Section 3 of the Kerala Act, which is the charging Section, provides for charging of tax as per the rates prescribed in the aforesaid Act on the agricultural income. Section 12 of the Kerala Act enables any person to carry forward any loss sustained in any year for set-off against the income of subsequent years. Such loss can be carried forward for a maximum period of 8 years. Section 48 of the Kerala Act provides that in case, a person dies, his legal representatives shall be liable to pay tax, which the deceased would have been liable to pay under the aforesaid Act, if he had not died. Any proceedings for the purpose can be against the legal heirs

of such deceased person, who shall be deemed to be an assessee under the aforesaid Act.

9.1 Section 54 of the Kerala Act deals with succession to business. It provides that where a person carrying on any business has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of their actual share of agricultural income in the previous year. Proviso to the aforesaid section provides that in case a person who succeeded cannot be found, action can be taken against a person who is succeeding such person. The succeeding person is liable to pay tax, if any, due from the succeeded person.

9.2 Section 60 of the Kerala Act deals with the status of a company in liquidation. In terms thereof, a liquidator of a company, being wound up under order of the court or otherwise, has to issue notice to the Agricultural Income Tax Officer, who in turn has to specify to him, the amount of tax due under the aforesaid Act.

9.3 Section 72A of the 1961 Act deals with carry forward and set off of accumulated losses and unabsorbed depreciation allowance in the cases of amalgamation or demerger. The provision, starting with a non-obstante clause, clearly provides that accumulated losses and unabsorbed depreciation of the amalgamating company shall be deemed

to be loss or as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which amalgamation was effected.

10. Learned counsel for the appellant has placed heavy reliance upon Clause 14.2 of the scheme of amalgamation. The same is extracted below:

> *"Clause 14.2. With effect from the Appointed Date, all the profits or Income accruing or arising to PRPL or expenditure or losses arising or incurred by PRPL shall, for all purposes, be treated as and shall deemed to accrue as the profits or income or expenditure or losses, as the case may be, of Aspinwall & Co."*

11. The fact which was not disputed by learned senior counsel for the appellant at the time of hearing is that no notice of amalgamation proceedings was issued to the State of Kerala to raise objection with reference to any terms referred to with the amalgamation scheme.

12. Section 394-A of the Companies Act, 1956[13] makes it mandatory on the Tribunal to issue notice in every application filed under Sections 391 or 394 to the Central Government and any objections raised

[13] Hereinafter referred to as '1956 Act'

are to be considered. Section 394 of the aforesaid Act talks about amalgamation of the companies. The Ministry of Corporate Affairs, Government of India, had issued a Circular dated 15.01.2014 bearing F.No.2/1/2014 providing that while responding to the notices issued to the Government under Section 394-A, the Regional Director shall invite specific comments from the Income Tax Department within 15 days. If no response is received from the Income Tax Department during the aforesaid period, it may be presumed that the Income Tax Department has no objection to the action proposed under Section 391 or 394, as the case may be. It is in the light of the aforesaid provision and the circular that the comments of the Income Tax Department are mandatory. The judgment of this Court in ***Dalmia Power Ltd.'s case (supra)*** is dealing with a case under the Companies Act, 2013 where similar provision is contained in Section 230(5) specifically and in Rule 8(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. There is a specific finding recorded in the aforesaid judgment that despite notice, Income Tax Department did not raise any objection, within the stipulated time, to the scheme, as proposed. The same was approved. As the scheme was approved, all terms and conditions contained therein stood approved and could be acted upon.

13. The facts in the present case are distinguishable. Neither there is any statutory requirement for issuing notice to the State Government before any scheme of amalgamation is approved by the Court under the 1956 Act nor such notice was issued. Hence, to state that the judgment in ***Dalmia Power Ltd.'s case (supra)*** covers the case of the appellant, is misconceived and deserves to be rejected. Ordered accordingly.

14. Learned counsel for the appellant has not been able to refer to any provision under the Kerala Act in terms of which the losses suffered by amalgamating company can be set-off against the income of the amalgamated company. His main reliance was only on the Clause 14.2 in the scheme of amalgamation. The argument addressed with reference thereto has already been dealt with in the previous paragraphs and rejected.

15. There is another finding on facts recorded by the High Court in the impugned order dated 23.09.2011 dealing with the Assessment Year 2006-07, i.e. that the loss of the amalgamating company/Pullangode Rubber & Produce Co. Ltd. pertained to a period beyond 8 years. Assessment years in all other appeals are subsequent to that. Hence, in terms of Section 12 of the Kerala Act the appellant/Aspinwall and Co. Ltd. will not be entitled to any set-off. It is a case wherein the appellant had

lost in all fora. To challenge the aforesaid findings of fact recorded by the High Court in the impugned order, no specific ground has been raised in the petitions filed before this Court.

16. For the reasons mentioned above, we do not find any merit in the present appeals. The same are accordingly dismissed. There shall not be any order as to costs.

17. Pending application(s), if any, shall also stand disposed of.

……..……..J.
(RAJESH BINDAL)

……..……..J.
(VIJAY BISHNOI)

New Delhi;
April 13, 2026.