



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 21ST DAY OF OCTOBER 2025 / 29TH ASWINA, 1947

ITA NO. 55 OF 2024

AGAINST THE ORDER DATED 09.02.2024 IN ITA NO.661/COCH/2022(A.Y.2016-17) OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT IN ITA/ASSESSEE:

STERLING FARM RESEARCH AND SERVICES PVT. LTD.,
29/2469 C2, STERLING HOUSE, PETTAH, POONITHURA S.O.,
ERNAKULAM, PIN - 682038.

BY ADVS.
SRI.KURYAN THOMAS
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN

RESPONDENT/RESPONDENT IN ITA/REVENUE:

THE COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, OLD RAILWAY STATION ROAD,
KOCHI, PIN - 682018.

BY SRI.JOSE JOSEPH, STANDING COUNSEL

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 21.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Harisankar V. Menon, J.

This appeal, at the instance of an assessee under the provisions of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), questions the *suo motu* revisional steps under Section 263 of the Act (Annexure G) as confirmed by the impugned order in I.T.A No.661/COCH/2022 dated 09.02.2024 (Annexure M) of the Income Tax Appellate Tribunal. The assessment year concerned is 2016-17, relevant to the financial year 2015-16.

2. The appellant had two units/divisions – 'Fertilizer Division' and 'Test House Division', out of which, the Test House Division was sold as a case of 'slump sale' with reference to the provisions of Section 50B of the Act. A return was also presented in that fashion. Steps under Section 143(3) of the Act were taken, and by Annexure E order dated 20.12.2018, the same was finalised. It is worthwhile to notice the following



observations made in Annexure E assessment order:

“6. During the year under consideration assessee has sold various assets of the company and produced supporting documents for income from Capital Gain declared. All the documents/materials produced are verified.”

Later, Annexure F notice under Section 263 of the Act dated 15.10.2020 was issued proposing to *set aside* the assessment order referred to above, to which the appellant-assessee sought to file objections placing reliance on the afore observations, in support of its contention that proper adjudication has been carried out in the matter by the assessing authority. The Commissioner, by Annexure G order dated 24.11.2020, however, found that the Assessing Officer has not enquired into the entire aspects of the matter and has merely completed the assessment, accepting the stand taken by the assessee, which is an incorrect assumption of facts. The appeal against the afore order is rejected by the Tribunal by the impugned order at Annexure M. It is in such circumstances that the captioned appeal is filed by the appellant-assessee



under Section 260A of the Act.

3. We have heard Sri.Kuryan Thomas, the learned counsel for the appellant-assessee, and Sri.Jose Joseph, the learned Standing Counsel for the respondent.

4. The main contention urged on behalf of the appellant-assessee is with reference to the very invocation of the power under Section 263 of the Act, with reference to the enquiry carried out by the assessing authority, as is discernible from paragraph 6 of the assessment order referred to earlier.

5. In this connection, we notice the reasons pointed out for initiation of steps under Section 263 of the Act as recorded in the show cause notice at Annexure F as confirmed by the final order at Annexure G. The very question as to whether the transaction – sale is to be considered as a case of “slump sale” under Section 50B of the Act *qua* the provisions of Section 50 of the Act as per which the same is to be treated as a case of short term capital gain; does not appear to have been addressed by the assessing authority while issuing Annexure E



order under Section 143(3) of the Act. True, the assessment order makes reference to certain documents/materials produced by the appellant-assessee. However, there is no adjudication with reference to the provisions of the statute in the afore assessment order. In **Malabar Industrial Co. Ltd v. Commissioner of Income Tax, Kerala State [(2000) 2 SCC 718]**, the Apex Court has categorically found that in a situation where the Commissioner is satisfied as regards the existence of the twin conditions - the assessment order being erroneous and prejudicial to the interest of revenue - power under Section 263 of the Act can be exercised. Elaborating further, the Apex Court held that if the assessing authority accepts the case of the assessee, without any enquiry, exercise of the jurisdiction under Section 263 of the Act was justified.

6. With reference to the touchstone of the principles laid down in the afore judgment, we note that since the assessment order does not appear to have addressed the issue with reference to the competing provisions, exercise of the power



under Section 263 of the Act was justified. In the light of this, we find no reason to interfere with the impugned order of the Tribunal.

7. At this juncture, we take note of the submission made by the Sri.Kuryan Thomas, the learned counsel, with reference to subsequent completion of the assessment pursuant to the directions issued by the revisional authority by adopting the reasonings contained in Section 263 order as concluding the issue, which, when pointed out before the Tribunal, the Tribunal, after finding the said course as “unfortunate”, brushed aside the same as a subsequent development. However, we note that any observation made by the Commissioner in his order under Section 263 of the Act will not preclude the appellant-assessee from making submissions before the assessing authority in accordance with law and the assessing authority or the appellate authority before whom the appeal against the revised assessment is stated to be pending, would have to consider the legality or otherwise of the



respective contentions in accordance with law.

With the above clarification regarding the findings in Annexure G order, as confirmed by the Tribunal, we dismiss this appeal.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

In

APPENDIX OF ITA 55/2024**APPELLANT'S ANNEXURES:**

- ANNEXURE -A** THE TRUE COPY OF THE DIVISION WISE BALANCE SHEET AS ON 31ST MARCH, 2016 AND THE CONSOLIDATED BALANCE SHEET ALONG WITH PROFIT AND LOSS ACCOUNT AND SCHEDULES OF THE APPELLANT COMPANY AS ON 31ST MARCH, 2016.
- ANNEXURE -B** A TRUE COPY OF THE AGREEMENT DATED 21.05.2015 ENTERED INTO BETWEEN THE APPELLANT AND NEOGEN.
- ANNEXURE-C** A TRUE COPY OF THE ADDENDUM TO ANNEXURE-B AGREEMENT DATED 10.08.2015.
- ANNEXURE -D** A TRUE COPY OF THE ADDENDUM TO ANNEXURE-B AGREEMENT DATED 19.07.2016.
- ANNEXURE-E** A TRUE COPY OF THE ASSESSMENT ORDER DATED 20.12.2018 PASSED BY THE ASSESSING AUTHORITY UNDER SECTION 143(3) OF THE ACT.
- ANNEXURE-F** A TRUE COPY OF THE NOTICE DATED 15.10.2020 ISSUED BY THE PRINCIPAL COMMISSIONER OF INCOME, KOCHI ON THE APPELLANT.
- ANNEXURE-G** A TRUE COPY OF THE ORDER DATED 24.11.2020 PASSED BY THE PRINCIPAL COMMISSIONER OF INCOME TAX, KOCHI-1, UNDER SECTION 263 OF THE INCOME TAX ACT.
- ANNEXURE-H** A TRUE COPY OF THE ORDER DATED 23.03.2022 PASSED BY THE ASSESSING AUTHORITY UNDER SECTION 143(3) READ WITH SECTION 263 OF THE ACT, PURSUANT TO ANNEXURE-G ORDER OF THE PRINCIPAL COMMISSIONER ALONG WITH THE COMPUTATION SHEET AND THE DEMAND NOTICE.
- ANNEXURE-I** A TRUE COPY OF THE APPEAL MEMORANDUM DATED 28.05.2022 (WITHOUT ANNEXURES) FILED BY THE APPELLANT BEFORE THE APPELLATE TRIBUNAL.



- ANNEXURE-J** **A TRUE COPY OF THE PETITION DATED 14.11.2023 (WITHOUT ANNEXURES) FILED BEFORE THE APPELLATE TRIBUNAL.**
- ANNEXURE-K** **A TRUE COPY OF THE RETURN OF INCOME DATED 20.10.2017, (FILED ON 21.10.2017) .**
- ANNEXURE-L** **A TRUE COPY OF THE ARGUMENT NOTES DATED 15.11.2023 FILED BY THE APPELLANT BEFORE THE APPELLATE TRIBUNAL.**
- ANNEXURE-M** **THE CERTIFIED COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 09.02.2024 (RECEIVED BY THE APPELLANT ON 16.04.2024)**