2025:KER:73081

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 19TH DAY OF SEPTEMBER 2025 / 28TH BHADRA, 1947

ITA NO. 42 OF 2024

AGAINST THE ORDER DATED 30/11/2023 IN IT APPEAL NO 139/COCH/2020

APPELLANT/S:

APOLLO TYRES LTD
3RD FLOOR, AREEKAL MANSION, NEAR MANORAMA JUNCTION,
PANAMPILLY NAGAR, KOCHI, PIN - 682036

BY ADVS.
SHRI.ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.SHARAD JOSEPH KODANTHARA
SHRI.JOHN VITHAYATHIL
SHRI.AIBEL MATHEW SIBY

RESPONDENT/S:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1(1), 4TH FLOOR, C.R. BUILDING I.S. PRESS ROAD,
KOCHI, PIN - 682018

ADV. JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 15.09.2025, THE COURT ON 19.09.2025 DELIVERED THE FOLLOWING:

A. MUHAMED MUSTAQUE & HARISANKAR V. MENON, JJ.

I.T.A No. 42/2024 "C.R"

Dated this the 19th day of September, 2025

J U D G M E N T

A.Muhamed Mustaque, J.

This appeal, at the instance of an assessee under the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), seeks to challenge the order dated 30.11.2023 in I.T.A. No.139/COCH/2020 of the Income Tax Appellate Tribunal, Cochin Bench, with respect to the assessment year 2009-10, by which, the findings of the first appellate authority to the effect that reopening of the assessment under Section 147 of Act, after four years was bad in law, was set aside. The appellant-assessee has raised the following questions of law:

i. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessment under Section 147 for AY 2009-10 is not barred by limitation?

ii. Whether on the facts and in the circumstances of the case, there was any evidence or material on record before the Income Tax Appellate Tribunal to find that the Appellant did not disclose material information in the form of Form 3CL and consequently, the period of limitation of four years would not be applicable for AY 2009-10?

iii. Whether on the facts and in the circumstances of the case and in the light of Section 35(2AB)(4) of the Act, ITAT was right in finding that there was failure on the part of the Appellant in not disclosing fully and truly all material facts for the assessment?

2. The questions raised are reframed by us, and the following question arises for consideration:-

> Whether the facts forming part of the assessment record can be treated as suppression of material facts, when such facts are not, by themselves, determinative of the claim for a deduction under Section 35(2AB) of the Act, to justify reopening of an assessment beyond four years by invoking Explanation 1 to Section 147 of the Act ?

3. Assessment of the appellant for the assessment year 2009-10 was completed on 31/12/2013. In the assessment, the appellant claimed a deduction under Section 35(2AB) of the Act. The total deduction claimed under Section 35(2AB) was Rs. 4111.09 lakhs. Under Section 35(2AB), any expenditure on scientific research

is allowable as a deduction. A sum equal to one and one-half times the expenditure is allowed as such a deduction. The prescribed authority mentioned under Section 35(2AB) is the Secretary, Department of Scientific Industrial Research (Government of India). As per the law that stood on the assessment year, the prescribed authority shall submit its report in relation to approval of the in-house research and development facility in Form 3CL to the Director General (Income Tax Assessment) within 60 days from the date of granting such approval. This rule, referred to under Rule 6(7A) of the Income Tax Rules, underwent an amendment with effect from 01.07.2016. After the amendment, it is mandated that, apart from the reporting of the approval, the prescribed authority shall also quantify the expenditure incurred by the company on in-house development and research facilities. This certified expenditure qualifies for a weighted deduction under Section 35(2AB). That means before the amendment, the assessing authority itself has to be satisfied with the actual amount allowable for deduction and not based on the report of the prescribed authority, though such reports may indicate expenditure.

4. Assessment in this matter for the year 2009-10 was completed on 31/12/2013, as noted earlier. In the approval granted, in Form 3CL, the prescribed authority quantified the expenditure allowable under Section 35(2AB) at Rs. 1875.02 lakhs. This was communicated both to the assessee and the income tax authority well before the completion of the assessment in the year 2013. As seen from the report, this was communicated in Form 3CL on 15/11/2011. The assessee did not produce Form 3CL during the assessment proceedings. According to the assessee, they did not produce Form 3CL as it was already communicated to the Director General of Income Tax(Exemption), as seen from the form itself. However, the assessing authority did not take into account the eligible expenditure stated in Form 3CL and completed the assessment on 31/12/2013.

5. Reassessment procedure was initiated under Section 147 of the Act in light of the expenditure certified in Form 3CL. This was resisted on the ground that the reassessment proceedings had been initiated beyond the 4 years contemplated under Section 147. Under Section 147, a reassessment order has to be passed within 4 years

from the end of the relevant assessment year, unless the assessee fails to disclose material facts fully and truly. That means, in this case, before 31/03/2014. The question is whether non-disclosure of Form 3CL is material or not. The appellate authority, as against the assessment order, ruled in favour of the assessee. The second appellate Tribunal interfered with the order of the appellate authority.

6. The Tribunal relied on explanation 1 to Section 147 of the Act. It is appropriate to refer to the explanation in Section 147.

"Explanation 1- Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

The Tribunal was of the considered view that the mere fact that Form 3CL had been communicated to the Director of Income Tax would not, by itself, absolve the assessee from the statutory obligation to place the said Form before the Assessing Authority at the relevant time. Consequently, the wilful non-disclosure of Form 3CL would furnish sufficient ground for reopening the assessment under Section 147 of the Act.

7. We find that the Tribunal erred in entering into a finding placing reliance on explanation 1 of Section 147. As the law stood for the assessment year, the prescribed authority was not under the obligation to assess the expenditure incurred for scientific research as mandated under Section 35(2AB) based on Form 3CL. Explanation as above becomes decisive if the assessing officer has to rely on Form 3CL alone for determination. If he has to assess independently of Form 3CL, such non-production from the side or non-reference on the side of the assessee is not material suppression. The law only commands that approval reports be forwarded to the Income Tax Authority. Therefore, it is clear that it was for the assessing authority to be satisfied with the deduction for the expenditure claimed by the assessee company. Form 3CL, before the amendment, only allowed the assessee to claim expenditure subject to verification of such expenditure by the assessing authority. It is only after the amendment in the year 2016 that the law mandates that the prescribed authority has to certify allowable expenditure for deduction. No doubt, this case could have been reopened on the grounds of non-consideration of expenditure reflected in Form 3CL,

if it had been done within the time. But law does not allow to reopen such assessment after four years merely to rectify such mistake of not adverting to Form 3CL, since it was not obligatory for the prescribed authority to certify the expenditure incurred. Any reference to expenditure in the Form 3CL thus became inconsequential or insignificant for the assessing authority to allow the deduction claimed. In the light of the law as it stood at the time of assessment, it cannot be said that there was willful non-disclosure, as the prescribed authority's reporting was only to report about approval and not about the expenditure incurred. Therefore, there was no necessity for the assessee to produce Form 3CL except to establish the approval. Since approval is not in dispute, it was obligatory for the assessing officer to verify actual expenditure incurred, including with reference to the non-binding report as to the expenditure reflected in Form 3CL. That omission on the part of the assessing authority to verify the actual allowable deduction cannot be taken for its advantage, unless the blame is squarely attributable to the assessee. Explanation 1 is applicable if facts so available on record itself are material. If independent of such records (here 'Form

3CL’), an assessment has to be made, then such a fact itself would not constitute non-disclosure of material facts. Therefore, the Tribunal erred in defining non-disclosure of material facts in accordance with statutory provisions. Thus, the appeal stands allowed. The impugned order of the Tribunal is set aside, answering the question of law framed, in favour of the assessee and against the revenue.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

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APPENDIX OF ITA 42/2024

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF FORM 3CM DATED 15.06.2009**
Annexure B	**TRUE COPY OF THE COMPUTATION OF TOTAL INCOME FOR AY 2009-10**
Annexure C	**TRUE COPY OF FORM 3CL DATED 15.11.2011 SENT BY DSIR DIRECTLY TO THE INCOME TAX DEPARTMENT**
Annexure D	**TRUE COPY OF THE ASSESSMENT ORDER DATED 31.12.2013 FOR AY 2009-10**
Annexure E	**TRUE COPY OF ASSESSMENT ORDER UNDER SECTION 143(3) READ WITH SECTION 147 ORDER DATED 21.12.2016,**
Annexure F	**TRUE COPY OF THE APPEAL FILED BY THE APPELLANT BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 20.12.2019 OF THE CIT (A)**
Annexure G	**TRUE COPY OF APPEAL FILED BY THE RESPONDENT BEFORE INCOME TAX APPELLATE TRIBUNAL DATED 19.02.2020**
Annexure H	**CERTIFIED COPY OF THE ORDER DATED 11.12.2023 BY THE INCOME TAX APPELLATE TRIBUNAL**