
(2009) 12 KL CK 0043

High Court Of Kerala

Case No: Income Tax A. No. 753 of 2009

The Commissioner of
Income Tax, Cochin

APPELLANT

Vs

M/s. Kuttukkar
Engine Rebuilders

RESPONDENT

Date of Decision: Dec. 10, 2009

Citation: (2010) 1 KLJ 169 : (2010) 1 KLT 793

Hon'ble Judges: V.K. Mohanan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: Jose Joseph SC, Income Tax, for the Appellant; P. Balakrishnan, for the Respondent

Final Decision: Allowed

Judgement

C.N. Ramachandran Nair, J.

This appeal is filed against the order of the Tribunal holding that the appeal is not maintainable before it for the reason that the tax effect is nil. According to the Tribunal, for filing appeal by the Department before it, tax effect should be above Rs. 2 lakhs. Since this is a case of reduction of loss on account of disallowance in assessments, the Tribunal held that the tax effect is nil. Standing Counsel rightly pointed out that the Tribunal has not correctly understood the scope of tax effect in the case of business concerns which are entitled to carry forward business loss to subsequent year and set off against income computed for that year. We are in agreement with this contention because tax effect need not be for the year of assessment itself, but it can be for subsequent years. When the loss computed is allowed to be carried forward, then the assessee can claim a set off of the same against another year's income which will go to reduce tax liability of the assessee for that year. Therefore, tax effect has to be worked out with reference to disallowance of loss which is the subject matter of dispute. If the tax payable on such disputed loss amount is above the limit, then the appeal is maintainable. In this case, since the estimated disallowance is above Rs. 10 lakhs, tax liability is more

Rs. 2 lakhs and so much so, the appeal is maintainable. We, therefore, allow the appeal by reversing the order of the Tribunal, restoring the appeal back to the Tribunal for deciding the case on merit after hearing the assessee and the Department.