

(1996) 07 KL CK 0019

High Court Of Kerala

Case No: Original Petition No. 12693 of 1993

Commissioner of  
Income Tax

APPELLANT

Vs

V.P. John, Janatha  
Medicals

RESPONDENT

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Date of Decision: July 2, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 256(2)

Citation: (1998) 229 ITR 475

Hon'ble Judges: V.V. Kamat, J; P.A. Mohammed, J

Bench: Division Bench

Advocate: P.K.R. Menon and N.R.K. Nair, for the Appellant; M. Ajay and K. Praveen Kumar,  
for the Respondent

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### Judgement

V.V. Kamat, J.

This is a petition u/s 256(2) of the Income Tax Act, 1961, praying for a reference of the following two questions :

"1. Whether, on the facts and in the circumstances of the case -

(a) the Tribunal is right in law and fact, in characterising/finding the sale of Eastern Tourist Home--a hotel business--as a mere discontinuance of an activity" and is not such a finding wrong, unreasonable, also unwarranted so long as the businesses are not one and the same ?

(b) the assessee is entitled to the benefits of carry forward and set off of unabsorbed losses and depreciation of hotel business against the other incomes of the assessee ?

2. Whether, on the facts and in the circumstances of the case and on an interpretation of Section 155 of the Income Tax Act,--

(i) withdrawal of the benefit initially granted in the assessment is a "debatable issue" and is not such a finding wrong, unreasonable and also unwarranted ?

(ii) the Tribunal is right in law in importing Section 154 in its entirety or all the ingredients thereof while considering the scope of Section 155 of the Income Tax Act in this case ?

(iii) the Tribunal is right in law in holding that the withdrawal of the benefit is not amenable to action u/s 155 of the Act ?"

2. The assessment year is 1975-76. The original assessment was completed on February 18, 1978, when the share income from the firm, Janatha Medicals, was adopted as unabsorbed depreciation of 1974-75 was carried forward and set off against the income for the assessment year in question.

3. Subsequently, this was sought to be modified by initiation of action u/s 155 of the Income Tax Act.

4. The first appellate authority, the Commissioner of Income Tax (Appeals), has recorded a finding as follows :

" The appellant was a partner in a registered firm called Eastern Tourist Home which was doing hotel business. That business which formed part of Janatha Medicals was admittedly sold in the previous year relevant to this assessment."

5. Even then, the reasoning is incongruous thereto, holding that the hotel business admittedly discontinued the trial authority's decision was confirmed.

6. This was set aside by the Tribunal on the approach of the assessee.

7. The Tribunal also has noted that the business carried on by the assessee was a composite one, but the hotel business was discontinued in the relevant previous year.

8. In its reasoning this finding is reiterated that the business was a composite one and it is recorded that this finding is not challenged before it by the Revenue. In conclusion, the Tribunal has held that mere discontinuance of an activity in a composite business will not disentitle the assessee to the benefit of carry forward and set off of unabsorbed losses and depreciation against the other incomes of the assessee. Additionally, the Tribunal also has observed that the benefit was initially granted in the original assessment.

9. In the light of the above factual findings making out abundantly clear that the business of the assessee was a composite one and it is out of this composite business, the business of the Eastern Tourist Home was sold it is not possible to consider the decision of the Tribunal in any way erroneous. If the business is "a composite one, and additionally if in the original assessment completed on February 18, 1978, relief is granted, the Tribunal has properly dealt with the situation. On

facts there cannot be any debate, much less a debatable issue as sought to be raised in the questions formed.

10. For the above reasons, the petition stands dismissed.