

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA Nos. 369 to 371/Coch/2023</b>
<b>Assessment Years : 2008-09, 2012-13 &amp; 2013-14</b>

M/s. Kil Kotagiri and Thirumbadi Plantations Ltd., Thirumbadi Estate, Mukkom – 673 602, Kozhikode Dist. <b>PAN: AABCT0021G</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle – 2(1), Kozhikode.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri R V Veeramani, CA
Revenue by	:	Smt. Leena Lal, Snr.AR

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	12-11-2024

**ORDER**

**PER BENCH**

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi all dated 29/03/2023 in respect of the A.Ys. 2008-09, 2012-13 and 2013-14.

The issues raised in all these appeals are common and disposed of together for the sake of convenience.

**2.** First we will take up the appeal filed by the assessee in ITA No. 370/Coch/2023 for A.Y. 2012-13.

**3.** The brief facts of the case are that the assessee is a company deriving income from sale of rubber. The assessee while filing the return of income

had reduced the sale value of old rubber trees on the ground that it is a capital in nature and thereafter computed the income. The AO not accepted the method adopted by the assessee and he in turn included the value of the old rubber trees as income and computed the income u/s. 115JB of the Act. The AO, for rejecting the method adopted by the assessee had relied on the decision of the Hon'ble Kerala High Court in the appellant's own case in which it was held that the sale value of old rubber trees is not deductible while working out the book profit for the purpose of section 115JB. Further, the AO disallowed a sum of Rs. 21,22,943/- which was paid to Mr. Pradeep Kumar for the supply of latex. The AO treated the said amount as payment made towards the work done by him and therefore TDS should have been deducted and for the failure to deduct tax he disallowed the same u/s 40(a)(ia) of the Act and added the same to the returned income. The assessee challenged the said order before the Ld.CIT(A) and contended that the sale value of old rubber trees could not be added while computing the book profit u/s. 115JB of the Act. In respect of the disallowance u/s. 40(a)(ia) of the Act, the assessee contended that the said Mr. Pradeep Kumar had sold the latex to the assessee for which the payment was made and therefore the deduction of TDS would not arise and therefore the disallowance made by the AO is not correct. The assessee also disputed the disallowance of bonus u/s. 43B of the act. The Ld.CIT(A) had rejected the first contention that the sale of old rubber trees being capital receipt ought not to have been included while working out book profit u/s. 115JB of the Act by relying on the orders of the Hon'ble Kerala High Court in the assessee's own case. In respect of the disallowance u/s. 40(a)(ia), the Ld.CIT(A) had dismissed the same on the ground that the payments made to Shri Pradeep Kumar is in the nature of contractual payments and therefore the assessee has to necessarily deduct TDS. Insofar as the third dispute of disallowance of bonus, the Ld.CIT(A) accepted the case of the assessee and allowed the same.

**4.** As against the said order, the assessee is in appeal before this Tribunal by raising the following grounds of appeal for A.Y. 2012-13:

*"1) The main dispute in this appeal is the non-exclusion of sale value of old rubber trees for purpose of Book Profits under sec. 115JB. Even though the Kerala High Court has decided the issue against the appellant, SLP filed before the Supreme Court has been accepted (SLP 6/2012) and is pending along with SLP for subsequent years.*

*2) The question of Law raised before the Supreme Court is, "whether an income which is not otherwise chargeable to tax in assessment proceedings could be brought to tax indirectly, through sec. 115JB which requires a company to prepare its profit and [ass Account in accordance with the provisions of parts II and III of Schedule VI to Companies Act",. The special Leave Application also raised further questions as to "whether for purposes of "book profit,, under sec.115JB, Capital receipts are liable to be deducted", "whether sale of old and unyielding rubber trees involves capital Gains", and "whether the sale proceeds of such trees is not agricultural receipts, outside the purview of Income Tax Act ?"*

*3) In view of the decision of the Supreme Court in Kalpetta Estates Ltd. Vs. CIT (122ITR 501) and the decision of the Kerala High Court in Roja Rubber & Produce Co. Ltd, (89 ITR 182), there is no capital gains exigible to tax on the sale of old and unyielding rubber trees. If that be so, what is not taxable under the normal provisions should not be taxed invoking sec. 115JB.*

*4) The Supreme Court in CIT Vs. Raja BenoykumarSahas Roy (32 ITR 466), held that income from trees planted and nurtured will be agricultural income. Again, the SC has, in CIT Vs. All India Tea and Trading Co. Ltd, (219 ITR 544) held that compensation received on requisition of agricultural land amounted to agricultural income.If that be so, such amount has to be excluded for purpose of book profits u/s 115JA. This has been followed by the ITAT, Cochin Bench in Harrisons Malayalam Ltd vs ACIT, Cochin (ITA NO. 54/COCH/2009) AND in ITA No.77/Coch/2010 dated 29.06.2012 and allowed deduction of sale of old rubber trees*

*5) In view of the foregoing, it is prayed that sale value of old rubber trees may be directed to be reduced while calculating book profits for purpose of sec. 115JB."*

**5.** At the time of hearing, the Ld.AR relied on the judgment of the Hon'ble Supreme Court in the case of Kalpetta Estates Ltd. vs. CIT reported in 122 ITR 501 and also the Hon'ble Kerala High Court in the case of Roja Rubber

& Produce Co. Ltd. reported in 89 ITR 182 and contended that what is not taxable under the normal provisions should not be taxed by invoking section 115JB of the act.

The Ld.DR relied on the orders of the Hon'ble Kerala High Court in the appellant's own case and prayed to dismiss the appeal.

**6.** We have heard the arguments of both sides and perused the materials available on record.

**7.** We have seen that there is no dispute that the claim of the assessee that the sale value of old rubber trees would not be treated as income while computing the book profit u/s. 115JB of the Act, was already decided by the Hon'ble Kerala High Court in the appellant's own case for the A.Ys. 1997-2001 in ITA No.15,31,37 &43 of 2010 dated 27.06.2011. The assessee's contention that the said decision of the Hon'ble Kerala High Court has not become final since the assessee had challenged the same before the Hon'ble Supreme Court and the same are pending is in no way helps the assessee for allowing these appeals. In fact, in all the years, the dispute is with regard to, whether the sale of old rubber trees could be included while computing the book profit u/s. 115JB of the Act. It is also an admitted fact that the Hon'ble Kerala High Court had negated the contention of the assessee and therefore the law prevailing as on today is that the value of the sale of old rubber trees should be included while computing the book profit u/s. 115JB of the Act. Unless and until the said order has been set aside by the Hon'ble Supreme Court, we have no other option except to confirm the order of the Ld.CIT(A). In view of the said facts, we are not inclined to accept the arguments made by the assessee and dismiss the appeals filed by the assessee by following the judgment of the Hon'ble Kerala High Court in the appellant's own case.

In the result, the grounds of appeal filed for the A.Ys. 2012-13 and 2013-14 are dismissed.

**ITA No. 369/Coch/2023 (A.Y. 2008-09)**

**8.** In this appeal, the assessee has challenged the order of the Ld.CIT(A) in which the similar dispute was involved i.e. whether the sale proceeds of the rubber trees is to be included for the purpose of computing book profit u/s. 115JB of the Act. The assessee mainly contended that the AO had no jurisdiction to pass an order u/s. 154 of the Act in which the AO had rectified the mistake and added the sale of old rubber trees while computing the book profit u/s. 115JB of the Act. The AO had not done the same while giving effect to the order of the Tribunal dated 03/01/2014. The main contention of the assessee is that the rectification should not be made u/s. 154 of the Act in the facts and circumstances of the case. We are of the view that the issue was already decided by the Hon'ble Kerala High Court against the assessee and therefore the same is a mistake apparent on the face of the record and therefore the AO had rightly invoked section 154 of the Act to rectify the said mistake.

**9.** The non-consideration of the judicial precedence by the AO would be a valid reason for invoking section 154 of the Act and therefore we are dismissing the present appeal filed by the assessee. The other grounds raised by the assessee does not require any adjudication in view of the dismissal of the appeal.

In the result, the appeal filed by the assessee for A.Y. 2008-09 is dismissed.

**10.** In the result, all the three appeals filed by the assessee are dismissed. Order pronounced in the open court on 12<sup>th</sup> November, 2024.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> November, 2024.  
/MS /

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|---------------|---------------------|
| 1. Appellant  | 2. Respondent       |
| 3. CIT        | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A)           |

By order

Assistant Registrar,  
ITAT, Cochin