Aspinwall And Co. Ltd — Civil Appeal Nos. 7796/2012, 6617/2019, 13454/2015 and connected matters

2026 INSC 359 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 7796 OF 2012 ASPINWALL AND CO. LTD. … Appellant (s) VERSUS INSPECTING ASSISTANT COMMISSIONER … Respondent(s) WITH CIVIL APPEAL NO. 6617 OF 2019 CIVIL APPEAL NO. 13454 OF 2015 CIVIL APPEAL NO. 13455 OF 2015 CIVIL APPEAL NO.19865 OF 2017 JUDGMENT Rajesh Bindal, J.

1. This order will dispose of five appeals. Signature Not Verified Digitally signed by ANITA MALHOTRA Date: 2026.04.13 17:37:49 IST Reason: Page 1 of 19 FACTS OF THE CASES

2. In Civil Appeal No.7796 of 2012 challenge is to the order dated 23.09.2011 passed by the High Court 1 in OTC No.3 of 2011 whereby order dated 22.03.2011 passed in AITA Nos.2/2010 by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal2, Addl. Bench, Ernakulam, was upheld. 2.1 In Civil Appeal No.19865 of 2017 challenge is to the order dated 27.07.2017 passed by the High Court in OTC No.11 of 2013 wherein order dated 30.11.2012 passed in AITA No.1/2011 by the Tribunal, was upheld. 2.2 In Civil Appeal No.13454 of 2015 challenge is to the order dated 27.07.2015 passed by the High Court in OTC No.1 of 2015 wherein order dated 19.02.2015 passed in AITA Nos.2 & 3 /2012 by the Tribunal, was upheld. 2.3 In Civil Appeal No.13455 of 2015 challenge is to the order dated 27.07.2015 passed by the High Court in OTC No.2 of 2015 wherein order dated 19.02.2015 passed in AITA Nos. 2 & 3/2012 by the Tribunal, was upheld. 2.4 In Civil Appeal No.6617 of 2019 challenge is to the order dated 24.05.2019 passed by the High Court in OTC No.1 of 2019 wherein order 1 High Court of Kerala at Ernakulam 2 Hereinafter referred to ‘Tribunal’ Page 2 of 19 dated 30.08.2018 passed in AITA Nos.2-4/2016 by the Tribunal, was upheld.

3. All the appeals are being taken up together, as common questions of fact and law are involved in these appeals. Facts are being noticed from Civil Appeal No.7796 of 2012.

4. A company named ‘Pullangode Rubber & Produce Co. Ltd.3 was amalgamated with the appellant company 4. The scheme of amalgamation was sanctioned in November 2006. The appointed date was fixed as 01.01.2006. As there were accumulated losses in the balance sheet of amalgamating company, the issue is, as to whether the same could be claimed as a set-off against the income of the amalgamated company.

5. The argument raised by Mr. S. Ganesh, learned senior counsel for the appellant is that in terms of the provisions of of the Kerala Agricultural Income Tax Act, 1991 5, the amalgamated company as successor of the amalgamating company shall be entitled to set-off of the losses suffered. In terms of of the Kerala Act, the losses suffered by an assessee can be carried forward for a period of 8 years for set-off against the income of subsequent years. State (NCT of Delhi■).12 6.4 He further referred to the impugned order dated 23.09.2011 passed by the High Court where a specific finding has been recorded that the losses for which the set-off is sought to be claimed by the appellant/amalgamated company pertains to a period beyond 8 years, which otherwise also is not permissible in terms of of the Kerala Act.

7. Heard learned counsel for the parties and perused the relevant referred record.

8. The provisions of the which are relevant for consideration of the arguments raised by learned counsel for the parties are extracted below: > “ . Definitions. – In this Act unless the context otherwise requires, 8 1986 INSC 85 : (1986) 2 SCC 656 9 1990 INSC 266 : 1990 Supp SCC 675 10 2004 INSC 447 : (2004) 7 SCC 1 11 2019 INSC 815 : (2020) 18 SCC 331 12 2023 INSC 819 : (2024) 1 SCC 797 Page 7 of 19 x x x (7) “assessee” means a person by whom any tax or any other sum of money is payable under this Act, and includes: > (i) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person; or of the amount of refund due to him or to such other person; > (ii) every person who owns or possesses any land in which any crop is grown, the agricultural income of which is liable to tax under the provisions of this Act either on his own account or on account of others; > (iii) every person who is deemed to be an assessee under any provision of this Act; > (iv) every person who is deemed to be an assessee in default under any provision of this Act; x x x . Carrying forward of loss. – Where any person sustains a loss as a result of computation of agricultural income any year, the loss shall be carried forward to the following year and set off against the agricultural income of that year and if it cannot be wholly set off, the amount of loss not so set off, shall be carried forward to the following year and so on, but no loss shall be carried forward for more than eight years. x x x . Legal Representative:- (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay under this Act if he had not Page 9 of 19 died, in the like manner and to the same extent as the deceased. (2) For the purpose of making an assessment (including an assessment, re-assessment or recomputation under chapter VII), of the agricultural income of the deceased and for the purpose of levying any sum at the hands of the legal representative in accordance with the provisions of sub-section (1) (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased; (b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and (c) all the provisions of this Act shall apply accordingly, (3) The legal representative of the deceased shall for the purposes of this Act, be deemed to be an assessee. (4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative, if, while his liability for tax remains undercharged, he creates a charge on or disposes of or parts with any assets of the estate of the Page 10 of 19 deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with in respect of these assets. > (d) an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the previous year in which the restriction Page 12 of 19 on amalgamation in the share purchase agreement ends,]then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was

effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly: > Provided that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be the loss or, as the case may be, the allowance for unabsorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment. > Explanation.—For the purposes of clause (d),— > (i) "control" shall have the same meaning as assigned to in clause (27) of of the Companies Act, 2013 (18 of 2013); Page 13 of 19 > (ii) "erstwhile public sector company" means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government; > (iii) "strategic disinvestment" means sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below fifty-one per cent along with transfer of control to the buyer."

9. From a perusal of the aforesaid provisions it is evident that defines an assessee to mean a person liable to pay tax under the . defines a person to mean an individual etc. owning, possessing or holding property which includes a corporate as well. of the Kerala Act, which is the charging Section, provides for charging of tax as per the rates prescribed in the aforesaid Act on the agricultural income.

11. The fact which was not disputed by learned senior counsel for the appellant at the time of hearing is that no notice of amalgamation proceedings was issued to the State of Kerala to raise objection with reference to any terms referred to with the amalgamation scheme.

12. Section 394-A of the Companies Act, 195613 makes it mandatory on the Tribunal to issue notice in every application filed under Sections 391 or 394 to the Central Government and any objections raised 13 Hereinafter referred to as '1956 Act' Page 16 of 19 are to be considered. Section 394 of the aforesaid Act talks about amalgamation of the companies. The Ministry of Corporate Affairs, Government of India, had issued a Circular dated 15.01.2014 bearing F.No.2/1/2014 providing that while responding to the notices issued to the Government under Section 394-A, the Regional Director shall invite specific comments from the Income Tax Department within 15 days. If no response is received from the Income Tax Department during the aforesaid period, it may be presumed that the Income Tax Department has no objection to the action proposed under Section 391 or 394, as the case may be. It is in the light of the aforesaid provision and the circular that the comments of the Income Tax Department are mandatory. The judgment of this Court in Dalmia Power Ltd.'s case (supra) is dealing with a case under the where similar provision is contained in Section 230(5) specifically and in Rule 8(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. There is a specific finding recorded in the aforesaid judgment that despite notice, Income Tax Department did not raise any objection, within the stipulated time, to the scheme, as proposed. The same was approved. It is a case wherein the appellant had Page 18 of 19 lost in all fora. To challenge the aforesaid findings of fact recorded by the High Court in the impugned order, no specific ground has been raised in the petitions filed before this Court.

16. For the reasons mentioned above, we do not find any merit in the present appeals. The same are accordingly dismissed. There shall not be any order as to costs.

17. Pending application(s), if any, shall also stand disposed of. ……………………………..J. (RAJESH BINDAL) ……………………………..J. (VIJAY BISHNOI) New Delhi; April 13, 2026. Page 19 of 19