

M/s. Dynamic Orthopedics Pvt. Ltd. v. Commissioner of Income Tax, Cochin, Kerala

Civil Appeal No. 8419 of 2003

[2010] 2 SCR 879 | 2010-02-16

Whether book profit under historical section 115J for AY 1990-91 could reflect a private company's depreciation at Income-tax Rules rates, rather than Schedule XIV Companies Act rates, and whether Malayala Manorama required larger-bench reconsideration.

115J | 115J(1A)

Two-judge bench | S.H. Kapadia, J. | Aftab Alam, J.

Assessment years: 1990-91

Reference only: no final section 115J merits result

This 16 February 2010 two-judge order concerns AY 1990-91 and sends the issue for larger-bench reconsideration. It does not itself overrule Malayala Manorama or finally settle the depreciation claim. The later reference/disposal has not been verified. Check that later outcome and the applicable historical statute before reliance; no current-law, section 115JB or Income-tax Act, 2025 carryover is certified.

01 FACTS OF THE CASE

The private company manufactured and sold orthopaedic appliances and returned income of Rs.1,50,730 for AY 1990-91. It provided depreciation in its profit-and-loss account at rule 5 Income-tax Rules rates. The Assessing Officer recomputed section 115J book profit using the lower Schedule XIV Companies Act rates. The Commissioner (Appeals) accepted the company's claim, relying on its private-company status, its not being a public-company subsidiary and section 355's effect on section 350. The Tribunal dismissed Revenue's appeal. The Kerala High Court reversed, treating the statutory book-profit scheme as incorporating Companies Act requirements. The assessee appealed to the Supreme Court. A similar Kerala ruling in Malayala Manorama had meanwhile been reversed by the Supreme Court in [2008] 300 ITR 251 (physical pages 2-7).

Source: [reported referral order / paragraphs Unnumbered opening facts, procedural history and statutory extracts / PDF pages 3, 4, 5, 6, 7 / judicial text](#)

02 DISCUSSION BY THE HON'BLE COURT

The two-judge bench considered that Malayala Manorama required reconsideration. Its stated reasons were that section 115J was a special deemed-income provision for profitable zero-tax companies, did not distinguish public from private limited companies, and legislatively incorporated Parts II and III of Schedule VI. A MAT company therefore had to prepare the relevant profit-and-loss account on that footing. The bench treated the deeming provision strictly and said the incorporation was of Schedule VI, not sections 205, 350 or 355. It noted the differing tax and Companies Act depreciation rates and the 1988 statutory de-linking. Although the reasons strongly disagreed with Malayala Manorama, they support a referral; they are not an operative overruling or final disposition of the assessee's depreciation claim (physical pages 7-8).

Source: [reported referral order / paragraphs Unnumbered referral reasons beginning "In our view, with respect" / PDF pages 7, 8 / judicial text](#)

03 JUDICIAL DECISION

The Registry was directed to place Civil Appeal No.8419/2003 before the Chief Justice for appropriate directions, the bench considering that reconsideration by a larger bench was needed. The appeal was neither allowed nor dismissed on the underlying section 115J computation. This reported order does not determine the later reference's outcome (physical page 8, final unnumbered judicial paragraph).

Source: [reported referral order / paragraphs Final unnumbered judicial paragraph beginning "For the afore-stated reasons" / PDF pages 8 / judicial text](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: No party finally succeeds on the tax merits in this order

Registry directed to place the appeal before the Chief Justice for appropriate directions for larger-bench reconsideration

Reference only; underlying depreciation/book-profit merits not finally disposed of

The referring bench's criticism of Malayala Manorama is not a larger-bench overruling. This source supplies neither a final allowed/disallowed depreciation result nor the later reference outcome.

Source: [reported referral order / paragraphs Final unnumbered direction to Registry; report footer confirms referral / PDF pages 8 / judicial text](#)

05 AKHB REVIEW POINT

Index this document as a larger-bench reference order and keep its reasoning visible only with that procedural label. Do not cite the strong disagreement with Malayala Manorama as if it itself overruled the earlier Supreme Court decision, and do not convert the reference into a Revenue win on depreciation. Before using this line of authority, separately locate and read the later reference/disposal and the relevant statutory version. That later disposition has not been verified for this note. The historical section 115J/Companies Act, 1956 issue cannot automatically answer a present-day section 115JB question or an Income-tax Act, 2025 provision.

Source: [reported referral order / paragraphs Unnumbered referral reasons and final direction; no final merits disposition / PDF pages 7, 8 / judicial text](#)

DETAILED DISPOSITION AND CONNECTED GROUPS

Issue results

1.

Issue: Whether Malayala Manorama should be reconsidered

Result: Two-judge bench expressed disagreement and sought larger-bench reconsideration

In whose favour: Procedural reference; no final merits winner

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: Unnumbered reasoning beginning "In our view, with respect" and continuing to the end of the reasons

Source role: judicial text

2.

Issue: Ultimate book-profit/depreciation outcome

Result: Not finally determined by this order; Registry referral is the operative action

In whose favour: Undetermined in this source

Pinpoints

1.

Source url: [Open cited source](#)

Pdf pages: 8

Paragraphs: Final unnumbered paragraph beginning "For the afore-stated reasons"

Source role: judicial text

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

32(1)(ii); 80VVA

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.H. Kapadia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported referral order)

Identified source rendition: 8 PDF pages; SHA-256

bf975338e1742ab532980bcd14546ca15edab8f6ba9fc7fbbfd140a66722d4cc. Original bytes preserved.

Unnumbered judicial order begins at the foot of physical page 2 (SCR 880) and ends on physical page 8 (SCR 886). All judicial text, statutory extracts, referral reasoning and operative direction read. Pages 1-2 before "The Order of the Court" are editorial/report matter. The headnote's paragraph reference is not adopted as a printed judicial paragraph number. No adjacent judgment.

Open cited source rendition

The unnumbered opening judicial text on physical page 3 expressly states AY 1990-1991.

Historical section 115J book-profit computation is the live issue. Section 32(1)(ii) appears in quoted Income-tax Rules rule 5; section 80VVA is legislative background, not a separate live relief claim. Companies Act, 1956 sections 205, 349, 350 and 355, Parts II/III of Schedule VI and Schedule XIV, plus rule 5 of the Income-tax Rules, supply the dispute. No section 115JB or current Companies Act conclusion is made.

The public-mirror acquisition URL could not be reopened by the web tool; preserved bytes, size and page count were checked. No separately retrieved signed-original hash is claimed.; The headnote cites "para 6", but the actual judicial order in this rendition is unnumbered. Public pinpoints therefore give physical pages and identifying unnumbered paragraph openings.; The bench says the earlier Supreme Court reversal was wrong, but the operative direction only seeks larger-bench reconsideration. The headnote's substantive discussion is not a final merits holding.; The ultimate referral outcome and current status of Malayala Manorama have not been independently verified. No absence of later treatment is asserted.

Assessee appeal from Kerala High Court judgment dated 5 July 2002 in ITA No.66/1999. This order directs placement before the Chief Justice for appropriate directions because larger-bench reconsideration is considered necessary; it does not record the later bench's constitution or ultimate disposition.

STATUTORY SCOPE

Historical Income-tax Act, 1961 provisions and assessment years only. No automatic mapping to the Income-tax Act, 2025.

LATER TREATMENT

Source checked 2026-10-04. No comprehensive later-treatment or present-law audit has been performed. Any source-checked comparison is expressly bounded.

IDENTIFIED SOURCE LINKS

reported referral order - PDF pages: 8

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AI DISCLOSURE

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