

## **Carry forward of business loss not available by filing revised return: HC**

**Summary – The High Court of Kerala in a recent case of Kerala State Construction Corporation Ltd., (the Assessee) held that carry forward of business loss cannot be available by filing revised return**

### **Facts**

- For relevant year, assessee filed a revised return u/s 139(5) declaring a loss and sought carry forward of such business loss.
- The Assessing Officer took a view that carry forward of business loss is not permitted in a return filed under section 139(5) and rejected assessee's claim for set off of business loss.
- The Tribunal, however, allowed assessee's claim.
- On revenue's appeal:

### **Held**

- The HC stated that if a return is filed under section 139(3), an assessee can avail of the benefit under section 139(5) for filing a revised return which would be treated as the original return filed under section 139(3). However, when a return is originally filed under section 139(1), the enabling provision under section 139(5) to file a revised return only enables the substitution or revision of the original return filed.
- Since the assessee originally filed a '*nil*' return with positive income under section 139(1) and thereafter filed a revised return under section 139(5) the original return filed under section 139(1) was substituted. Hence, such a return permits set off of the loss against the income of that relevant previous year but does not allow carry forward of such losses for reason of the revised return not being deemed to be one under section 139(3).
- Thus the order of the Tribunal is set aside and it is held that the assessee is not entitled to carry forward the business loss.