

आयकरअपीलीयअधिकरण, मुंबईन्यायपीठ‘एच’मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL“H” BENCH, MUMBAI

श्रीजी.एस.पन्नू, लेखासदस्य, एवंश्रीअमरजीतसिंह, न्यायिकसदस्य, केसमक्ष
BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM
आयकरअपीलसं/ I.T.A. No.6303/M/12, I.T.A. No. 326/M/14 & 6571/M/14
(निर्धारणवर्ष / Assessment Year: 2009-10,2010-11 & 2011-12)

Hybrid Financial Services Limited 17-A Wing, 2 nd Floor, Raj Industrial Estate Premises Ltd., Military Road, Marol, Andheri(East), Mumbai - 400059	बनाम/ Vs.	Asst. Commissioner of Income Tax 10(3) Room No.473, Aayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACM2824M		
(□ पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nitesh Joshi
Department by:	Shri C.N.Angokar

सुनवाईकीतारीख / Date of Hearing: 22.12.2015
घोषणाकीतारीख /Date of Pronouncement:29.12.2016
आदेश /O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different orders dated 10.08.2012, 28.11.2013 and 27.08.2014 passed by the Commissioner of Income Tax (Appeals)- Central 22 & 17 Mumbai [hereinafter referred to as the “learned CIT(A)”] relevant to the assessment year 2009-10, 2010-11 & 2011-11. These appeals

are been taken up together for adjudication being the parties are the same and the matter of controversy is also the same which can conveniently be adjudicated by virtue of a single order.

ITA NO.6303/MUM/2012:-

2. The assessee has raised the following grounds:-

“1. CIT(Appeals) erred in confirming the disallowance of depreciation on WDV of leased assets amounting to Rs.1,45,62,977/- when the same ought to have been allowed subject to rectification and determination of opening WDV by the department.

2. CIT(Appeals) erred in confirming the disallowance of Rs.3,14,660/- towards printing charges of Annual Report of the Company u/s.40(a)(ia) of the Income Tax Act, 1961 on the basis that no tax was deducted at source u/s.194C of the Income Tax Act, 1961.

3. CIT(Appeals) erred in confirming the interest debited to Profit & Loss A/c. u/s. 14A when the said interest is not related to any investment for the subject Assessment Year and was covered under scheme of compromise.

4. CIT(Appeals) erred in giving the credit of tax deduction at source short by Rs.4,75,554/- when original certificates were already on the record.

5. CIT(Appeals) erred in giving short credit of interest u/s. 244A which is the result of granting short credit of TDS.

6. CIT(Appeals) erred in not considering the long term capital losses of the current year to be carried forward as per the Income Tax Act, 1961.

7. *CIT(Appeals) erred in not indicating in the Assessment Order the brought forward business losses and allowances as per income tax records.*

8. *CIT(Appeals) erred in adding to book profits u/s. 115JB in respect to interest considered for computation u/s. 14A and provision of contingencies of Rs.1,80,00,000/- being taken twice for disallowance.*

ITA No.6303/Mum/2012:-

3. The brief facts of the case are that the assessee filed the return of income on 24.09.2009 declaring total loss of Rs.67,09,964/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961(in short “the Act”). Thereafter, notice u/s.143(2) of the Act was issued on 28.08.2010 which was duly served upon the assessee. Notice u/s.142(1) of the Act along with questionnaire was also issued on 23.08.2010 which was duly served upon the assessee. The assessee is engaged in the business of leasing and hire purchase finance company. The Assessing Officer disallowed the claim of the depreciation on lease assets and also disallowed the claim u/s.194C of the Act and carried forward long term losses and also disallowed the claim u/s.14A of the Act and certain claim u/s.115JB of the Act and assessed the income as Nil. Feeling aggrieved the assessee filed an appeal before the CIT(A) – 22 Mumbai who confirmed the order of the Assessing Officer therefore the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue, the assessee has challenged the disallowance of depreciation on WDV of leased assets amounting to Rs.1,45,62,977/-. The Assessing Officer passed the order on the basis of previous order for the A.Y. 1993-94 to 1998-99 and arrived at this conclusion that the lease transactions are in the nature of finance and the assessee was not the owner of the leased assets and therefore he is not entitled to get depreciation thereon. Apparently, it is only required to be seen that whether the assessee is entitled to get the depreciation upon the lease assets or not. This issue has already been adjudication by the Income Tax Appellate Tribunal in the assessee's own case for the A.Y.1993-94 and 1994-95 to 1998-99 in ITA No.3990/Mum/2009 dated 08.02.2012 for A.Y.1993-94 and in ITA No.3991 to 3995/Mum/2009 for A.Y. 1994-95 to 1998-99 dated 21.11.2014, copy of which lies at page 1 to 17 of the paper book. The Hon'ble Tribunal has relied upon the judgment passed by the Hon'ble Supreme Court in case ICDS Ltd. Vs. CIT, CA No.3282 of 2008, wherein the Hon'ble Supreme Court has observed at page 16 para 19 mentioned below:-

“19. We may now advert to the first requirement i.e. the issue of ownership. No depreciation allowance is granted in respect of any capital expenditure which the assessee may be obliged to incur on the property of others.

Therefore, the entire case hinges on the question of ownership; if the assessee is the owner of the vehicles, then he will be entitled to claim on depreciation, otherwise, not”.

And at page 21 para 23, it has been held,

“23. The revenue’s objection to the claim of the assessee is founded on the lease agreement. It argued that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding 1% of the original cost of vehicle, making the assessee in effect a financier. However we are not persuaded to agree with the Revenue. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eyes of law. A scrutiny of the sale agreement cannot be the basis of raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee.”

And in paras 27 to 29,

“28. Finally, learned senior counsel appearing on behalf of the assessee also pointed out a large number of cases,

accepted and unchallenged by the Revenue, wherein the lessor has been held as the owner of an asset in a lease agreement [Commissioner of Income Tax Vs. Bansal Credit Ltd., Commissioner of Income Tax Vs. M.G.F.(India) Ltd., Commissioner of Income Tax Vs. Annamalai Finance Ltd.]. In each of these cases, the leasing company was held to be the owner of the asset, and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out. We are in complete agreement with these decisions on the said point.

28. There was some controversy regarding the invoices issued by the manufacturer – whether they were issued in the name of the lessee or the lessor. For the view we have taken above, we deem it unnecessary to go into the said question as it is of no consequence to our final opinion on the main issue. From a perusal of the lease agreement and other related factors, as discussed above, we are satisfied of the assessee's ownership of the trucks in question.

29. Therefore, in the facts of present case, we hold that the lessor i.e. the assessee is the owner of the vehicles. As the owner, it used the assets in the course of its

business, satisfying both requirements of Section 32 of the Act and hence, is entitled to claim depreciation in respect of additions made to the trucks, which were leased out.”

5. In view of the above said observations the Hon’ble Income Tax Appellate Tribunal in the above mentioned case allowed the case of the assessee therefore in the said circumstances we are of the view that the case of the assessee is fully covered by the aforesaid decisions passed by the Hon’ble Income Tax Appellate Tribunal in the assessee’s own case, we are of the view that the assessee is entitled to claim the depreciation on WDV of leased assets amounting to Rs.1,45,62,977/- in accordance with law. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.2:-

6. Under this issue the assessee has raised the question in connection with the disallowance of Rs.3,14,660/- towards printing charges of Annual Report of the Company u/s. 40(a)(ia) of the Act on account of non deduction of tax at source. The assessee had purchased the 55,000 copies of its Annual Report from M/s. Rivera Systems, Mumbai for a consideration of Rs.3,14,660/-. The Annual Reports were printed and sold by the said concern to the assessee firm. The Assessing Officer and learned CIT(A) have observed that the said payment was to carried out of work and therefore, liable to

TDS u/s. 194C of the Act. Appellant had purchased the annual reports from M/s. Rivera Systems on which they have also charged Value Added Tax which has already been paid. In this regard the tax invoice is on record which is lying at page 23 of the paper book. Apparently, it is not a contract for work liable to TDS u/s. 194C of the Act. In this regard we also found support of law settled in BDA Limited Vs. ITO(TDS) 281 ITR 99 wherein it is held that the supply of printed labels as per the customers specification is a contract of sale and is not a contract of work therefore the contract of sale is not liable to be TDS u/s.194C of the Act. Accordingly, we are of the view that the learned CIT(A) has passed the order wrongly and illegally which is not liable to be sustainable in the eyes of law. Accordingly finding of the CIT(A) is hereby set aside and the claim of the assessee is hereby allowed. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.3:-

7. Under this issue, the assessee has challenged the disallowance u/s. 14A read with Rule 8D of the Act. The appellant has challenged the disallowance to the tune of Rs.4,75,554/-. Investment schedule in its Annual Report has been filed and the figure of which has been reflected at page 52 and 53 of the paper book which shows that no fresh investment has been made during the year. This issue has already been considered by the Income Tax Appellate Tribunal while

deciding the case of the assessee for A.Y.2000-01, 2001-02, 2003-04, 2006-07 and 2007-08 by virtue of order dated 31.10.2012. In the said order the issue has been restored to the file of Assessing Officer and it has also been directed to the Assessing Officer that the matter is required to be decided again on the basis of decision which has been taken in the earlier years. No doubt, on this issue the Hon'ble Jurisdictional High Court, Bombay in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. Commissioner of Income Tax has also passed the order wherein certain guidelines have been issued to calculate the expenditure incurred to earn the exempt income. Accordingly we set aside the finding of the learned CIT(A) on this issue and restore the same to the file of Assessing Officer to decide the matter a fresh in accordance with law. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.4 &5:-

8. The learned representative of the assessee did not press both the grounds. Therefore these grounds are hereby ordered to be dismissed being not pressed.

ISSUE NO.6:-

9. The assessee has challenged the action of Assessing Officer and learned CIT(A) to not to carry forward the Long Term Capital Loss of Rs.5,44,47,930/-. The assessee suffered Long Term Capital Loss of

Rs.5,44,47,930/-. The claim for carry forward of this loss to the subsequent years was not made in the return of income. However, the same was claimed by way of a letter dated 11.11.2011 in the course of assessment proceedings. The Assessing Officer declined the claim of the assessee on the ground that the same was not raised in the return. The said observations was confirmed by the learned CIT(A) relying upon the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. 284 ITR 323 wherein it has been held that the assessee can raise a further claim before the Assessing Officer only by way of a revised return of income. The contention of the assessee is that the assessee can raised the additional ground to accept the claim before the appellate authorities in view of the law settled by Bombay High Court in CIT Vs. Pruthivi Brokers and Shareholders Pvt. Ltd. 349 ITR 336. It is not in dispute that the assessee did not raise his claim in his return as well as in his revised return. However he raised his claim by way of letter dated 11.11.2011. In view of the law settled by Bombay High Court in CIT Vs. Pruthivi Brokers and Shareholders Pvt. Ltd. 349 ITR 336, wherein it is held that it is open to the assessee to raise the additional ground before the appellate authority. In view of the said circumstances, we are of the view that this matter is required to be reconsidered again by the Assessing Officer by giving an opportunity of being heard to the assessee in accordance with law. Therefore, in this regard the finding of the learned CIT(A) is hereby ordered to be set aside and the Assessing Officer is directed to

reconsider the matter in accordance with law after giving an opportunity of being heard to the assessee in the interest of justice. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.7:-

10. The assessee has contended that the learned CIT(A) was wrong for not carry forwarding / brought forwarding business losses and allowances further. The appellant had incurred business losses and has unabsorbed depreciation allowance in respect of the earlier years which are liable to be carry forwarding for the subsequent year in accordance with law. Therefore, in this case we set aside the finding of learned CIT(A) and this issue is hereby restored to the file of Assessing Officer to decide this issue a fresh in accordance with law after giving full opportunity of being heard to the assessee. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.8:-

11. Under this issue the assessee has contended that there was a total addition of provision of contingencies and addition of interest disallowance u/s.14A of the Act while computing the book profit u/s. 115 JB of the Act which has been shown at page 7 of the assessment order. It is apparent that there is a provision for contingencies of

Rs.1,80,00,000/- which has been added as well as form part of Rs.1,88,65,335/-. Since the amount of Rs.1,80,00,000/- for the contingencies has been added twice and the addition should be made once. The amount of disallowance of interest u/s.14A of the Act as determined while giving effect to ground no.3 above is required to be added while computing the book profit. No doubt in the said circumstances, the said amount is not required to be added to income of assessee. Therefore, in the said circumstances we set aside the finding of the CIT(A) on this issue and delete the said addition. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.9:-

12. Under issue no.9 the assessee has challenged the action of the Assessing Officer which has been confirmed by the learned CIT(A) for not carry forwarding the unabsorbed depreciation u/s. 115JB of the Act while computing book profit for subsequent years. The assessee had unabsorbed depreciation in its books of account of Rs.52,76,19,767/- which has been shown at page 69 of the paper book. As per its computation of income, it has adjusted such depreciation to the extent of Rs.4,51,20,663/- against the book profit for the year under consideration and carried forward the balance amount of Rs.48,24,99,104/- for being set off in subsequent years. The Assessing Officer in the assessment order set off such unabsorbed

depreciation to the extent of Rs.6,31,20,663/- based on his computation of book profit in view of the page 7 of the assessment order. The appellant has claimed in connection with carry forwarding the remaining unabsorbed depreciation. No doubt, the Assessing Officer as well as learned CIT(A) has not decided this issue on merit. In view of the said circumstances, we set aside the finding of the CIT(A) on this issue. Since there is no specific finding on record on this issue, therefore, we are of the view that the matter is required to be decided afresh on merits by the Assessing Officer after giving an opportunity of being heard to the assessee in accordance with law. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.10:-

13. So far as the issue no.10 is concerned, the assessee has raised the claim of deciding the application u/s.154 of the Act. It is not in dispute that whenever an application to section 154 of the Act has been moved before the authority the same is liable to be decided in accordance with law, therefore, there is no need to issue the directions in this regard.

ITA NO. 326/M/14:-

14. The assessee has raised the following grounds:-

“1. The CIT (Appeals) erred in disallowing Income-Tax Depreciation of Rs.1,23,29,106/- on opening WDV of Leased Assets when the same ought to have been allowed subject to rectification and determination of opening WDV by the department.

2. The CIT(Appeals) erred in disallowing RS.3,06,563/- u/s. 40(a)(ia) by invoking Section 194C of the Income Tax Act 1961 when there was no requirement of Tax Deduction at Source for printing of Annual Report of the appellant.

3. The CIT(Appeals) erred in disallowing Long Term capital Loss of Rs.9,50,468/- to be carried forward for future assessment when corresponding capital loss as per books at Rs.92,579/-

ISSUE NO.1:-

15. According to issue no.1, the assessee has challenged the disallowance on depreciation on the lease assets. This issue has also been decided by us in deciding the issue no.1 for A.Y.2009-10. The same ratio would be applicable in this assessment year also because there is no change of the facts and circumstances of the case. Therefore there is no need to repeat the finding again. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.2:-

16. The issue no. 2 is in connection with the disallowance of Rs.3,06,563/- towards printing charges of Annual Report of the

Company u/s. 40(a)(ia) of the Act for non deduction of tax at source. The assessee had purchased the 55,000 copies of its Annual Report from M/s. Rivera Systems, Mumbai, for a consideration of Rs.3,06,563/-. The Annual Reports were printed and sold by the said concern to the assessee firm. The Assessing Officer and learned CIT(A) have observed that the said payment was to carried out of work and therefore, liable to TDS u/s. 194C of the Act. Appellant had purchased the annual reports from M/s. Rivera Systems on which they have also charged Value Added Tax which has already been paid. In this regard the tax invoice is on record which is lying at page 23 of the paper book. Apparently, it is not a contract for work liable to TDS u/s. 194C of the Act. Accordingly, we are of the view that the learned CIT(A) has passed the order wrongly and illegally. Therefore the finding of the learned CIT(A) on this issue is hereby ordered to be set aside and this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.3:-

17. The assessee has challenged the action of Assessing Officer and learned CIT(A) to not to carry forward the Long Term Capital Loss of Rs.9,50,468/-. The assessee had sustained the Long Term Capital Loss of Rs.9,50,468/-. The claim for carry forward of this loss to the subsequent years was not made in the return of income. However, the same was claimed by way of a letter dated 14.02.2013 during the

course of assessment proceedings. The Assessing Officer declined the claim of the assessee on the ground that the same was not raised in the return. The said observations was confirmed by the learned CIT(A) relying upon the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. 284 ITR 323 wherein it has been held that the assessee can raise a further claim before the Assessing Officer only by way of a revised return of income. The contention of the assessee is that the assessee can raised the additional ground to accept the claim before the appellate authorities in view of the law settled by Bombay High Court in CIT Vs. Pruthivi Brokers and Shareholders Pvt. Ltd. 349 ITR 336. It is not in dispute that the assessee did not raise his claim in his return as well as in his revised return. However he raised his claim by way of letter dated 11.11.2011. In view of the law settled by Bombay High Court in CIT Vs. Pruthivi Brokers and Shareholders Pvt. Ltd. 349 ITR 336, wherein it is held that it is open to the assessee to raise the additional ground before the appellate authority. In view of the said circumstances, we are of the view that this matter is required to be reconsidered again by the Assessing Officer by giving an opportunity of being heard to the assessee in accordance with law. Therefore, in this regard the finding of the learned CIT(A) is hereby ordered to be set aside and the Assessing Officer is directed to reconsider the matter in accordance with law after giving an opportunity of being heard to the assessee in the interest of justice.

Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ITA NO. 6571/M/14:-

18. The assessee has raised the following grounds:-

“1. The CIT (Appeals) erred in disallowing Income-Tax Depreciation of Rs.1,04,87,106/- on opening WDV of Leased Assets when the same ought to have been allowed being the “Lessor” as the ownership of the assets stands in the name of company and assets are used for the purpose of business of the company.

2. The CIT(Appeals) erred in withdrawal of interest granted u/s. 244A of Income Tax, 1961 at Rs.21,219/-

3. The CIT(Appeals) erred in levying interest u/s. 234D of the Income Tax Act, 1961 at Rs.2,546

ISSUE NO.1:-

19. According to issue no.1, the assessee has challenged the disallowance on depreciation on the lease assets. This issue has also been decided by us in deciding the issue no.1 for A.Y.2009-10. The same ratio would be applicable in this assessment year also because there is no change of the facts and circumstances of the case. Therefore there is no need to repeat the finding again. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

ISSUE NO.2 &3:-

20. On appraisal on the finding of the learned CIT(A) it is apparent that the learned CIT(A) has set aside the finding of the Assessing Officer on these issues and Assessing Officer has been directed to verify the correctness of the claim raised by the appellant. Therefore in the said circumstances nothing concrete finding is before us. Matter is yet to be decided by the Assessing Officer in view of the assertion raised by the assessee in accordance with law. Since matter of controversy with regard to the interest is yet to be decided in view of the direction of the CIT(A) by the Assessing Officer, therefore we are of the view that the order passed by the CIT(A) is justifiable which is not required to be interfered with at this appellate stage. Accordingly this issue is decided in favour of the revenue and against the assessee.

21. Accordingly, appeals of the Assessee are hereby Partly Allowed.

Order pronounced in the open court on 29thDecember, 2016

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER न्यायिकसदस्य/JUDICIAL MEMBER
मुंबई Mumbai; दिनांक Dated : 29thDecember, 2016

MP

**ITA No.6303/M/12&326&6571/M/14
A.Y. 2009-10,2010-11&2011-12**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**