

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI B.R. BASKARAN, HON'BLE ACCOUNTANT MEMBER
& SHRI DUVVURU R.L. REDDY, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 405 & 406/VIZ/2017
(Asst. Years : 2005-06 & 2010-11)**

M/s. Bharat Heavy Plate & Vessels Ltd., Visakhapatnam, now known as "Bharat Heavy Electricals Ltd" (HPVP Unit), Nathayyapalem Post, Visakhapatnam.	vs.	DCIT, Circle-3(1), Visakhapatnam.
PAN No. AAACB 7076 N		
(Appellant)		(Respondent)

**ITA Nos. 438 & 439/VIZ/2017
(Asst. Years : 2005-06 & 2010-11)**

ACIT, Circle-1(1), Visakhapatnam.	vs.	M/s. Bharat Heavy Plate & Vessels Ltd., Visakhapatnam, now known as "Bharat Heavy Electricals Ltd" (HPVP Unit), Nathayyapalem Post, Visakhapatnam.
PAN No. AAACB 7076 N		
(Appellant)		(Respondent)

Assessee by : Shri I. Kama Sastry - CA.
Department By : Shri Deba Kumar Sonawal - CIT DR

Date of hearing : 19/03/2018.
Date of pronouncement : 21/03/2018.

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER

These cross appeals relate to Assessment Years 2005-06 & 2010-11 and they are directed against the orders passed by the

Id. CIT(A)-1, Visakhapatnam. Since the issue urged in the appeals filed by the revenue is identical in nature, these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is a public sector company, engaged in the business of manufacture, supply and erection of heavy equipments.

3. The facts relating to the issues contested by the parties in AY 2005-06 are discussed in brief. The assessment of the assessment year 2005-06 was originally completed by the Assessing Officer on 18/10/2007 under section 143(3) of the Act. When the disputes reached the Tribunal, the ITAT restored certain matters to the file of the Assessing Officer and consequently the assessment under section 143(3) read with section 253 of the Act was passed by the Assessing Officer on 30/09/2011. Thereafter, on 22/05/2013, the Assessing Officer passed a rectification order under section 154 of the Act to make the following disallowances, which were omitted to be disallowed in the original assessment order.

- a) Employees contribution to provident fund pertaining to the period April 2004 to August 2004 Rs. 1,15,41,061/-
- b) Employees contribution to provident fund pertaining to A.Y. 2004-05

claimed by the assessee in the Assessment Year 2005-06 on Rs. 3,26,58,925/- payment basis

The Assessing Officer noticed that the employees' contribution to Provident Fund pertaining to the period from April 2004 to August 2004 amounting to Rs.115.41 lakhs was paid beyond the due date prescribed under the respective heads, even though it was paid before the completion of relevant financial year. Accordingly, he took a view that the above said amount is liable to be disallowed under section 36(1)(va) of the Act. Accordingly the AO disallowed the above said amount. The AO further noticed that the assessee had paid the Employees' contribution to PF pertaining to FY 2003-04 relevant to Asst. Year 2004-05 amounting to Rs.326.58 lakhs in the succeeding year, i.e., in FY 2004-05 relevant to AY 2005-06. The assessee claimed deduction of the above said amount in assessment year 2005-06 on payment basis. Since the payments have been made beyond the due dates prescribed under P F Act, the Assessing Officer held that the amount of Rs. 326.58 lakhs referred to above is also not allowable as deduction in Assessment Year 2005-06. Accordingly he disallowed the claim of Rs.326.58 lakhs also.

4. In the appeal filed before Ld CIT(A), the first appellate authority allowed the claim of Rs.115.41 lakhs by following various decisions relied upon by the assessee. However he confirmed the addition of Rs.326.58 lakhs as he did not accept the claim for deduction on payment basis in the succeeding year. Hence the revenue is challenging the relief of Rs.115.41 lakhs granted by Ld CIT(A) and the assessee is challenging the addition of Rs.326.58 lakhs confirmed by Ld CIT(A).

5. In assessment Year 2010-11 also, the Assessing Officer noticed that employees contribution to the PF amounting to Rs.69,36,066/- was paid by the assessee beyond the due date prescribed in the respective Acts. However, the above said amount was paid before the end of the concerned financial year. The Assessing Officer disallowed the above said by invoking provisions of sec. 36(1)(va) of the Act. In the appellate proceedings, the Ld CIT(A) deleted the disallowance by following various case laws relied upon by the assessee. Hence the revenue has filed appeal challenging the relief granted by the Ld CIT(A).

6. The appeals filed by the revenue for AY 2005-06 and 2010-11 are on same issue, viz., on the relief granted by Ld CIT(A).

7. We heard the parties on this issue and perused the record. The undisputed fact remains in both the years under consideration

that the assessee had paid employees contribution of Rs. 115.41 lakhs & Rs. 69.36 lakhs respectively before the end of the relevant financial year. Before the Id. CIT(A), the assessee relied on host of case laws to contend that the time limit prescribed under section 43B of the Act for allowing him payment of employer's contribution of PF was extendable to the employees contribution also. Accordingly the Id. CIT(A), by following the said decisions has deleted the addition in both the years under consideration. For the sake of convenience, we extract below the order passed by the Id. CIT(A) on this issued in Assessment Year 2005-06.

"4.3 I have considered the submissions made. As per the information stated in the audit report, the employees contribution relating to period April 2003 to March 2004 amounting to Rs. 3,26,58,925/- was deposited into the PF account on 21.10.2004, much after the due date prescribed under the PF Act and after the due date for filing of the return of income for the said year. It is also noted that the employees contribution for the period April 2004 to August 2004 amounting to Rs.1,15,41,061/- was deposited into PF account on 21.10.2004, much after the due date prescribed under the PF Act but before the due date of filing of the return of income for the said year. In this regard it is relevant to refer to the following judicial pronouncements. In the case of Essae Teraoka (P) Ltd. Vs. DCIT 43 Taxmann 33, the Hon'ble Karnataka High Court took the view that the word contribution occurring in Sec.43B of the I.T.Act would include employees contribution to PF, in the light of the definition of the word, 'contribution' by Sec.2(c) of P.F. Act, as per which contribution would mean both the employers contribution and employees contribution. Accordingly, it was held that the provision of Sec.43B allowing deduction for payment made before the filing of the income tax return cannot be ignored. In the case of CIT Vs. Kichha Sugar Co. Ltd. 35 Taxmann 54, the Hon'ble High Court of Uttarakhand held that the due date referred in Sec.36(v)(a) should be read in conjunction with Sec.43B(b) of the Act, and that deduction should be allowed for payment made

before the due date for filing of the return of income. In the case of *CIT Vs. Udaipur Dugdha Utpadak Sahakari Sangh Ltd.* 35 Taxmann 616, the Hon'ble High Court of Rajasthan after referring to the Apex Court decision in the case of *CIT Vs. Alom Extrusions Ltd.* (319 ITR 306) & *CIT Vs. Vinay Cement Ltd.* (213 CIR 268 SC) held that the deduction should be allowed for the payment of, employees contribution made before the due date of filing of return. Similarly in the case of *CIT Vs. State Bank of Bikaner*, the Hon'ble Rajasthan High Court held that the PF contribution paid after the due date under the respective Act but before filing of the return of income u/s.139(1) cannot be disallowed u/s.43B, or u/s.36(1)(v)(a) of the IT Act. Similar views were taken by the Hon'ble Calcutta High Court in the case of *CIT Vs. Vijay Shree Ltd.* 43 Taxmann 396, the Hon'ble Delhi High Court in the case of *CIT Vs. Dharmendra Sharma* 297 ITR 328, *CIT Vs. AIMIL Ltd. & Others* (321 ITR 508), the Hon'ble Madras High Court in the case of *CIT Vs. Nexus Computer Pvt. Ltd.* 313 ITR 144 & the Hon'ble Himachal Pradesh High Court in the case of *CIT Vs. Nipso Poly fabric Pvt. Ltd.* (350 ITR 327 HP). The Hon'ble ITAT, Mumbai, Pune & Chennai have taken similar views. In the light of the above judicial pronouncements, it is held that the assessee would be entitled for deduction of the employees contribution of PF & ESI made before the due date of filing of the return of income under section 139(1) of the I.T. Act. In the light of the above decisions of the various High Courts, it is held that the contributions amounting to Rs.1,15,41,061/- pertaining to the period April 2004 to August 2004, would be allowable as deduction as they were paid before the due date for filing the income tax return. Accordingly, the Assessing Officer is directed to allow deduction of an amount of Rs.1,15,41,061/-.

- 8.** An identical reasoning was given by the Id. CIT(A) in Assessment Year 2010-11 also for deleting the addition of Rs.69.36 lakhs made by the Assessing Officer.
- 9.** Ld. Departmental Representative placed reliance on the circular issued by the Board, wherein it was stated that the decision rendered by the Hon'ble Supreme Court in the case of *CIT vs. Alom Extrusions Ltd.* (319 ITR 306) was applicable only to

employer's contribution of PF and not to employees' contribution. Ld. Departmental Representative also placed reliance on the decision rendered by the Hon'ble Kerala High Court in the case of *CIT vs. Merchem Ltd.* (2015) 378 ITR 443 and also the decision rendered by the Hon'ble Gujarat High Court in the case of *CIT vs. Gujarat State Road Transport Corporation* (Tax Appeal Nos. 1711 & 2577/2009 & others, dated 26/12/2013), wherein it was held that the time limit prescribed under section 43B of the Act would apply to employees' contribution and only the provisions of section 36(1)(va) shall apply to the employees contribution. He further submitted that, in both the above said cases, the decision rendered by the Hon'ble Supreme Court in the case of *Alom Extrusions Ltd.*, (supra) has been distinguished.

10. On the contrary, Id. Authorised Representative of the assessee submitted that the Hon'ble Calcutta High Court in the case of *Vijay Shree Ltd.*, (supra) and also the Hon'ble Delhi High Court in the case of *Dharmendra Sharma* (supra), the Hon'ble Madras High Court in the case of *Nexus Computer Pvt. Ltd.*, (supra) and the Hon'ble Himachal Pradesh High Court in the case of *Nipso Poly Fabric Pvt. Ltd.*, (supra) have taken the view that the time limit prescribed under section 43B of the Act would apply to the employees' contribution also. He submitted that the view in

favour of the assessee should be followed in case of divergent views expressed by different non-jurisdictional High Courts. Accordingly he submitted that the Ld CIT(A) was justified in granting relief to the assessee on this issue in both the years under consideration.

11. We have noticed that different non-jurisdictional High Courts have expressed divergent views in this matter. It is well settled proposition of law that in case of divergent views expressed by the Hon'ble Jurisdictional High Courts, the view is in favour of the assessee should be followed. For this proposition a gainful reference may be made to the decision of the Hon'ble Supreme Court in the case of the CIT Vs. M/s.Vegetables Products Ltd. (SC) (88 ITR 192). Admittedly, there are host of decisions rendered by the various High Courts which is in favour of the assessee on this issue, some of which has been listed out by Ld CIT(A) in his order. We notice that Id. CIT(A) has decided the issue in favour of the assessee by following those decisions. In the absence of any decision rendered by the Jurisdictional High Court on this issue, the Ld CIT(A) was justified in following the decisions rendered in favour of the assessee. Accordingly we do not find any infirmity in the order passed by the Id. CIT(A) on this issue in both the years under consideration.

12. We shall now take up the appeal filed by the assessee for assessment year 2005-06, wherein the assessee is contesting the decision of Ld CIT(A) in upholding the disallowance of Rs.3,26,58,925/- relating to Employees Contribution of Provident Fund.

13. We have noticed earlier that the above said amount was related to the FY 2003-04, i.e., for assessment year 2004-05. The assessee did not pay the same during that year and accordingly, it appears that the same was disallowed in that year. Subsequently, the assessee paid the above said amount on 21-10-2004 and accordingly claimed the deduction of the above said amount in AY 2005-06 on payment basis. The AO rejected the claim of the assessee in the order passed u/s 154 of the Act and the Ld CIT(A) also confirmed the same.

14. The Ld A.R submitted that even though the provisions of sec. 36(1)(va) governs the deduction of employees contribution to Provident Fund, yet the provisions of sec.43B should also be applied to employees' contribution also. The Ld A.R contended that the distinction between employees contribution and Employers contribution made out by the Act has been diluted by Hon'ble Supreme Court in the case of CIT Vs. Alom Extrusions Ltd (2009)(319 ITR 0306). He submitted that the Hon'ble Apex Court has discussed about the object of inserting these provisions, in paragraph 15 of its order, by observing that these provisions were brought to curb the practice of claiming deduction by passing a book entry based on mercantile system of accounting. Accordingly these provisions have intended to allow deduction on payment basis. He submitted that identical view was expressed

by the Special bench of ITAT in the case of Kwality Milk Foods Ltd vs. ACIT (2006)(100 ITD 0199). Hence the object of these provisions is to allow deduction on payment basis.

15. He further submitted that the provisions of sec.43B override all other provisions of the Act. He submitted that the sec. 43B(1) also states that the deduction shall be allowed in the year of payment irrespective of method of accounting followed by the assessee. He submitted that the proviso to sec. 43B(1) only relaxes the above said condition by providing that the deduction shall be allowed in the year in which the liability was incurred, if the payment is made on or before the due date for filing return of income. The Ld A.R submitted that the assessee is placing reliance on the provisions of sec. 43B(1) and accordingly claiming deduction of the above said amount in the year of payment, i.e., in AY 2005-06.

16. The Ld A.R further submitted that the time limit prescribed in sec. 43B of the Act for employers contribution has been made applicable to sec. 36(1)(va) of the Act in various decisions rendered by various High Courts. Though different view has been expressed by Hon'ble Kerala High Court and Hon'ble Gujarat High Court in the cases relied on by Ld D.R, yet the view in favour of the assessee is required to be adopted. He submitted that the the co-ordinate bench of ITAT has expressed this view in the case of DCIT Vs. Eastern Power Distribution Company of A.P Ltd (ITA No. 609/Viz/2014 dated 29-07-2016). The Ld A.R submitted that the co-ordinate bench, in paragraph 10 of its order, has observed that there is no distinction between employees and employer's

contribution to PF and if the total contribution is deposited on or before the due date of furnishing return of income u/s 139(1) of the Act, then no disallowance can be made towards employees' contribution to Provident Fund.

17. Accordingly the Ld A.R submitted that the distinction between employees' contribution to PF and employer's contribution to PF has been diluted by the decisions rendered by various Tribunals and High Courts. Accordingly he submitted that the mandate provided by sec. 43B of the Act to allow deduction on payment basis should also be extended to employees' contribution also and accordingly contended that the impugned claim of Rs.326.58 lakhs made by the assessee should be allowed in AY 2005-06 on payment basis.

18. In the alternative, the Ld A.R submitted that the impugned deduction should have been allowed in AY 2004-05 itself. He submitted that the due date for filing return of income for assessment year 2004-05 u/s 139(1) of the Act was extended, inter alia, for Corporate assesseees to 31-10-2004. He submitted that the assessee has paid the above said amount of Rs.326.58 lakhs on 21.10.2004, i.e., before the due date for filing return of income for AY 2004-05 u/s 139(1) of the Act. Accordingly he submitted that, without prejudice his original contentions, the above said amount should be allowed in AY 2004-05. Accordingly he prayed that a suitable direction may be given to the AO, if the Tribunal is not convinced with his original arguments.

19. The Ld D.R, on the contrary, submitted that the time limit for making payment of employees contribution is prescribed in the

respective Acts and the deduction of the same is governed by the provisions of sec. 36(1)(va) of the Act. The various decisions relied upon by Ld CIT(A) for deleting disallowance of employees' contribution were related to the cases, where payments have been made by the assessee along with employer's contribution. Further, both the employees and employer's contribution were related to the same assessment year. However, in the instant case, the assessee is seeking to claim deduction for employees contribution related to the immediately preceding year on payment basis as per the provisions of sec.43B of the Act and hence the said claim cannot be said to be covered by various decisions relied upon by the Ld A.R. Accordingly he submitted that the Ld CIT(A) has rightly confirmed the addition of Rs.326.58 lakhs made by the AO in AY 2005-06.

20. We heard rival contentions on this issue and perused the record. We notice that the employees contribution of Rs.326.58 lakhs, referred above, relate to AY 2004-05, i.e., immediately preceding year to the year under consideration. The assessee seeks to claim the same in AY 2005-06 for the reason that the above said amount was paid by it in the financial year relevant to AY 2005-06. The contention of the assessee is that there is no difference between employer's contribution and employees' contribution of Provident fund and hence the provisions of sec. 43B should be extended to employees' contribution also and accordingly deduction of the above said amount should be allowed in AY 2005-06, being the year of payment.

21. Before us, the Ld A.R placed reliance on the decisions rendered by Hon'ble Supreme Court in the case of Alom Extrusions Ltd (supra) and also the decision rendered by the Special bench of ITAT in the case of Kwality Milk Foods Ltd (supra). However, we notice that both the Hon'ble Supreme Court and the Special bench have interpreted only the provisions of sec. 43B of the Act in the above said cases. The question of extending the benefits of time limit prescribed in the proviso to sec. 43B of the Act was extended to employees' contribution also by the Tribunals/High Courts by interpreting the proviso to sec. 43B, that too, the old proviso and the substituted new proviso. All these case laws, nowhere, state that the entire provisions of sec. 43B would apply to the employees' contribution. The provisions of sec. 43B were applied only to the extent of time limit prescribed for making payment in the proviso to sec.43B of the Act, i.e., the application was limited to the proviso to sec. 43B(1) of the Act only. Accordingly we are unable to agree with the contentions of the assessee and accordingly hold that the amount of Rs.326.58 lakhs is not allowable as deduction in AY 2005-06 on payment basis.

22. We notice that the Ld CIT(A) has expressed the view that the above said payment was not made into PF account before the due date of filing the return for the subject year. The Ld CIT(A) has further observed that various decisions have liberally interpreted the provisions of and have laid down the principle that the employees' contribution paid before the due date for filing return of income is allowable as deduction. Since the employees' contribution is income of the assessee u/s 2(24(x) of the Act, the Ld CIT(A) held that the same is allowable as deduction only if it is

paid before the due date for filing return of income. Accordingly the Ld CIT(A) has rejected the claim of the assessee.

23. In view of the discussions made by us in the preceding paragraphs, we are of the view that the Ld CIT(A) was justified in confirming the disallowance made by the AO.

24. Before us, the Ld A.R took an alternative plea that the impugned amount is allowable as deduction in AY 2004-05 itself, as it has been paid within the extended time limit prescribed for AY 2004-05 u/s 139(1) of the Act. We notice that the assessee is taking this alternative plea for the first time before us. Hence we restore this plea of the assessee to the file of the AO for deciding the same in accordance with the law.

25. Now we shall take up the appeal filed by the assessee for assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the rejection of depreciation claimed by the assessee on EDP equipments taken on lease from M/s HCL Infosystems Ltd.

26. The facts relating to the above said issue are set out in brief. The assessee entered into a contract (stated as 'rate contract') with M/s HCL Infosystems for supply of EDP equipments on lease for a period of five years. In the return of income, the assessee claimed lease rental payments as deduction. However,

during the course of assessment proceedings, the assessee contended before the AO that the assessee has entered into Finance lease with M/s HCL infosystems Ltd and hence it is entitled to claim depreciation on the EDP equipments. It was submitted that the value of EDP equipments were capitalised in AY 2009-10. Accordingly the assessee requested the AO to allow depreciation. The AO, however, did not agree with the contentions of the assessee. Before the AO, the assessee has furnished copy of agreement entered between M/s HCL Infosystems and M/s BHEL. The assessee submitted that the terms and conditions of agreement entered by the assessee were same as that entered by BHEL. The AO examined the said agreement and observed that the terms and conditions clearly specify that, only after completion of the 5 years lease period, M/s BHEL would have right to acquire or surrender of the equipments and that in case M/s BHEL decides to acquire the equipment it could do so at a nominal charge of Re 1.00 per equipment which will be paid as terminal payment and thereafter it could claim depreciation as per the provisions of Income tax Act. The AO also noticed that the insurance for the equipments/goods was vested with the supplier and also that even shifting of equipment from

one location to another after initial installation was the responsibility of supplier. Accordingly the AO took the view that the ownership on the assets did not pass on the assessee company and accordingly held that the assessee is not entitled to claim depreciation thereon.

27. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal before the Tribunal.

28. The Ld A.R submitted that the assessee has purchased the EDP equipments under Finance lease only and it has wrongly claimed the lease payments as deduction. He submitted that the lessee is entitled to claim depreciation under Finance lease. He submitted that there will be usually three parties in case of lease agreements, viz., the lessor, the lessee and the supplier of equipments. In that case, the lease agreement shall be entered between the lessor and lessee. However, in the instant case, the supplier of equipments and the lessor are one and the same person, viz., M/s HCL Infosystems Ltd. He submitted that the intention of supplier of equipments will also be to sell the equipments. Accordingly he submitted that M/s HCL Infosystems Ltd has actually sold the EDP equipments under Finance lease. Accordingly he submitted that the assessee has become owner of

the EDP equipments and is entitled to claim depreciation thereon. The Ld A.R further submitted that the Ld CIT(A) has observed that the assessee, in its capacity as lessee, is entitled to terminate the agreement. The Ld A.R invited our attention to paragraph 21.1 of the agreement and submitted that the context of clause 21.1 should be understood in the context of supplier of equipments only. He submitted that the substance should prevail over the form. He further submitted that the assessee has borne the maintenance charges of the EDP equipments, which is evident from the break up details of lease instalments, which are furnished in page 39 of the paper book. He submitted that the lease instalments included maintenance charges also. He submitted that the assessee would not have borne the maintenance charges, if it was not the owner of the EDP equipments. Accordingly he submitted that the Ld CIT(A) was not justified in rejecting the claim for depreciation.

29. On the contrary, the Id D.R submitted that the depreciation was admissible only on the owner of the assets. He submitted that the assessee was not owner of the assets and hence the claim for depreciation was rightly rejected by Ld CIT(A).

30. We have heard rival contentions on this issue and perused the record. We notice that the Ld CIT(A) has rejected the claim of the assessee with the following observations:-

"5.3 I have considered the submissions made and the details filed. At the outset it is to be noted that the assessee had not filed the (ease agreement entered with HCL and had not claimed depreciation over the (eased assets in the return of income. During the course of assessment proceedings, claim for depreciation over the teased assets were made on the plea that the assessee inadvertently failed to claim in the return of income and that the assessee is owner of the said assets taken on lease for all practical purposes, and that the ownership of the assets was determined by the terms of the contract between the lesser and lessee, However, the assessee did not file the contract entered with the lessor, M/s. HCL Systems. Thus in the absence of production of the contract said to be entered with M/s.HCL Systems, the assessee's claim for depreciation is prima fade not entertainable.

5.3.1 A copy of lease agreement entered between BHEL and HCL Info systems Ltd. dated 27.10.2009 was produced and it was claimed that similar contract was entered into by the assessee. Assuming, it was so, the perusal of the terms of the said agreement would clearly show that the assessee was only a lessee over the Agreement, the lessor had the obligation to insure the assets over the lease period and only after the expiry of the lease period the lessee gets a right to acquire the leased assets. The lessee also has right to terminate the agreement if the lessor fails to perform the services or deliver the equipments within the agreed time. Thus as per the terms of the agreement, the lessee has only right to use the assets without any ownership rights over the assets. The claim of exclusive possession is not legally tenable as the lessor continues to own and have legal possession over the assets. Thus even as per the terms of the agreement, the assessee cannot be construed as owner of the assets and would not be entitled for deprecation over the said assets.

5.3.2 It was also pleaded that the claim 0' depreciation was not made in the return of income due to inadvertence. But no information was furnished as to whether claim of depreciation was made in regard to these assets in the

returns filed for subsequent years. Hence this plea is also liable for rejection.

5.3.3 In view of the above discussion, I do not find merit in the assessee's claim for allowance of depreciation and has been rightly rejected by the AO."

31. We notice that the assessee has not furnished the relevant agreement entered with M/s HCL Infosystems Ltd. Instead, the assessee has furnished the copy of agreement entered between M/s HCL Infosystems Ltd and M/s BHEL. It has been claimed by the assessee that the said agreement was identical with the agreement entered by the assessee. Hence, the Ld CIT(A) has taken the view that the claim of the assessee to allow depreciation was not prima facie admissible, in the absence of relevant agreement. We notice that the Ld CIT(A) has, however, proceeded to examine the terms and condition of the Contract and has given a finding that the assessee was only a lessee and the ownership has remained with lessor only. He has also given a finding that the assessee had got the right to use the equipments only and the lessor continued to have legal possession over the assets. The Ld CIT(A) has also observed that the assessee did not furnish any information about similar claim made in the succeeding years. Under these set of facts, the Ld CIT(A) has confirmed the rejection of claim for depreciation.

32. Before us, the assessee did not furnish any document to contradict the interpretation given by the Ld CIT(A). The Id A.R disputed the observations of the AO by stating that the supplier of equipment and lessee were one and the same. However, in our view, what is required to be shown is that the ownership of the equipments has transferred from M/s HCL infosystems ltd to the assessee. In our view, the assessee has failed to show the same. In any case, in the absence of relevant agreement, it may not be proper to understand the terms and conditions of the lease on the basis of some other agreement. Hence we are of the view that the Ld CIT(A) was justified in confirming the order passed by the AO on this issue.

33. In the result, both the appeals of the revenue and both the appeals of the assessee are dismissed.

Order Pronounced in open Court on this 21st day of March, 2018.

Sd/-
(DUVVURU R.L. REDDY)
Judicial Member

sd/-
(B.R. BASKARAN)
Accountant Member

Dated : 21st March, 2018.

vr/-

Copy to:

1. The Assessee- M/s. Bharat Heavy Plate & Vessels Ltd., Visakhapatnam, now known as "Bharat Heavy Electricals Ltd" (HPVP Unit), Nathayyapalem Post, Visakhapatnam.
2. The Revenue -
 - a) DCIT, Circle-3(1), Visakhapatnam.
 - b) ACIT, Circle-1(1), Visakhapatnam.
3. The Pr.CIT-1, Visakhapatnam.
4. The CIT(A)-1, Visakhapatnam.
5. Ld. D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.

