

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER  
AND**

**SHRI LALIET KUMAR, JUDICIAL MEMBER**

**ITA No.530/Bang/2017  
(Assessment year : 2010 – 11)**

The ACIT, Circle 1,  
Kalaburagi.

Appellant

Vs

M/s. Sahakari Sakkare Karkhane Niyamith, Aland,  
#2 – 841, Near J. K. Furniture,  
Ramadevi Mudge,  
Jagat Circle,  
Gulbarga - 535105  
**PAN. AAFAS0073H**

Respondent

**Assessee by : Shri B. S. Balachandran, Advocate**  
**Revenue by : Shri C. H. Sundar Rao, CIT (DR)**  
**Date of hearing : 10 – 01 – 2019**  
**Date of pronouncement : 08– 02 – 2019**

**ORDER**

**PER A. K. GARODIA, A.M.:**

This appeal is filed by the revenue which is directed against the order of CIT (A) Kalaburagi dated 29.12.2016 for A. Y. 2010 – 11.

2. The grounds raised by the revenue are as under:-

*“1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to law and fact of the case.*

*2. In the facts & circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in allowing relief to the assessee by considering Rs. 50 lakhs as taxable lease rent for year under consideration as against Rs.15 crore received by assessee.*

*3. In the facts & circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in considering Rs.15 crore as advance lease rent even though nowhere in the lease agreement it is written that Rs. 15 crore is paid towards advance lease rent.*

*4. In the facts & circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in not adjudicating the nature of receipt of Rs.15 crore whether the same falls under the head 'Income from Business & Profession' or 'Income from House Property' without appreciating the fact that M/s NSL Sugars Ltd. issued TDS certificate (Form-16A) dated 20.01.2011 under section 194I of the IT Act.*

*5. In the facts & circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in considering Rs. 15 crore as advance lease rent which was received in one go instead of Rs. 45.0471 crore without going into the fact whether Rs.15 crore received by the assessee is 'Income from Business & Profession' or 'Income from House Property' without exercising his powers u/s 251 of IT Act as mentioned by the Hon'ble High Court of Delhi in case of Gurinder Mohan Singh Nindrajiog vs. CIT [2012] 348 ITR 170 (Delhi) that in appellate proceedings, Commissioner (Appeals) has jurisdiction to correct order of Assessing Officer not only with regard to matter raised by assessee in appeal but also with regard to any other matter which has been considered by Assessing Officer and determined in course of assessment.*

*6. The appellant craves leave to add, amend or alter any of the grounds of appeal either before or at the time of hearing?"*

3. Brief facts as noted by the A. O. on page 3 of the assessment order are that as per Lease deed dated 06.03.2010, the lessee agreed to pay a total lease rent of Rs. 7500 lacs excluding security deposit of Rs. 500 lacs for the entire lease period of 30 years from 2010 – 11 to 2039 – 40 sugar crushing season up to 30.09.2040. It is further noted that considering the immediate requirement of funds of the lessor i.e. the present assessee and upon the permission of the govt. vide letter dated 25.01.2010, the lessee has agreed to pay to the lessor Rs. 1500 lacs in one lump sum at the time of execution of the lease agreement which is equivalent to Rs. 4504.71 lacs after discounting total lease rent payable for 30 years at the rate of 10 percent. It is further noted that the balance lease rent i.e. Rs. 2995.29 Lacs is payable by the lessee to the lessor as per various dates and amounts noted in the lease deed and reproduced in the assessment order as per which Rs. 89.86 lacs is payable in crushing season 210 – 11. The lessee has accordingly paid Rs. 1500 lacs in F. Y. 2009 – 10 and deducted TDS Rs. 104,14,474/-. The assessee claimed refund of TDS amount of Rs. 104,14,474/- but as per the assessee, this amount of Rs. 1500 Lacs is not taxable in the present year. But the AO was not satisfied in view of these facts and the AO came to the conclusion that this amount of Rs. 1500

lacs received in the present year is taxable in full in the present year. Being aggrieved, the assessee carried the matter in appeal before CIT (A). He held that the amount of Rs. 1500 lacs is receipt of advance rental and since, the assessee is following mercantile system of accounting, advance rental cannot be brought to tax in the present year. He also held that this amount of Rs. 1500 lacs should be taxed in these 30 years @ Rs. 50 lacs in each year plus the annual rent receivable as per lease deed. He also held that credit of TDS should be restricted to proportionate amount of income. Now, the revenue is in appeal before the tribunal.

4. Learned DR of the revenue supported the assessment order. As an alternative argument, he submitted that even if it is held that the full amount of Rs. 1500 lacs is not taxable in the present year and it should be taxed over the full period of lease of 30 years, it cannot be distributed equally in these 30 years because the discounted value of the first year i.e. the present year will be full but that of the last i.e. 30<sup>th</sup> year will be very small and hence the discounted value of each year should be worked out and that discounted value should be taxed in each of these 30 years. Learned AR of the assessee supported the order of CIT (A).
5. We have considered the rival submissions. We find that the learned CIT (A) has decided the issue in dispute as per Para 3.3 of his order, which is reproduced as under for ready reference:-

*“3.3 The important points for consideration are the language of the lease deed, accrual of income and relevant provisions of the act. The lease deed is clear that the lease period is for 30 years commencing from crushing season 2010 to 2039-40 and that the lease rental payable for the said period is Rs.75 crores. However, the lessor has decided to receive out of Rs.75 crores, a certain portion of amount(Rs.45 crores approx) in lump sum to meet its urgent liabilities at a discounted value of Rs.15 crores. The relevant lines from the lease agreement are:*

*"The lessee hereby has agreed to pay a total lease rent of Rs. 7500 lakhs for the period from 2010-11 to 2039-40 sugar cane crushing season. Further, considering the immediate requirements of funds for settlement of preferential liabilities of the lessor.....the lessee has agreed to pay the lessor a sum of Rs. 1500 lakhs in one lump sum which is equivalent to Rs.4504.71 lakhs after discounting total lease rental payable for 30 years at rate of ten percent. The balance of lease rent is payable by the lessee to the lessor annually as follows....."*

*So it is clear that the lease rent of Rs.75 crores accrues over the lease period of 30 years. The fact that an amount of Rs. 15 crores was received in one go instead of Rs.45.0471 crores and it is an arrangement between the lessor and lessee. Taking advance rent after discount is the arrangement between parties regarding the payment which cannot form the basis for taxation. The appellant has been following mercantile system of accounting and as such, advances cannot be treated as income. Further, the contention of the AO that since the assessee has taken whole sum of TDS credit, and so the income also should be taxed in the single year is not justifiable. The provisions relating to TDS are different from provisions of taxation of income. The stand taken with respect to TDS credit cannot form basis for scope of income. The provisions of TDS in respect of rent (Sec. 1941) require that TDS be made either at the time of credit or payment, whichever is earlier. At most, in this case, the TDS credit should have been restricted to proportionate amount of income. The lease rent to be offered to tax each year for the 30 years period in this case is Rs.15 crores over 30 years at Rs.50 lakhs each year plus the annual rental receivable as per the lease deed. However, the TDS credit for the AY 2010-11 shall be restricted to the amount of income for AY 2010-11 and balance shall be allowed to be carried forward. The appellant during the appellate proceedings has agreed for the same.”*

6. From the above Para of CIT (A), it comes out that as per CIT (A), out of this amount of Rs. 1500 Lacs received in the present year being the discounted value of the Lease rent of these 30 years Rs. 4504.71 lacs, an amount of Rs. 50 lacs should be brought to tax in each of these 30 years. In our considered opinion, in principle, we are in agreement with CIT (A) that only proportionate amount of this Rs. 1500 Lacs should be brought to tax in each of these 30 years but regarding the working of CIT (A) that Rs. 50 lacs should be taxed in each of these 30 years, we are not in agreement with CIT (A). In our considered opinion, since, the total agreed lease rent for 30 years is Rs. 7500 lacs, the amount of lease rent for each year is Rs. 250 lacs. From this amount of lease rent for each year, part amount is receivable in the respective year and the balance amount is received in advance after discounting the same @ 10%. Hence in each year, the amount to be brought to tax should be the actual amount receivable in that year and the discounted value of the balance amount. In the first year, the actual amount receivable is Rs. 89.86 lacs in addition to the discounted value received in one lump sum. Hence the discounted value of the balance amount i.e. Rs. 160.14 Lacs (Rs. 250 lacs less Rs. 89.86 lacs) in the

first year will be the same amount Rs. 160.14 Lacs because, the discounted value of the amount receivable in the present year has to be equal. In this manner, the amount to be brought to tax in the present year being the first year is Rs. 250 Lacs. In the remaining 29 years, actual amount receivable in each year is noted in the lease deed. The same should be brought to tax in the respective year and in addition to that, the balance amount should be worked out and thereafter, the discounted value thereof should be computed @ 10% and the total of these two amounts i.e. actual amount receivable in that year plus the discounted value of the balance amount should be brought to tax in each year. We have worked out the same as under:-

			Full		Discounted	Gross
			Amount of		Amount of	Income
		Balance Rent	Discounted	Discount factor	Discounted	to be
Year No.	Full Rent	to be received	Rent	10%	Rent	Taxed
1	2,50,00,000	89,86,000	1,60,14,000	1	1,60,14,000	2,50,00,000
2	2,50,00,000	92,11,000	1,57,89,000	1.1	1,43,53,636	2,35,64,636
3	2,50,00,000	94,41,000	1,55,59,000	1.21	1,28,58,678	2,22,99,678
4	2,50,00,000	96,78,000	1,53,22,000	1.331	1,15,11,645	2,11,89,645
5	2,50,00,000	99,20,000	1,50,80,000	1.4641	1,02,99,843	2,02,19,843
6	2,50,00,000	1,01,69,000	1,48,31,000	1.61051	92,08,884	1,93,77,884
7	2,50,00,000	1,04,24,000	1,45,76,000	1.771561	82,27,772	1,86,51,772
8	2,50,00,000	1,06,84,000	1,43,16,000	1.9487171	73,46,372	1,80,30,372
9	2,50,00,000	1,09,51,000	1,40,49,000	2.14358881	65,53,962	1,75,04,962
10	2,50,00,000	1,12,23,000	1,37,77,000	2.357947691	58,42,793	1,70,65,793
11	2,50,00,000	1,15,05,000	1,34,95,000	2.59374246	52,02,907	1,67,07,907
12	2,50,00,000	1,17,92,000	1,32,08,000	2.853116706	46,29,323	1,64,21,323
13	2,50,00,000	1,20,86,000	1,29,14,000	3.138428377	41,14,798	1,62,00,798
14	2,50,00,000	1,23,89,000	1,26,11,000	3.452271214	36,52,957	1,60,41,957
15	2,50,00,000	1,26,97,000	1,23,03,000	3.797498336	32,39,764	1,59,36,764
16	2,50,00,000	1,30,15,000	1,19,85,000	4.177248169	28,69,114	1,58,84,114
17	2,50,00,000	1,33,41,000	1,16,59,000	4.594972986	25,37,338	1,58,78,338
18	2,50,00,000	1,36,73,000	1,13,27,000	5.054470285	22,40,987	1,59,13,987
19	2,50,00,000	1,40,15,000	1,09,85,000	5.559917313	19,75,749	1,59,90,749
20	2,50,00,000	1,43,65,000	1,06,35,000	6.115909045	17,38,907	1,61,03,907
21	2,50,00,000	1,47,25,000	1,02,75,000	6.727499949	15,27,313	1,62,52,313
22	2,50,00,000	1,50,93,000	99,07,000	7.400249944	13,38,739	1,64,31,739
23	2,50,00,000	1,54,71,000	95,29,000	8.140274939	11,70,599	1,66,41,599
24	2,50,00,000	96,51,000	1,53,49,000	8.954302433	17,14,148	1,13,65,148
25	2,50,00,000	60,21,000	1,89,79,000	9.849732676	19,26,854	79,47,854
26	2,50,00,000	37,56,000	2,12,44,000	10.83470594	19,60,736	57,16,736
27	2,50,00,000	23,42,000	2,26,58,000	11.91817654	19,01,130	42,43,130
28	2,50,00,000	14,62,000	2,35,38,000	13.10999419	17,95,424	32,57,424

29	2,50,00,000	9,11,000	2,40,89,000	14.42099361	16,70,412	25,81,412
30	2,50,00,000	5,32,000	2,44,68,000	15.86309297	15,42,448	20,74,448
<b>TOTAL</b>	<b>75,00,00,000</b>	<b>29,95,29,000</b>	<b>45,04,71,000</b>		<b>15,09,67,234</b>	<b>45,04,96,234</b>
					Rounded off to 15 Crores	
	29,95,29,000	To be received		Rounding off Difference		
	15,00,00,000	Received in Advance		to be reduced in last year		9,67,234
	<b>44,95,29,000</b>	Total Receivable		Total Amount to be taxed		<b>44,95,29,000</b>

7. The amount to be taxed in each of these 30 years should be as per this chart. Year No. 1 is the present year. Credit of TDS should be allowed on proportionate basis of income taxed in each year out of discounted amount of discounted rent.

8. In the result, the appeal of the revenue is partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(LALIET KUMAR)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 08<sup>th</sup> February, 2019.  
/MS/

Copy to:  
1. Appellant  
2. Respondent  
3. CIT  
4. CIT(A)  
5. DR, ITAT, Bangalore  
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.