

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 3041/Ahd/2014
Assessment Year: 2011-12

GTPH Hathway Pvt Ltd**Appellant**
*202, Sahjanand Shopping Centre,
2nd Floor, Opp. Swami Narayan Mandir,
Shahibaug, Ahmedabad- 380 004
[PAN : AAACG 6676 M]*

Vs.

The Jt. Commissioner of Income-tax**Respondent**
Range -4, Ahmedabad

ITA No. 3346/Ahd/2014
Assessment Year: 2011-12

The Dy. Commissioner of Income-tax**Appellant**
Circle-2(1)(1), Ahmedabad

Vs.

GTPH Hathway Pvt Ltd**Respondent**
*202, Sahjanand Shopping Centre,
2nd Floor, Opp. Swami Narayan Mandir,
Shahibaug, Ahmedabad- 380 004
[PAN : AAACG 6676 M]*

Appearances by:

TP Hemani, for the Assessee
Lalit P Jain, for the Revenue

Date of concluding the hearing : 30.01.2019
Date of pronouncing the order : 24.04.2019

O R D E R

Per Pramod Kumar, Vice President :

These cross appeals call into question correctness of learned CIT(A)'s order dated 19th September 2014 in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the assessment year 2011-12.

2. Grievances raised by the parties are, in effect, as follows:-

Grounds of appeal:-

ITA No. 3346/Ahd/2014 - by Revenue

"1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance of depreciation claimed by the assessee on leased assets despite the admission of the assessee and the lessor that depreciation on the said assets is being claimed by the lessor and the ownership and control on assets was held by the lessor."

ITA No. 3041/Ahd/2014 - by assessee

"1. The Ld. CIT(A) has erred in law and on facts in holding that the nature of the lease transaction entered into by the appellant was Finance Lease and not Operating Lease.

2. The Ld. CIT(A) has erred in law and on facts in not allowing the claim of expenditure in the nature of lease rental in the sum of Rs. 1,57,73,040/- on the assets leased by the appellant. Under the facts and circumstances of the case, Ld. CIT(A) ought to have allowed the claim of Lease Rentals.

3. The Ld. CIT(A) has erred in law and on facts in directing the assessing officer of CISCO Systems Capital (India) Private Limited to disallow depreciation on the assets given to the appellant on lease."

3. As all the above grievances pertain to the same issue, we will take them up together.

4. The relevant material facts are as follows. The assessee before us is engaged in the business of broadcasting through channels, broadband, advertisement and other related activities. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed depreciation on the leased assets. When Assessing Officer probed the matter further, he found that this depreciation of Rs. 97,08,988/- was claimed on the machineries which were obtained on lease from CISCO Systems Capital (India) Pvt. Ltd. but, in effect, the ownership of the asset vested with the lessor. The Assessing Officer was thus of the view that the assessee is not entitled to the depreciation on these assets, and that, in any event, lessor had also claimed the depreciation. He thus declined the claim of depreciation of Rs. 97,08,988/-. Aggrieved, assessee carried the matter in appeal before the CIT(A). The assessee also raised the plea that in the event of the ownership being held to be of the lessor, the lease rentals are to be allowed as a deduction. Accordingly, he raised an alternate plea for deductibility of Rs. 1,57,73,040/- as operating lease rentals. Learned CIT(A) upheld the claim of the assessee to the extent that it was a case of financial lease in which lessee was *de facto* owner of the asset and entitled to depreciation. He, however, also directed that the depreciation in the hands of lessor is to be disallowed, and that the Assessing Officer may, accordingly, take up the matter with the Assessing Officer of CISCO Systems Capital (India) Pvt. Ltd. As regards the alternate plea of the assessee for deductibility of lease rentals of Rs. 1,57,73,040/- he rejected the

same on the ground that the lease is a finance lease in nature. In his well reasoned order, learned CIT(A), *inter alia*, observed as follows:-

“2.3 Decision:

I have carefully considered the facts of the case, the assessment order and in written submission of the appellant. The appellant is in the business of providing cable distribution, broadband, advertising and value added services related to cable network. It was noted by the AO that it had taken certain assets on lease on which depreciation has been claimed. The AO held that since the appellant has taken assets on lease it cannot be allowed depreciation on those assets as it was not the owner of those assets.

The appellant on the other hand has submitted that the assets have been taken by it on finance lease and therefore, the claim of depreciation was in accordance with accounting standards AS-19. It has therefore, been requested that it should be allowed.

On a careful consideration of total facts and circumstances, it is noted that the claim of the appellant that it has taken the assets on finance lease appears to be correct. The appellant has taken the assets which are of specific use for him and were given by the lessor according to the selection and choice made by the appellant. The appellant has taken delivery of the assets and all risks and benefits have been transferred to it. The appellant has to maintain those assets. As per the lease agreement which has been produced by the appellant, it is clear that the appellant has first option to buy those assets at the end of the lease period. Further, as per the accounting standards in case of finance lease the depreciation is to be claimed by the lessee. The accounting standard also defines the finance lease as a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Since the appellant has become de-facto owner of the asset the claim of depreciation made by it is correct. The honourable Supreme Court in the case of Asia Brown Boveri Limited 154 taxman 512 has also dealt with the issue of operating lease and financial lease. It has been laid down by the honourable Court that the lessor enters into the transaction only as a financier and it does not bear the cost of repairs maintenance and operation. The main interest of the lessor was in his rentals and not the asset and he must get his principal back along with interest. It is further noted that clause 1.2 of the agreement clearly provides that lessor shall all times retain the title of the equipment.

Further, the accounting standards also prescribe that lessee shall recognize finance leases as assets and liabilities in their balance sheets at amounts equal to the fair value of the lease property. The appellant has accordingly recognized lease transaction as per the accounting principles and has also made disclosures and the financial statements issued with the annual accounts of the company. It has clearly mentioned that it has taken set top boxes under finance lease and has also given details of the lease rentals. It is also observed from the working of lease payment charges during the relevant assessment year that the lease rent has been worked out by working out the

principal payment, interest payment, service tax on interest and also the margin money payment. This clearly shows that it is a finance lease.

Therefore, it is clear from the above discussion that even though the assessee is not the owner of the asset but it has dominant control over the assets. The assets are used by the appellant for the purpose of its business and accordingly it shall be entitled to claim depreciation under section 32 of the Income tax Act.

In view of the above discussion, I am of the considered opinion that the appellant had rightly made claim of depreciation on the assets taken by it on financial lease. The action of the AO by disallowing the same was not justified. The disallowance made by the AO is therefore, directed to be deleted and the claim of depreciation on the leased assets is accordingly allowed.

*The relevant grounds of appeal are accordingly **allowed**.*

The appellant has also raised an alternative ground in which it has been claimed that the lease rent paid by the appellant amounting to Rs. 15773040/- should be allowed in respect of the leased assets in case the claim of depreciation is not considered to be allowable. During the course of assessment proceedings, the appellant had made this claim by way of a letter stating that since the depreciation has been claimed by the lessor it is withdrawing its' claim of depreciation and accordingly the lease rentals should be allowed as deduction. The AO disallowed the claim of the appellant stating that the claim was not made in the return and in view of the honourable Supreme Court's ruling in the case of Goetze(India) Ltd 284 ITR 323 he did not admit the revised claim.

During the course of appellate proceedings, the appellant has submitted that there was no bar in making a revised claim even though it was not made in the original return. The appellant has placed reliance on the judgement of honourable Gujarat High Court in the case of Arvind Mills Ltd. in Income Tax Appeal No. 01/04/2007 of 2011. The honourable High Court has held that in admitting new claim which was not made in the return of income there is no bar on the appellate authorities. It has accordingly been requested by the appellant that the revised claim should be admitted.

On a careful consideration of entire facts of the case, it is noted that the facts clearly show that appellant has taken these assets on a finance lease and it is not an operating lease. The issue has been discussed in detail in the preceding grounds of appeal. It has been held by me in the preceding discussion that the assets have been taken on a finance lease and accordingly the appellant shall be entitled to claim depreciation on those assets. The appellant has mentioned that since the lessor has claimed depreciation it cannot be allowed the claim of depreciation on the same asset. The reason given by the appellant is not acceptable. If the other person or the lessor has made a wrong claim of depreciation the action has to be taken

in its hand and the claim made by the appellant cannot be disallowed. It is accordingly held that the appellant shall be entitled to claim depreciation. The claim of lease rentals made by the appellant is therefore, dismissed.

The AO is directed to pass on the information to the assessing officer holding jurisdiction of the lessor namely CISCO Systems Capital (India) Private Limited to take consequential action of disallowing the claim of depreciation made by it on the assets leased out to the appellant on finance lease. Since it is the financial transaction the lessor shall not be entitled for claiming the depreciation.

The ground of appeal is accordingly dismissed.”

5. None of the parties are satisfied, and therefore, both the parties are in appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. We find that, as learned CIT(A) has rightly concluded, it is a case of finance lease in which not only the assessee has taken assets of specific use to him, taken delivery of the same, is maintaining the same and has the first option to buy the same at the end of the lease period. All the risks and rewards of the ownership are with the assessee. In these circumstances, and for the detailed reasons set out by the learned CIT(A) - as expected above, the *de facto* ownership was with the assessee and the assessee was entitled to depreciation on the same. In any case, no material has been brought on record to controvert these findings of the CIT(A). As the claim of depreciation has thus been allowed, the deductibility of lease rentals is already ruled out. As regards the claim of depreciation by the lessor, the CIT(A) has already given directions for the said claim being denied in the hands of the lessor. No specific points have been raised in respect of these directions. We are thus in considered agreement with the stand of the CIT(A) and we reject grievances of both the parties against the same.

8. In the light of the above discussions, as also bearing in mind entirety of the case, we approve the well reasoned stand of the CIT(A) and decline to interfere in the matter.

9. In the result, both the appeals are dismissed. Pronounced in the open court today on the 24th April, 2019.

Sd/-

Sd/-

Ms. Madhumita Roy
(Judicial Member)

Pramod Kumar
(Vice President)

Ahmedabad, the 24th day of April, 2019

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *Commissioner*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

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*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*