

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 825, 2534 2535/Ahd/2013 2584/Ahd/2015
(निर्धारण वर्ष / Assessment Years: 2008-09, 2009-10, 2010-11 & 2012-13)

Gujarat Lease Finance Ltd. Hasubhai Chambers, Opp. Town Hall, Ellisbridge, Ahmedabad- 380006	बनाम/ Vs.	DCIT Circle-4, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAA CG8 354 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Soparkar, AR
प्रत्यर्थी की ओर से / Respondent by :	Shri S. K. Dev, Sr. DR

सुनवाई की तारीख / Date of Hearing	24/06/2019 and 25/06/2019
घोषणा की तारीख /Date of Pronouncement	28/06/2019

आदेश/ORDER

PER SUDHANSHU SRIVASTAVA - JM:

All the four appeal have preferred by the assessee and involved identical issues. ITA No. 825/Ahd/2013 is assessee's appeal for A.Y. 2008-09 and challenges the order of the Ld. Commissioner of Income Tax (Appeals)-8, Ahmedabad (hereinafter called 'CIT (A)') vide order dated 27.12.2012 upholding certain

disallowance/additions. ITA No. 2534/Ahd/2013 is the assessee's appeal for A.Y. 2009-10 and is preferred against the order dated 20.08.2013 passed by the Ld. CIT (A)-8 Ahmedabad. ITA No. 2535/Ahd/2013 is assessee's appeal against the order dated 18.03.2013 passed by the Ld. CIT (A)-8 and pertains to A.Y. 2010-11. ITA No. 2584/Ahd/2013 is assessee's appeal for A.Y. 2012-13 and is preferred against order dated 10.08.2015 passed by the Ld. CIT (A)-2, Ahmedabad. For the sake of convenience these appeals are being disposed by a common order.

2.0 The brief facts of the case are that in the past years the assessee company was engaged in leasing and financing activity. Admittedly in A.Y. 2008-09 and the other years under appeal, there was no business activity and there was no income from the principal source of business. For A.Y. 2008-09 the return of income was filed declaring a loss of Rs. 2,18,70,903/-. The case was selected for scrutiny and, thereafter, during the course of assessment proceedings the Assessing Officer (AO) noted that the assessee company had claimed depreciation of Rs. 2,31,42,720/-. The assessee company was asked to show-cause as to why the depreciation claimed should not be disallowed because there was no business activity and also in view of the fact that the assets belonging to the company had been assigned to the banks and

further because there was no income accruing to the company from leasing. It was the assessee's submission before the AO that although the company had not carried out any fresh financing activity in the year under consideration due to financial constraints and adverse situation being faced by it, the company was not entirely closed down and, therefore, since the business of the company had not shut down permanently, the assessee claim of depreciation could not be denied. It was also submitted that the assets on which the depreciation had been denied were not transferred to the banks which they were assigned and the same continued to be under the ownership of the assessee. However, the AO was of the view that since the assessee company had not carried out any business activity and since the assets on which the depreciation was claimed had been assigned to a consortium of bank depreciation was not to be allowed. The AO proceeded to make an addition of Rs. 23,142,720/- for A.Y. 2008-09. The assessee's appeal on this issue before the Ld. First Appellate Authority was dismissed. The assessee had also raised an alternate plea before the Ld. CIT(A) in this regard that depreciation on those assets which had not been leased out could not be refused. It was submitted before the Ld. CIT (A) that there were two other blocks of assets namely 'furniture and fixtures' and 'computers' which were present

in the block of assets apart from 'plant and machinery' which had been leased out. It was submitted that since these two blocks of assets did not have any connection with leasing out and the same were still being used by the assessee, depreciation on these blocks could not be disallowed. The Ld. CIT (A) did not allow this alternate plea of the assessee also.

2.1 In A.Y. 2009-10 the assessee had claimed depreciation of Rs. 81,34,281/- which was disallowed by the AO on identical facts and reasoning and the assessee's appeal before the First Appellate Authority was partly allowed by accepting the assessee's alternate plea that depreciation on assets which had not being leased out should be allowed.

2.2 Similar issue related to depreciation arose in A.Y. 2010-11 also wherein the assessee had claimed depreciation of Rs. 69,55,219/-. The AO noted that the assessee had not provided any break up of the depreciation charge as charged to the different blocks like 'plant and machinery' 'furniture and fixtures' and 'computers' and, therefore, proceeded to disallow the entire amount of 69,55,219/-. The assessee's appeal before the Ld. CIT (A) on this issue was again partly allowed with the Ld. CIT(A) dismissing the assessee's claim of depreciation on lease out assets but

accepting the alternative ground of allowing depreciation in relation to assets which were not leased out.

2.3 In A.Y. 2012-13, the disallowance of depreciation on identical facts amounted to Rs. 43,35,278/- and assessee's appeal before the Ld.CIT (A) on the issue was also partly allowed as in earlier two assessment years under appeal by giving the direction that the assessee's claim of depreciation in respect of 'furniture and fixtures' and 'computers' was to be allowed.

2.4 Now, the assessee is in appeal all these four years and has challenged the action of the Ld. CIT (A) in restricting the assessee's claim of depreciation only to the extent the depreciation of assets that had not been leased out by the assessee company. The assessee is also challenging the complete disallowance of depreciation in AY 2008-09.

2.5 In A.Y. 2008-09, it is further seen that there were other additions to the assessee's income i.e. disallowance under Sec. 14A and disallowance of sales tax/entry tax. These two disallowance were also upheld by the Ld. CIT (A) and the assessee is agitating both these disallowances now before us. In A.Y. 2009-10 apart from the depreciation disallowance there is a disallowance under Sec. 14A which is also being agitated before us. In A.Y. 2010-11

the sole issue before us is the issue of depreciation and in A.Y. 2012-13 again the main issue pertains to depreciation and other disallowance being challenged is the disallowance under Sec. 14A.

3.0 At the outset, the Ld. Authorised Representative (AR), while taking up the appeal for A.Y. 2008-09, submitted that ground no 2 challenges the action of the Ld. CIT (A) in dismissing the assessee's ground no. 2 in the appeal before him as general in nature not requiring any specific adjudication. Our attention was drawn to ground no. 2 as contained in the Form 35 and it was submitted that in this ground the assessee has challenged the action of the AO in computing the assessee's total income at Rs. 25,76,980/- as against the returned business loss of Rs. 2,18,70,903/- and, thereafter, setting of brought forward loss of Rs. 25,76,980/- pertaining to A.Y. 2006-07 instead of granting carry forward of business loss amounting to Rs. 2,18,70,903. It was submitted that this ground had not been adjudicated by the Ld. CIT (A) and had been simply dismissed by him by treating it as general ground requiring no specific adjudication.

3.1 With respect to ground no. 3 it was submitted by the Ld.AR that depreciation had been incorrectly disallowed by the AO and the disallowance upheld by the Ld. CIT (A) on the ground that no business activity of the assessee was being carried out. It was

submitted that under the scheme of compromise and arrangement approved by the Hon'ble Gujarat High Court under Sec. 391 of the Companies Act, 1956, the receivables of the assessee were required to be assigned to the consortium of banks and the actual assignment had not been done till the year 2014 which was evident from the directors' report containing the annual report for the various Assessment Years under appeal. It was submitted that during the years under consideration the final act of assignment of the charged assets in favour of banks was yet to be executed and, therefore, the assessee continued to be the owner of the assets. It was also submitted that as per the order of the Hon'ble High Court it was the receivables which had been assigned and not the leased fixed assets on which depreciation had been claimed. It was also submitted that, admittedly, no fresh financing had been done by the company during the years under consideration but it remained a fact that the assessee had incurred various other administrative expenses during the years under consideration which had not been disturbed by the AO. It was submitted that the assessee was entitled to full claim of depreciation for all the years under consideration.

3.2 In the alternate, it was submitted that the Ld. CIT (A) in the first appellate orders for A.Ys. 2009-10, 2010-11 and 2012-13 had accepted the assessee's plea that depreciation on those assets which

had not been leased out should be allowed and, therefore, following the same, suitable directions may be given for this year also for similar allowance of claim of depreciation.

3.3 For A.Ys. 2009-10, 2010-11 and 2012-13 it was submitted that the arguments on the issue of depreciation remained the same and for the sake of brevity, the same were not being repeated.

3.4 With respect to Ground No. 4 in assessee's appeal for A.Y. 2008-09 challenging the upholding of disallowance of Rs. 1,00,000/- under Sec. 14A of the Act, the Ld. AR submitted that the same was not being pressed due to smallness of the amount.

3.5 With respect to Ground No. 5 challenging the action of the Ld. CIT (A) in sustaining the disallowance of Rs. 12,31,000/- on account of sales tax/entry tax debited to the profit and loss account, it was submitted that the same was an item of loss and not item of expenditure. He drew out attention to observation of the AO on Page 7 of the assessment order that this expenditure had neither been incurred in the current year nor did the same pertain to the year under consideration and, therefore, the same was to be disallowed. It was submitted that earlier the assessee had been in receipt of a notice by the sales tax department to submit details of sales and purchases in respect of hire purchase transaction for the

years 1994-95, 1995-96 and 1996-97 and the assessee company was required to pay entry tax on the local purchases. It was submitted that the assessee company had paid the entry tax amounting to Rs. 13,17,601/- to the Maharashtra sales tax department and the assessee company, at that point, was of the opinion that it was not liable to pay any such tax and, therefore, the same was not routed to the profit and loss account and was shown under 'loans and advances' in the balance sheet since March 1997. But, now as the amount was not recoverable the same was written off in the assessment year under consideration. Our attention was also drawn to the balance sheet where the amount was shown as an advance.

3.6 With respect to Ground No. 2 in A.Y. 2009-10 pertaining to disallowance of Rs. 5,77,683/- under Sec. 14A of the Act. It was submitted that since there was no exempt income during the year under consideration, no disallowance under Sec. 14A of the Act could be made.

3.7 With respect to ground no. 2 in AY 12-13 pertaining to disallowance under Sec. 14A of the Act, the Ld. AR submitted that the same was not being pressed due to smallness of amount.

4.0 In response, the Ld. Sr. DR appearing on behalf of the department placed extensive reliance on the findings of the Ld. CIT

(A) /AO and vehemently argued that the disallowance/s had been rightly made and the same did not require any further tinkering. It was prayed that the assessee's appeals be dismissed.

5.0 We have heard the rival submissions and have perused the material on record. We now take up the issues before us one by one. The first issue for consideration before us is the issue of depreciation and the facts leading to the controversy on this issue are that the assessee had claimed depreciation during the years under consideration. However, the AO disallowed the assessee's claim of depreciation on the ground that the assessee's business was no longer in operation and in absence of business activity and in view of the assets belonging to the company having been assigned to the bank, there was no income accruing to the assessee company from leasing. The AO has observed that since the assets were to be assigned to the consortium of banks, the test of ownership of assets was not fulfilled which was *sine qua non* for claim of depreciation. The AO also placed reliance on the fact that since the assessee's business was no longer in operation, it could not be said that the assets were used for the purpose of business of the assessee. The assessee's appeal before the Ld. CIT (A) for A.Y. 2008-09 on the issue was dismissed completely whereas in the remaining assessment years the Ld. CIT (A) allowed part relief to the assessee

by directing that depreciation on assets which were not leased out by the assessee should be allowed. Before us, it has been submitted by the Ld. AR that the fact that assessee had or had not carried any business in the year will not be dependent upon whether the assessee had earned any business income or entered into business deals during the year. It is also the assessee's contention that although the scheme of compromise and arrangement, as approved by the Hon'ble Gujarat High Court under Sec. 391 of the Companies Act, required assignment of assets/receivables, the actual assignment did not happen till the year 2014. A perusal of the assessment orders shows that the AO has taken a view that depreciation on leased assets is not allowable. It is the assessee's contention that as per the High Court's order what has been assigned is the receivables and not the leased fixed assets on which depreciation has been claimed. It is the assessee's submission that since there was no assignment of the leased fixed assets there was no change in ownership. Thus, it is apparent from a combined reading of the assessment orders as well as the orders of the Id. CIT (A) for all the four years under consideration that there is an apparent contradiction between the claim of the assessee and the stand of the department on this issue. On the one hand it is the assessee's claim that the leased assets were not assigned and,

therefore, there is no change in ownership on the other hand it is the department contention that the leased assets have been assigned and, therefore, by virtue of this assignment the assessee is no longer in ownership of the assets. This is an issue which needs factual verification at the end of the AO. Therefore, it is our considered opinion that, in interest of substantial justice, the issue of depreciation should be reexamined. Accordingly, we restore the issue to the file of the AO and direct him to examine the issue in detail and re-examine the assessee's claim of depreciation essentially to examine and decide (1) as to whether there is a change in ownership of the leased assets or not as per the arrangement approved by the Hon'ble Gujarat High Court and (2) whether the assessee would be entitled to claim of depreciation on leased assets in light of settled judicial precedents. We are not going into the merits of this issue at this juncture and we leave it open to the AO to adjudicate the issue afresh after affording proper opportunity to the assessee to substantiate its case. This issue is common in all the four years under appeal and the issue is restored accordingly in all the four years under consideration.

5.1 Coming to ground no. 2 of the assessee's appeal in A.Y. 2008-09 it is evident from the reading of the impugned order that the Ld. CIT (A) has not adjudicated the ground as mentioned in Form 35 of

the assessee's appeal. This issue is also restored to the file of the Ld.CIT (A) for passing a speaking order on the issue.

5.2 Ground No. 4 in appeal for A.Y. 2008-09 has been not pressed by the assessee due to smallness of the amount. Accordingly, this ground is dismissed has not pressed.

5.3 Ground No. 5 in appeal for A.Y. 2008-09 is against the disallowance of sales tax/entry tax. It is apparent that this issue has not been examined in proper perspective because it is assessee's claim that this was shown under advances and was later written off whereas the lower authorities have treated it as a disallowance u/s 43B of the Act. Accordingly, in our opinion, this issue also needs reexamination and the same is restored to the file of the AO to adjudicate it afresh after giving proper opportunity to the assessee.

5.4 In the result, ITA 825/Ahd/2013 stands partly allowed for statistical purposes.

6.0 In A.Y. 2009-10 the issue of depreciation is identical and in view of our directions in the preceding paragraphs for AY 2008-09, the same also stand restored.

6.1 With respect to ground no. 2 regarding disallowance u/s. 14A of the Act, it has been claimed by the assessee that there was no exempt income during the year under consideration. Accordingly, this issue also needs reexamination and finding by the AO as to whether or not any exempt income was earned by the assessee during the year under consideration. The AO is directed to pass the order as per law after verifying this fact and keeping in mind the settled judicial precedents and after giving proper opportunity to the assessee to present its case.

6.2 In the result, ITA No. 2534/Ahd/2013 also stands allowed for statistical purposes.

7.0 In A.Y. 2010-11, the sole issue is the issue of depreciation and in view of our observations and directions in A.Y. 2008-09 as contained in the preceding paragraphs this issue also stand restored to the file of the AO.

7.1 In the final result, ITA 2535/Ahd/2013 stands allowed for statistical purposes.

8.0 In A.Y. 2012-13, the Ld. AR has stated that the ground regarding 14A disallowance was not being pressed due to smallness of amount. Accordingly, this ground is dismissed as not pressed.

8.1 The other ground pertains to the issue of depreciation which is identical to the issue in the other three years under appeal and likewise this ground also stands restored to the file of the AO.

8.2 In the result, ITA 2584/Ahd/2015 stands allowed for statistical purposes.

9. In the final result, all the four appeals of the assessee stands allowed for statistical purposes.

This Order pronounced in Open Court on 28/06/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad: Dated 28/06/2019
TANMAY

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।