IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 239 to 255 (Bang) 2018
(Assessment Years : 1995-96 to 2008-09 & 2011-12 to 2012-13)

M/s. Maharashtra Apex Corporation Ltd., Appellant
Syndicate House,
Manipal – 576104.
PAN. AACCM2741B

Vs

The DCIT,
Circle – 1,
Udupi. Respondent

Assessee by : Shri Anil Kumar Rao, C. A.
Revenue by : Shri Vikas Suryavamshi, Addl. CIT DR

Date of hearing : 31 – 07 – 2019
Date of pronouncement : 20– 09 – 2019

O R D E R

PER BENCH:

All these seventeen appeals are filed by the assessee and it includes 6 appeals directed against six separate orders of CIT (A), Mangalore dated 13.10.2017 for A. Ys. 1995 – 96 to 2000 – 2001 in proceedings u/s 143 (3), 2 appeals for A. Ys. 1999 – 2000 to 2000 – 01 directed against two separate orders of CIT (A), Mangalore dated 23.10.2017 in proceedings u/s 154, 4 appeals directed against four separate orders of CIT (A), Mangalore dated 16.10.2017 for A. Ys. 2001 – 02 & 2003 – 04 to 2005 – 06 in proceedings u/s 143 (3), 5 appeals directed against five separate orders of CIT (A), Mangalore dated 23.10.2017 for A. Ys. 2006 – 07 to 2008 – 09 & 2011 – 12 to 2012 – 13 in proceedings u/s 143 (3). All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee in these seventeen appeals are as under:-

(a) ITA No. 239/Bang/2018, A. Y. 1995 – 96:-

"*1) The order of the C.I.T (A) Mangalore (hereinafter referred to as the Appellate Officer) so far as it is against the appellant is against law, facts of the case and weight of evidences.*

2) a) The learned appellate officer has erred in ignoring the CBDT circular No 2 of 2001 which has specifically issued to the department not to follow the directions issued by the Institute of Chartered Accounts of India to its members and allow the depreciation.

b) The learned appellate officer has erred in overlooking the decision of the jurisdictional ITAT in allowing the depreciation in the case of Manipal Finance Ltd vs J.C.I.T(Asst) Special Range Mangalore (ITA No 294(Bang)/99, 344 & 644 (Bang)/99 which has been accepted by the department.

c) Hence the depreciation as claimed be allowed and deduction now allowed for payment towards capital portion be disallowed.

3) The learned appellate officer has erred in confirming the disallowance of depreciation on the assets leased to certain educational institutions by AO based on the decision of the High Court of Karnataka in the case of ICDS vs CIT Karnataka. Hence the depreciation as claimed be allowed.

4) The appellant prays it may be permitted to raise further ground the time of hearing of the appeal."

(b) ITA No. 240/Bang/2018, A. Y. 1996-97 :-

"*1) The order of the C.I.T (A) Mangalore (hereinafter referred to as the Appellate Officer) so far as it is against the appellant is against law, facts of the case and weight of evidences.*

2) a) The learned appellate officer has erred in ignoring the CBDT circular No 2 of 2001 which has specifically issued to the department not to follow the directions issued by the Institute of Chartered Accounts of India to its members and allow the depreciation.

b) The learned appellate officer has erred in overlooking the decision of the jurisdictional ITAT in allowing the depreciation in the case of Manipal Finance Ltd vs J.C.I.T(Asst) Special Range Mangalore (ITA No 294(Bang)/99, 344 & 644 (Bang)/99 which has been accepted by the department.

c) Hence the depreciation as claimed be allowed and deduction now allowed for payment towards capital portion be disallowed.

3) The learned appellate officer has erred in confirming the disallowance of depreciation on the assets leased to certain educational institutions by AO based on the decision of the High Court of Karnataka in the case of ICDS vs CIT Karnataka. Hence the depreciation as claimed be allowed.

4) The appellant prays it may be permitted to raise further ground the time of hearing of the appeal."

(c) ITA No. 241/Bang/2018, A. Y. 1997-98 :-

"*1) The order of the C.I.T (A) Mangalore (hereinafter referred to as the Appellate Officer) so far as it is against the appellant is against law, facts of the case and weight of evidences.*

2) a) The learned appellate officer has erred in ignoring the CBDT circular No 2 of 2001 which has specifically issued to the department not to follow the directions issued by the Institute of Chartered Accounts of India to its members and allow the depreciation.

b) The learned appellate officer has erred in overlooking the decision of the jurisdictional ITAT in allowing the depreciation in the case of Manipal Finance Ltd vs J.C.I.T(Asst) Special Range Mangalore (ITA No 294(Bang)/99, 344 & 644 (Bang)/99 which has been accepted by the department.

c) Hence the depreciation as claimed be allowed and deduction now allowed for payment towards capital portion be disallowed.

3) The learned appellate officer has erred in confirming the disallowance of depreciation on the assets leased to certain educational institutions by AO based on the decision of the High Court of Karnataka in the case of ICDS vs CIT Karnataka. Hence the depreciation as claimed be allowed.

4) The appellant prays it may be permitted to raise further ground the time of hearing of the appeal."

(d) ITA No. 242/Bang/2018, A. Y. 1998-99 :-

"*1. The order of the Commissioner of Income Tax (Appeals) Mangalore (hereinafter after referred to as the Appellate Officer) so far as it is against the appellant is against law, facts of the case and weights of evidences.*

2. Learned Appellate Officer has erred in ignoring the decision of the jurisdictional ITAT in allowing depreciation on leased assets in the

case of Manipal Finance ltd vs J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department based on CBDT circular No.2 of 2001 and confirming action of the Assessing officer in disallowing depreciation on assets given on lease, for earlier years, for this year also.

3. i) The Appellate Officer has erred in holding the appellant had only financed Khatima Fibres Ltd of Rs.51,01,950/-. when ownership of the assets given on lease vests with the appellant.

ii) The Appellate officer has erred in holding the appellant has only financed "Mohan Meakin Ltd" and it had not become the owner of BOD Analyser costing Rs.19.98 lakhs.

iii) The Appellate Officer has erred in concluding the Apex Courts decision in the case of ICDS Ltd vs C.I.T (Mysore) applicable only to motor vehicles and not to other assets.

4. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of this appeal."

(e) ITA No. 243/Bang/2018, A. Y. 1999-2000 :-

"*1. The order of the commissioner of Income tax (Appeal) Mangalore (hereinafter referred as the Appellate Officer) so far as it is against the appellant, is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate Officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore on leased assets based on CBDT circular No2/2001 which has been accepted by department and confirming the action of Assessing Officer, in disallowing the depreciation given on lease for earlier year for this year also.

b) The Appellate officer has erred is concluding the Apex Court's decision in the case of ICDS Ltd vs. C.I.T (Mysore) applicable only to motor vehicles and not to other assets given on lease.

3. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of the appeal."

(f) ITA No. 244/Bang/2018, A. Y. 1999-2000 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore, in dismissing the appeal is against law, facts of the case and weight of evidences.*

2. The learned Appellate Officer has erred in upholding the action of the Assessing Officer in not granting interest u/s 244A on the refund

due as per order of ITAT in an order passed u/s 143(3) r.w.s 254 dated 31.12.2010 for the assessment year under appeal, holding the "assessee should be gracious to acknowledge its mistake" and not agitate for "what is not due to him"

3. The appellant prays that it may be permitted to raise additional grounds of appeal at the time of hearing of this appeal."

(g) ITA No. 245/Bang/2018, A. Y. 2000-01 :-

"*1. The order of the commissioner of Income tax (Appeal) Mangalore (hereinafter referred as the Appellate Officer) so far as it is against the appellant, is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate Officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore on leased assets based on CBDT circular No2/2001 which has been accepted by department and confirming the action of Assessing Officer, in disallowing the depreciation given on lease for earlier year for this year also.

b) The Appellate officer has erred is concluding the Apex Court's decision in the case of ICDS Ltd vs. C.I.T (Mysore) applicable only to motor vehicles and not to other assets given on lease.

3. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of the appeal."

(h) ITA No. 246/Bang/2018, A. Y. 2000-01 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore, in dismissing the appeal is against law, facts of the case and weight of evidences.*

2. The learned Appellate Officer has erred in upholding the action of the Assessing Officer in not granting interest u/s 244A on the refund due as per order of ITAT in an order passed u/s 143(3) r.w.s 254 dated 31.12.2010 for the assessment year under appeal, holding the "assessee should be gracious to acknowledge its mistake" and not agitate for "what is not due to him"

3. The appellant prays that it may be permitted to raise additional grounds of appeal at the time of hearing of this appeal."

(i) ITA No. 247/Bang/2018, A. Y. 2001-02 :-

"*1. The order of the commissioner of Income tax (Appeal) Mangalore (hereinafter referred as the Appellate Officer) so far as it is against the appellant, is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate Officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore on leased assets based on CBDT circular No2/2001 which has been accepted by department and confirming the action of Assessing Officer in disallowing depreciation on assets given on lease.

b) The Appellate officer has erred is concluding the Apex Court's decision in the case of ICDS Ltd vs. C.I.T (Mysore) applicable only to motor vehicles and not to other assets given on lease.

3. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of the appeal."

(j) ITA No. 248/Bang/2018, A. Y. 2003-04:-

"*1. The order of the Commission of Income Tax (A) Mangalore (hereinafter referred to as the Appellate officer) so far as it is against the appellant is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore allowing the depreciation on the leased assets based on CBDT circular No 2/2001 which has been accepted by the department and confirming the action of the Assessing officer in disallowing depreciation on assets given on lease.

b) The Appellate officer has erred in concluding the Apex court's decision in the case of ICDS Ltd vs C.I.T Mysore applicable only to motor vehicles given on lease.

3. The learned Appellate officer has erred in holding that delay in getting refund from department is due to appellant not filing TDS certificate on time "as such should be gracious to acknowledge its mistake and not agitate for what is not due to him" when the facts are quite to the contrary.

4. The appellant prays it may be allowed to raise additional grounds of appeal at the time of hearing of this appeal."

(k) ITA No. 249/Bang/2018, A. Y. 2004-05 :-

"*1. The order of the commissioner of Income tax (Appeal) Mangalore (hereinafter referred as the Appellate Officer) so far as it is against the appellant, is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate Officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore on

leased assets based on CBDT circular No2/2001 which has been accepted by department and confirming the action of the Assessing Officer in disallowing depreciation on assets given on lease.

b) The Appellate officer has erred is concluding the Apex Court's decision in the case of ICDS Ltd vs. C.I.T (Mysore) applicable only to motor vehicles and not to other assets given on lease.

3. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of the appeal."

(l) ITA No. 250/Bang/2018, A. Y. 2005-06 :-

"*1. The order of the commissioner of Income tax (Appeal) Mangalore (hereinafter referred as the Appellate Officer) so far as it is against the appellant, is against law, facts of the case and weight of evidences.*

2. a) The learned Appellate Officer has erred in ignoring the decision of the Income Tax Appellate Tribunal Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore on leased assets based on CBDT circular No2/2001 which has been accepted by department and confirming the action of the Assessing Officer in disallowing depreciation on assets given on lease.

b) The Appellate officer has erred is concluding the Apex Court's decision in the case of ICDS Ltd vs. C.I.T (Mysore) applicable only to motor vehicles and not to other assets given on lease.

3. The appellant prays it may be allowed to raise further grounds of appeal at the time of hearing of the appeal."

(m) ITA No. 251/Bang/2018, A. Y. 2006-07 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore so far as it is against appellant is against law, facts of the case and weight of evidences.*

2. The learned Appellate officer has erred in concluding the appellant is not entitled to claim depreciation on assets leased out to customers as the lease is a financial lease in spite of the CBDT circular No 2/2001 and the decision of ITAT Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department.

3. The learned Appellate Officer has erred in concluding the decision of Apex Court in case of ICDS ltd vs C.I.T (Mysore) is only applicable for motor vehicles given on lease and not for other goods given lease.

4. The appellate officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd that the amount forgone by deposit holders is a capital receipt not taxable to income tax and confirming the addition now made by assessing officer.

5. The appellant prays that it may be permitted to raise further grounds of appeal at the time of hearing of this appeal."

(n) ITA No. 252/Bang/2018, A. Y. 2007-08 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore so far as it is against appellant is against law, facts of the case and weight of evidences.*

2. The learned Appellate officer has erred in concluding the appellant is not entitled to claim depreciation on assets leased out to customers as the lease is a financial lease in spite of the CBDT circular No 2/2001 and the decision of ITAT Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department.

3. The learned Appellate Officer has erred in concluding the decision of Apex Court in case of ICDS ltd vs C.I.T (Mysore) is only applicable for motor vehicles given on lease and not for other goods given lease.

4. The appellate officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd that the amount forgone by deposit holders is a capital receipt not taxable to income tax and confirming the addition now made by assessing officer.

5. The appellant prays that it may be permitted to raise further grounds of appeal at the time of hearing of this appeal."

(o) ITA No. 253/Bang/2018, A. Y. 2008-09 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore, so far as it is against the appellant is against the law, facts of the case and weight of evidences.*

2. The learned Appellate officer has erred in concluding the appellant is not entitled for depreciation on assets leased on to customers, as all the lease are financial lease in spite of the CBDT circular No 2/2001 and decision of ITAT Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department.

3. The learned Appellate officer has erred in concluding the decision of the Apex Court in the case of ICDS Ltd vs C.I.T Mysore is applicable only for motor vehicles given on lease and not for other goods given on lease.

4. The learned CIT(A) has erred is not allowing the claim of the appellant that MAT paid for A.Y 1997-98,1998-99,1999-00 and 2000-01 should be deducted before determining the tax payable on regular basis or under MAT.

5. The learned Appellate officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd, that the amount forgone by deposit holders is a "Capital Receipt" not taxable to income tax but confirming the addition made by assessing officer."

(p) ITA No. 254/Bang/2018, A. Y. 2011-12 :-

"*1. The order of the Commissioner of Income Tax (A) Mangalore so far as it is against appellant is against law, facts of the case and weight of evidences.*

2. The leased Appellate officer has erred in concluding the appellant is not entitled to claim depreciation on assets leased out to customers as the lease is a financial lease in spite of the CBDT circular No 2/2001 and the decision of ITAT Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department.

3. The learned Appellate Officer has erred in concluding the decision of Apex Court in case of ICDS ltd vs C.I.T (Mysore) is only applicable for motor vehicles given on lease and not for other goods given lease.

4. The appellate officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd that the amount forgone by deposit holders is a capital receipt not taxable to income tax and confirming the addition now made by assessing officer.

5. The appellant prays that it may be permitted to raise further grounds of appeal at the time of hearing of this appeal."

(q) ITA No. 255/Bang/2018, A. Y. 2012 – 13:-

"*1. The order of the Commissioner of Income Tax (A) Mangalore so far as it is against appellant is against law, facts of the case and weight of evidences.*

2. The leased Appellate officer has erred in concluding the appellant is not entitled to claim depreciation on assets leased out to customers as the lease is a financial lease in spite of the CBDT circular No 2/2001 and the decision of ITAT Bangalore in the case of Manipal Finance Ltd vs. J.C.I.T (Asst) Special Range Mangalore which has been accepted by the department.

3. The learned Appellate Officer has erred in concluding the decision of Apex Court in case of ICDS ltd vs C.I.T (Mysore) is only applicable for motor vehicles given on lease and not for other goods given lease.

4. The appellate officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd that the amount forgone by deposit holders is a capital receipt not taxable to income tax and confirming the addition now made by assessing officer.

5. The appellant prays that it may be permitted to raise further grounds o S appeal at the time of hearing of this appeal."

3. In course of hearing, it was agreed by both sides that one common issue involved in all these assessment years is about allowability of Depreciation on Finance Lease. This was submitted by the learned AR of the assessee that this is the second round. He pointed out the tribunal order for A. Ys. 1995 – 96 to 1997 – 98 in ITA Nos. 88 & 103/ Bang/2000 and 170/Bang/2001 dated 19.01.2007 is available on pages 53 to 65 of the paper book and in this tribunal order, the tribunal noted about the judgment of Hon'ble apex court rendered in the case of Asea Brown Boveri Ltd. Vs. Industrial Finance Corpn. Of India Ltd., 154 Taxman 512. He submitted that the tribunal observed in this order that this judgment will certainly help the AO to come to a conclusion whether the transactions involved in this case are lease or financial arrangements. He pointed out that the tribunal reproduced certain paras of this judgment of Hon'ble apex court and thereafter observed that Hon'ble apex court in fact provided guidelines as to nature of lease transactions and finance transactions and directed the AO to decide the issues based on this decision of Hon'ble apex court. He submitted that the observation of the tribunal is this much only that this judgment of Hon'ble apex court will certainly help the AO to come to a conclusion whether the transactions involved in this case are lease or financial arrangements and the AO was ultimately directed to decide the issues based

on this decision of Hon'ble apex court. He submitted that this judgment has to be considered but not to be followed blindly. At this juncture, the bench wanted to see the lease agreements to examine this aspect as to whether the transactions in question are lease transaction or finance transactions. In reply, it was submitted by the learned AR of the assessee that the lease agreements are not readily available The bench observed that in the assessment order, the AO has given a categorical finding on page 37 in A. Y. 1995 – 96 that the transactions in question is a financial transaction and not lease transaction and in spite of this, the assessee has not brought on record the relevant lease agreements to controvert this finding of the AO and therefore, the bench has no option but to give due weightage to this finding of the AO because no material has been brought on record by the assessee to dislodge this finding of the AO. In reply, learned AR of the assessee had nothing specific to say although, he made some arguments and reliance was placed by him on the judgment of Hon'ble Madras High Court rendered in the case of First Leasing Co. of India Ltd. Vs. ACIT as reported in356 ITR 128, copy available on pages 85 to 104 of the paper book. It was also submitted that extract of CBDT circular No. 762 dated 18.02.1998 is available on pages 83 to 84 of the paper book and it should be considered for deciding this issue. Written submissions are also available in the paper book on pages (i) to (xviii). The same are reproduced herein below: -

"*Submission on Issues relating to the common grounds of appeal being claim of depreciation on Assets given under Lease*

GROUNDS
a) The learned Appellate Officer has erred in concluding the appellant is not entitled to claim depreciation on assets leased out to customers as the lease is a financial lease in spite of CBDT Circular No 2/2001 which has specifically issued to the department not to follow the directions issued by ICAI to its members and the decision of ITAT Bangalore allowing the depreciation in the case of Manipal Finance Limited vs JUT (Asst) Spl Range, Mangalore (ITA No 294(Bang) /99,344&644(Bang)/99 which has been accepted by the Department

b) The learned Appellate officer has erred in concluding the decision in case of ICDS Ltd vs CIT (Mysore) is only applicable to motor vehicles given on lease and not for other goods given on lease.

c) The learned Appellate Officer has erred in confirming the disallowance of depreciation on the assets leased to certain educational institutions by AO based on the decision of the High Court of Karnataka in the case of ICDS vs CIT Karnataka. Hence the depreciation as claimed be allowed.

SUBMISSIONS

1. The present batch of appeals is arising out of the AU giving effect to the order of the Honourable Tribunal under Section 254 in ITA No 88&103/B/2000 and 170/B/2001 for Asst year 1995-96.1996-97 and 1997-98 in which order a direction was given to follow the ratio in Asea Brown Boveri Ltd vs industrial Finance Corporation of India ltd (154 Taxman 512). The Appellant submits that the said case does not lay down the law relating to the allowability of depreciation under the Income Tax Act,1961 in the case of finance leases. This issue has now achieved finality in the case of ICDS Ltd vs CIT 350 ITR 527 (SC) which has been followed by the jurisdictional High Court in Manipal Finance Corporation limited vs CIT [2014] 49 Taxmann.com 353 (Karnataka). In the case of Sale and Lease back with related parties the decision of the Hon'ble Supreme Court in Pr Commissioner of Income Tax, City-1 vs Bombay Burmah Trading Corporation Ltd [2018] 256 Taxman 393 dismissed the SLP of the Department both on the grounds of delay as well as merits . The list of the 25 contracts where depreciation disallowed by AO in the assessment of which 23 confirmed by CIT-A and issue before Honourable Bench are listed in Annexure-1. These include 4 contracts of sale and lease back of Asst year 1992-93, 1993-94 and 1994-95 disallowed following the ITAT order for those years. Said order is enclosed in the paper book (pages 23 to 30). In these contracts the AO has granted deduction for capital recovery.

2. The written submissions made before the CIT-A are separately given Si No 12 (Page 127 to 136 of the paper book). The submissions now are to supplement the submissions made before CIT-A and put the issues in perspective.

3. The Appellant is a finance company which was classified under the then NBFC Directions of RBI as a Leasing and Hire Purchase Finance Company, the classification based on the portfolio of financing contracts. As a Leasing and Hire Purchase Finance Company it could collect deposits from the public over 10 times its net worth of, where as a "loan company" it could have only collected deposits from the public only up to one time the net worth. The financing through contracts structured as hire purchase or lease

contracts was as per the then policy of Government of India conveyed through RBI directions which believed that hire purchase and lease finance would promote the creation of productive assets, as against loan finance. The Appellant never dealt with any of the movables financed either under Hire Purchase or Lease. Under both these contracts the customer would identify the movable of his choice and purchase the same in the name of "Maharashtra Apex Corporation Limited A/c Customer", the Appellant would pay for the same and as the owner would then give the asset on hire purchase or lease to the customers. Based on the contracts the company was classified as a Hire Purchase and Leasing Finance company by RBI. Its transactions of lease or hire purchase were never held to be sham by RBI.

4. The distinction between hire purchase or lease was that in the hire purchase the customer (hirer) had an option to purchase at the end of the contract. No such option was given in the contract of lease. The treatment under the Income Tax Act, 1961 between Hire Purchase and Lease differed accordingly, though the finance company was the owner of assets in both hire purchase and lease contracts. In terms of Board Circular No 9 of 1943 dated March 23,1943, applicable to Hire Purchase contract, though the hirer/customer (described as "lessee" in the Board Circular), was not the owner, the payments were to be split between consideration for hire and payment on account of capital outlay, depreciation being allowed to the "lessee" on the initial value (the amount for which the hired subject would be sold for cash as on the date of the agreement). In the case of Hire Purchase there was no question of the owner/finance company claiming depreciation on these assets, as in terms of the accounting practice the asset given on hire would be classified under "Stock on Hire" under Inventory in the Balance Sheet of the Finance Company and not under Fixed Assets. In the case of lease contracts, the finance company was the "owner" entitled to depreciation and the asset given on lease would be classified under fixed assets in its Balance Sheet. In the case of a plain Vanilla loan, the Loan is shown under "Loans and Advances".*
** - Enclosed Annexure – 2*

5. The monthly receipts from the customer were described appropriately: "Hire Charges" in the case of "Hire Purchase Contracts" and "EMI" in case of Loans. In the books of finance companies, the accounting treatment of monthly "Hire Charges" and "EMI" were same - the monthly instalments were to be split into "principal" and "Income" Components. - The principal component went to reduce the "Stock on Hire" in case of Hire Purchase Contracts or Loan balance in case of Loan and income component in the "Hire Charges" or "EMI" was taken to its Profit & Loss Account. In the case of Contracts of Lease, the monthly lease rental was taken to the Profit

and Loss as income. The charge against that income came through depreciation. The Customers on the other hand would classify the movables obtained on hire purchase finance or loan under Fixed Assets in their Balance Sheets and claim depreciation on the same in the IT Computation. In the case of lease, the entire lease rent was charged to the P&L.

6. This treatment in the Income Tax Return of Hire Purchase and Lease transactions was being accepted by the Department. The Assessing Officers in the assessment would rely on the accounts of the assessees and unless the transactions was a sham, asset was non-existent, the computations were not disturbed. The concept of Finance Lease and Operating Lease did not entire the accounting lexicon till 1988 by the issue of the "Guidance Note on Accounting for Leases" which was revised in 1995 and withdrawn after Accounting Standard (AS)- 19 leases became mandatory with effect from 1-4-2001. The Revised Guidance Note is enclosed as pages 1 to 22 of the paper book.

7. ICAI observed that in the case of leasing contracts of finance companies there was a mismatch between the income declared in the profit and loss account and the lease charge by way of depreciation. The finance companies were not depreciating the cost of the asset over the lease term. Consequent thereto there was a mismatch between the income by way of lease rent and the annual lease charge. Hence it issued a guidance note titled "Guidance Note on Accounting for Leases" in 1988. In terms of the Guidance Note the Lessor was required to ascertain whether a lease was a finance lease or operating lease. "Finance Lease" was defined as a Lease where the present value of the minimum lease payments at the inception of the lease exceeds or equal to the substantially the whole of the fair value of the leased asset. An Operating Lease was defined as a Lease other than a Finance Lease. (The italcised terms are defined in the Guidance Note.). The Guidance Note required a Lease Equalisation Charge to be added or deducted from the statutory depreciation so to ensure that the charge to the profit & loss account match with the lease rentals to determine the net income from the Finance Lease. Paragraphs 9,10 and 11 give the guidance for accounting by Lessors. It is pertinent to note that the assets leased were to be shown under "Assets Given on Lease" as a separate section under "Fixed Assets" in the balance sheet of the Lessor. The standard has a separate section on Finance Leasing by by Manufactures or Dealers (Paragraph 15 and 16). On Sale and Lease Back (Paragraph 21 and 22) there is advise to the Lessees who are the vendors on how to recognise sale and lease back in three different situations- where the sale is at fair value, where the sale is made below the fair value or above the fair value. In the case of a Lessee the Guidance Note requires that the assets taken under finance lease by way of note, disclosing inter alia , the future obligations of the Lessee as per the

agreement. Lease rentals should be accounted for on accrual basis over the lease term so as to recognise an appropriate charge to the profit & loss account with a separate disclosure thereof. (Paragraphs 24 and 25). The Guidance Note did not require lessees to disclose the assets taken on lease as their fixed assets and claim depreciation.

8. After the introduction of the Guidance Note the leasing contracts of the Appellant were classified as Finance Leases as required by the Guidance Note. However in the initial years after introduction of the Guidance Note the claim of the Appellant for depreciation in respect of leased assets was not denied or disturbed. However, in Asst Year 1992-93, 1992-94 and 1994-95 the AO questioned certain sale and lease back transactions on the ground that these transactions were sham, assets bought were having Nil wdv and purpose was to reduce the taxable income and disallowed depreciation on 5 sale and lease back transactions. Out of 5, 4 were upheld by the CIT-A. However, he allowed deduction for capital recovery on the same. The one Sale and Lease back transaction with Kongrar Clothes and Synthetics Limited was allowed by CIT-A and not contested by the Department before the ITAT. In Appellant's appeal for AY 1992-93, 1993-94 and 1994-95 the disallowance of depreciation on 4 transactions was upheld (ITA No 17,48 & 87/Bang/2000) vide its order dated October 6th 2003.. Based on certain documentation in one case i.e. JL Morrison & Co the Hon'ble Apex Court's decision in Mcdowell's case and Hon'ble Kolkatta Tribunal decision in Shaw Wallace Case (86 ITD 315) was applied to deny depreciation. The depreciation on the four assets was denied on the following grounds:.

a. In the one case (JLM) the Lease security deposit equaled the value of the asset given on lease.

b. There was no evidence that the machineries have been actually delivered or installed. The production at the lessees' factories did not stop for the transaction of delivery of the asset sold and receipt on buyback.

c. No inspection report obtained and held on record.

d. Written down value was Nil but assets purchased at a very high value. In one case approved valuer furnished the valuation report after the lease contract was signed. No valuation in other cases.

e. The lessees would not have been able to claim depreciation on the assets but still wanted to use the same.

f. It is a pure and simple financial arrangement where the assessee lends money and in the name of lease rent receives interest.
(Copy of the ITAT order is enclosed in pages 23 to 30 of the paper book.)

The term "Finance Lease" had now acquired a meaning in various decisions where the appellate 'authorities have decided against assessees, to mean Leases which are in the nature of financial transactions, which is not as per ICAI Guidance Note. (See definition of Finance Lease in the Guidance Note). All Leases (' both Finance Lease and Operating Lease) are in the nature of Financing transactions. In the Appellant's case there was no difference between lease contract with Kongrar Clothes and Synthetics Limited which as per CIT-A was held not a "financial transaction" and not appealed by the Department and other cases except that it was a Government Company and other lessees were private concerns. (See contrary line of reasoning in the case of Manipal Finance Corporation Ltd.)

The reasons given by the Honourable Tribunal for holding the transactions as sham require re-examination in light of its subsequent decisions, in particular in the case of Manipal Finance Corporation Limited in ITAs No 249/Bang/99 and 344&644/Bang/2000 for Assessment Years 1995-96,199697 and 1997-98 which have not been appealed by the Department and the decision of the Hon'ble Madras High Court in First Leasing Co of India Ltd vs ACIT [2013] 38 Taxmann.com 213 where similar reasons cited by the Department and Tribunal for holding the SLB transactions as sham were dismissed by the High court.

As appellant has not gone on appeal against these orders the AO has disallowed the depreciation on these assets leased in earlier year in the assessments for AY 1995-96,1996-97 and 1997-98 and subsequent years and allowed deduction for capital recovery.

9. In the case of Manipal Finance Corporation Limited in ITAs No 249/Bang/99 and 344&644/Bang/2000 for Assessment Years 1995-96,199697 and 1997-98 passed on 16th July 2004, (decision enclosed in pages 31 to 52 of the paper book), the Honourable Bangalore Tribunal has allowed the claim of depreciation on sale and lease back transactions, distinguishing the order for AY 1992-93 to 1994-95 passed by it in the case of the Appellant. Of the 4 transactions which came up for adjudication, one was not a SLB and 3 were SLBs. In this order the Tribunal observed that AO and CIT-A have not questioned the genuineness of the transactions as was the case in Appellant's case for AY 1992-93 to 1994-95. It was found that in the case of Manipal Finance Corporation Limited:

a. the department has allowed depreciation on other leased assets and in the case of vehicles depreciation was disallowed on some other ground but was allowed by the Tribunal. (Para 6.4 of the order).
b. The clauses in the SLB agreements are the same as the regular leases allowed by the AO. (ibid)
c. None of the lessees in the SLB cases are PSUs. They have the authority to sell the assets.
d. No option has been given to the lessee to retain the asset at the expiration of the lease.
e. No evidence has been brought that the agreement were not intended to be acted upon.
f. Department cannot make any hypothetical assessment of the real motive of the appellant.

Based on the reasoning above detailed in paragraph 9 of its order, the Honourable Tribunal came to the conclusion that MFC had entered into the lease agreements in the ordinary course of business and disallowance of depreciation cannot be sustained. We are informed that the decision in this case has been accepted by the Department and the Department did not appeal this judgement. The reasoning in this case is in line with the order of the Hon'ble Chennai High court in case of First Leasing Co of India Ltd (Supra). (Said decision is enclosed in pages85 to 104 of the paper book.)

10.The Honourable Tribunal in ITA No 88&103/B/2000 and 170/B/2001 for Asst year 1995-96.1996-97 and 1997-98 (enclosed in pages 53 to 66 of the paper book) gave a direction to follow the ratio in Asea Brown Boveri Ltd vs Industrial Finance Corporation of India ltd (154 Taxman 512) rendered by the Hon'ble Supreme Court. A perusal of the order (enclosed in pages 67 to 76 of the paper book) will indicate:

a. The petition before the Hon'ble Supreme Court was to set aside the order of the Special Court directing ABB to hand over the possession of all 56 vehicles taken under lease from Fairgrowth Financial Services Private Limited (Respondent no 3) to IFCI the custodian.

b. ABB had in its application before the Special Court had not indicated that the lease was a finance lease. (Para 5 of the order). The Special court has rigidly applied the rule of pleadings and no effort was made to scrutinise the documents evidencing the transaction to determine the nature thereof.

c. During the course of the hearing before the Court it was conceded at the Bar that the transaction between Fairgrowth and the appellant was concerned it was a transaction of lease finance. (Paragraph 7) and rights and obligations had to be worked out accordingly. Para 8,

9 and 10 discusses the nature of finance lease and the rights of the lessee.

d. The dispute was primarily relating to the amount owed by ABB to terminate the hypothecation. (Para 6).

e. As appellant was ready to pay the amount still found to be due and payable it was not considered necessary for the Court to adjudicate on the applicability of the provisions of Subsection (2) of Section 3 of the Special Court Act.

f. The order of the Hon'ble Apex Court finally was to allow the petition and set aside the order of the Special Court directing the petitioner to hand over possession of the 56 cars.

g. There is no discussion in the case on taxation of finance leases as observed in paragraph 4 of the Honourable Tribunal's order. However, the Honourable Apex Court has clearly observed in fag end of paragraph 10 as under:

> *"There are certain tax benefits which by styling the transaction like a financial lease become available to the lessor (financier) and the lessee (borrower) both. The accounting standards have been devised consistently with which entries are made in the accounts so as to satisfy the requirement of tax laws and to avail the benefits by way of tax planning to both the parties."*

Therefore, in the case relied upon by the Hon'ble Tribunal to be followed by the AO, the Honourable Supreme Court, had decided nothing about taxation of finance lease. The Supreme Court only enumerated the distinction between finance lease and operating lease to set out the rights of the applicant. and finally set aside the order directing the applicant to hand over the 56 cars when the applicant agreed to pay whatever is due to enable the hypothecation to be lifted. Nothing further required to be adjudicated.

The AO was therefore required to seek clarification from the Tribunal before passing the order. Instead he passed the order presuming that Hon'ble Supreme Court decision has held that deprecation is not allowable under the Income Tax Act,1961 to the lessor in the case of a finance lease which is not correct.

11. In so far as AO is concerned, he is bound by CBDT instructions and precedents in taxation of leases whether by way of Sale and Lease Back or otherwise. The Department has not challenged the order of the Hon'ble Bangalore Tribunal in the case of Manipal Finance Corporation Limited in ITAs No 249/Bang/99 and 344&644/Bang/2000 for Assessment Years 1995-96,1996-97 and 1997-98 passed on 16th July 2004.

12. In passing the fresh order of assessment in Appellant's case he was bound by instruction No 1978 dated31-12-1999 (enclosed in pages 79 to 82 of the paper book) which required him amongst others:
a. To co-ordinate with the AO of the lessee to ensure that claim of depreciation is not disallowed to both lessor and lessee.

b. To make field enquiries about the existence of the leased assets.

c. To ensure that books of account reflect the lease rentals in terms of the lease agreements.

d. To refer to departmental valuer the valuation where he has doubt about valuation in sale and lease back transaction.

The Board circular also obviously puts the onus on the AO to establish that a lease is a sham transaction. The AO is required to visit the place where the asset is purported to be installed to verify the existence or non existence of the asset. The AO in his orders for various Asst Years where there were new finance leases has only been making allegations of sham transactions only to disallow depreciation. This approach by AO has been commented upon by the Hon'ble Tribunal in the case of Manipal Finance Corporation Ltd (Supra). In the case of Manipal Finance Corporation ltd the asscssee's contention that Sale cum Lease Back is not illegal was accepted. He has also not co-ordinated with the AO of the Lessees to ensure there is no double disallowance of depreciation..

13. The Departmental instructions do not make distinction between Finance Lease and Operating Lease and there are no instructions to disallow depreciation in the hands of Lessors in the case of Finance Leases. They only instruct for disallowance of depreciation where the asset does not exist or the moneys come back to the lessor through hawala transactions. It has been further clarified by the CBDT in circular No 2 /2001 that AS-19 leases (notified to come into effect from 1-4-2001) which requires capitalisation of assets in the hands of the lessees, by itself will not have any effect on the allowance of depreciation under the Act. The amendment made by Finance Act 1996 in Section 43 for insertion of Explanation 4A to the definition of "actual cost" indicates that in case of Sale cum Lease back the actual cost to the Lessor will be the wdv of the asset in the hands of the Lessee. The Act could well have been amended to state that in Sale cum Lease back the lessee would be deemed to be the owner as in the case of Section 27 where "owner" includes a person who is allowed or take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act,1882. This indicates that based on documents, the Lessor only will be the

owner to whom the depreciation will be allowed. The extract from Board Circular No 762 dated 18-2-1998 explaining this provision is enclosed as page 83 of the paper book.

14.The CIT-A appeal erred in relying upon the decision in Indus Ind Bank Ltd case reported in [2012] 19 Taxmann.com 173(Mumbai) (SB) which relied upon the ABB case (supra) when the Hon'ble Supreme Court in ICDS Ltd vs CIT (supra) was available holding that Lessor is entitled for depreciation as the owner in case of leased vehicles though the same may be registered in the names of the lessees and under the Motor Vehicles Act they are treated as the registered owner. His holding that the ICDS case applies only to lease of vehicles is not correct. The Hon'ble Karnataka High Court in the case of Manipal Finance Corporation Limited vs ACTT Circle-1 Udupi [2014] 49 Taxmann.com 353 (Karnataka) has held that the ICDS case applies to leasing of machinery and equipment also. The decision of the Madras High court in First Leasing Company of India. Limited is also clear that when both parties are clear about the terms of the agreement the same can be accepted and the lessor is entitled to depreciation on the leased assets in the case of Sale cum Lease Back. Copy of the decision in ICDS case is enclosed in pages 105 to 118 of the paper book. Copy of the decision in Manipal Finance Corporation Limited 49 Taxmann.com 353 (Karnataka) is enclosed in pages 121 to 126 of the paper book

15. Accordingly the Appellant be allowed the depreciation on the assets leased under finance lease, deduction for capital recovery allowed be added back.

16. Regarding assets leased to Educational Institutions the transactions are also covered in the decision of the Hon'ble Karnataka High Court in the case of Manipal Finance Corporation Limited vs ACIT Circle-1 Udupi [2014] 49 Taxmann.com 353 (Karnataka) . In the case of Sale and Lease back with related parties the decision of the Hon'ble Supreme Court in Pr Commissioner of Income Tax, City-1 vs Bombay Burmah Trading Corporation Ltd [2018] 256 Taxman 393 dismissed the SLP of the Department both on the grounds of delay as well as merits (see pages 119 to 120 of the paper book). Hence depreciation now disallowed be allowed.

ANNEXURE-1

MAHARASHTRA APEX CORPORATION LIMITED
PARTICULARS OF LEASE CONTRACTS WHERE DEPRECIATION DISALLOWED BY AO

Contracts of Asst Year	*Lessee*

1992-93 to 1994-95	*J L Morrison India Ltd*	*Sowparnika Yarn & Fabrics Limited*	*Mysore Polymers*	*VXL*
Whether Sale & Lease ba	*Yes*	*Yes*	*Yes*	*Yes*

Contracts of Asst Year 1995-96	*Lessee*						
	Deve Sugars Ltd	*Gannon Dunkerly & Co Ltd*	*Emtex Industries Ltd*	*Sharvani Pharmaceuticals*	*Shimoga Steels*	*Kedia Castle Douglas Ltd*	*Educational Institutions*
Whether Sale & Lease ba	*Yes*	*Yes*	*Yes*	*Yes*	*Yes*	*No*	*No*
Cost	*51,44,000*	*24,99,960*	*50,03,000*	*23,00,000*	*2,25,00,000*	*55,83,357*	*6,97,678*
Total Payments	*84,00,000*	*29,69,953*	*78,74,725*	*33,49,260*	*2,82,82,500*	*71,35,524*	
Lease Term	*6 Years*	*3 Years*	*5 Years*	*4 Years*	*6 Years*	*4 Years*	
Amount of Deposit	*1,44,100*	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*	*See Order*

In the case of Ashok Enterprisses- CIT-A granted relief

	*Ashok Enterprises**
Whether Sale & Lease ba	*No*
Cost	*71,16,687*
Total Payments	*90,31,140*
Lease Term	*3 Years*
Amount of Deposit	*Nil*

Contracts of Asst Year 1996-97	*Lessee*			
	ATV Projects	*Spartek Ceramics*	*Shimoga Castings*	*Educational Institutions*
Whether Sale & Lease ba	*Yes*	*No*	*Yes*	*No*
Cost	*1,41,90,000*	*2,00,00,000*	*40,00,000*	*17,36,674*
Total Payments	*1,75,47,372*	*3,30,00,000*	*58,32,000*	
Lease Term	*4 years*	*6 years*	*4 Years*	
Amount of Deposit	*14,19,000*	*Nil*	*Nil*	*See Order*

Contracts of Asst Year 1997-98	Lessee					
	Eastern Medikit Ltd	Eastern Medikit Ltd	Lotus Printers	Pearl Polymers Ltd	Ankot Polymer P Ltd	Educational Institutions
Whether Sale & Lease ba	Yes	Yes	No*	Yes	No	No
Cost	2,49,808	17,24,550	85,00,000	34,92,431	62,40,000	15,06,518
Total Repayments	3,30,371	22,80,718	1,32,60,000	64,19,235	77,11,725	
Lease Term	4 Years	4 Years	6 Years	4 Years		
Amount of Deposit	1,73,000	25,000	8,50,000	4,97,650	Nil	See Order

** Treated as SLB by AO. (See page 6 of order)*
*** In the case of Rungta Irrigation Ltd CIT-A granted rellief*

	Rungta Irrigation Ltd
Whether Sale & Lease ba	No
Cost	27,49,440
Total Repayments	35,70,973
Lease Term	4 Years
Amount of Deposit	2,74,944

Contracts of Asst Year 1998-99	Lessee	
	Khatema Fibres Limited,	Mohan Meakin Limited
Whether Sale & Lease ba	No	No
Cost	45,55,950	19,98,000
Total Repayments		
Lease Term		
Amount of Deposit	10,20,390	

ANNEXURE – 2

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Direct Tax

Circular : No. 9 [R. Dis. No. 27(4)-IT/43], dated 23-3-1943.

Date: 23/03/1943
The following instructions are issued for dealing with cases in which an asset is being acquired under on what is known as hire-purchase agreement :

1. In every case of payment purporting to be for hire-purchase, production of the agreement under which the payment is made should be insisted on.

2. Where the effect of an agreement is that the ownership of the subject is at once transferred to the lessee (e.g., where the lessor obtains a right to sue for arrear instalments but no right to recovery of the asset), the transaction should be regarded as one of purchase by instalments and no deduction in respect of "hire" should be made. Depreciation should be allowed to the lessee on the entire purchase price as per the agreement.

3. Where the terms of the agreement provide that the equipment shall eventually become the property of the hirer or confer on the hirer an option to purchase the equipment, the transaction should be regarded as one of hire purchase. In such cases the periodical payments made by the hirer should for tax purposes be regarded as made up of :

a. Consideration for hire, to be allowed as a deduction in the assessment, and

b. payment on account of purchase to be treated as capital outlay, depreciation being allowed to the lessee on the initial value (i.e., the amount for which the hired subject would have been sold for cash at the date of agreement).

The allowance to be made in respect of hire should be the difference between the aggregate amount of the periodical payments under the agreement and the initial value (as described above), the amount of this allowance being spread evenly over the term of the agreement. If, however, the agreement was terminated either by the outright purchase of equipment or of its return to the owner, the deduction should cease as from the date of the termination.

An assessee claiming this deduction should be asked to furnish a certificate, from the vendor or other satisfactory evidence, of the initial value (as described above). Where no certificate or satisfactory evidence is forthcoming, the initial value should be arrived at by computing the present value of the amount payable under the agreement at an appropriate rate per centum; in doubtful cases the facts should be reported to the Board.
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4. As against this, learned DR of the revenue supported the orders of the lower authorities. He submitted that this issue is covered against the assessee by the tribunal order in assessee's own case for A. Ys. 1992 – 93 to 1994 – 95 in ITA No. 17, 48 & 87/Bang/2000 dated 06.10.2003, copy available on pages 23 to 30 of the paper book. Regarding another tribunal order available on pages 31 to 52 of the paper book rendered in the case of M/s Manipal Finance Corporation Ltd. Vs. JCIT in ITA No. 294/Bang/1999 & 344 and 644/bang/2000 dated 16.07.2004, he submitted that this tribunal order is not applicable in the present case.

5. We have considered the rival submissions. We find that not even one lease agreement is made available before us. The AO in the assessment order has discussed about various clauses of some lease agreements and after considering a tribunal order rendered in the case of Centre for Monitoring Indian Economy vs. DCIT in ITA No. 3820/Bom/1990, the AO noted that in this case of identical nature, the tribunal held that it was not a lease agreement but a hire purchase agreement camouflaged as lease agreement and in the absence of lease agreement, we have no option but to hold that there is no infirmity in the assessment order on this issue. In most of the remaining appeals, no difference in facts is pointed out and for those appeals also, no lease agreement is brought on record. In the tribunal order in the assessee's own case for A. Ys. 1992 – 93 to 1994 – 95 in ITA Nos. 17, 48 & 87/Bang/2000 dated 06.10.2003, copy available on pages 23 to 29 of the paper book, the tribunal held that the lease transaction is sham because the assessee on the one hand pays the value of machinery and at the same time, receives the equivalent amount as deposit and thus, there is no out flow of fund so as to validly make payment for purchase price. In A. Y. 1995 – 96 which is before us also, it is noted by the AO on page 20 of the assessment order for A. Y. 1995 – 96 that cost of the leased asset is Rs. 1.99 Crores and the lessee had to pay security deposit of Rs. 1.7 Crores in addition to lease rental of Rs. 1.69 Crores in the total lease period of 96 months. It is seen that the facts in this year are

similar and no difference in facts is pointed out in any other year. When, the lease transaction itself is sham as per the earlier tribunal order in assessee's own case under similar facts, no other argument or judgment cited in the written submissions reproduced above is required to be considered. Hence, we decline to interfere in the orders of the lower authorities on this issue in all years.

6. It was submitted by the learned AR of the assessee that Ground No. 3 in A. Y. 1996 – 97 in ITA No. 240/Bang/2018 and in A. Y. 1997 – 98 in ITA No. 241/Bang/2018 is regarding disallowance of Depreciation on the assets leased to certain Educational Institutions on the basis of a decision of Hon'ble Karnataka High Court rendered in the case of ICDS vs. CIT but now, this issue is covered in favour of the assessee by another judgment of Hon'ble Karnataka High Court rendered in the case of Manipal Finance Corporation Ltd. Vs. ACIT as reported in 49 Taxman.com 353, copy available on pages 121 to 126 of the paper book. Learned DR of the revenue submitted that this judgment is not applicable because facts are different.

7. We have considered the rival submissions. We find that this issue was decided by CIT (A) as per identical Para 5.7.2 to 5.7.3 of his order on pages 22 and 23 for A. Y. 1996 – 97. For ready reference, these paras are reproduced hereinbelow: -

> "*5.7.2 The HIGH COURT OF KARNATAKA in the case of I.C.D.S Ltd.[2007] 161 TAXMAN 293 (KAR.) on the identical issue held against the assessee and held that the assessee is not entitled to claim depreciation on the assets. This issue attained finality and the appellant has not appealed against the High Court order. The relevant portion of the order is reproduced below:*
>
> > *18. The assessee acquires the asset in its name and leases it to the education institution which makes an interest bearing security deposit, equal to the entire value of the asset so leased, but agrees not to receive any interest which is to be adjusted entirely towards lease rentals. There is a remote possibility of termination of the lease and refund of the security deposit.*
> >
> > *19. In the meanwhile the assessee claims depreciation on the asset, which the educational institution could not have claimed if it had directly acquired the asset, as it is exempt from payment of income-tax. The further fact that the assessee and the lessees are managed*

by the same group of individuals, as directors in the assessee-company and in other capacities, managing the lessees would leave no room for doubt that the transactions are blatantly geared to evade the tax liability. It would be extremely naive to accept the transactions as commercially accepted transactions. The same cannot be considered as being a tidy management of affairs in accordance with law. The assessee and the lessees are on the other hand, cocking a snook at the law. Though it remains true in general that the taxpayer, where he is in a position to carry through a transaction in two alternative ways, one which will result in liability to tax and the other which will not, is at liberty to choose the latter. The transactions in the case on hand is not an alternative chosen by the assessee but a mechanism devised to enable a non-tax paying entity to acquire an asset and also to claim depreciation on it. It cannot be said that the transactions are entered into with the effect of minimising the subject's burden of tax, but only in order to facilitate the benefit as aforesaid.

20. It does not require a vivid imagination to discern the obvious in these transactions there is no warrant to give chase to a will-o'-the-wisp.

21. The finding that the assessee is not entitled to claim depreciation on the assets is not on the basis of the underlying motive but the direct result of the manner these transactions are engineered.

5.7.3 The facts in this case being identical, taking into consideration the above Jurisdictional High Court judgement, the action of the AO in disallowing the depreciation in the case of assets leased to Educational Institutions is hereby upheld. The ground no.5 raised on this issue is rejected."

8. We find that the decision of the AO in the assessment orders and of CIT (A) are by following the judgment of Hon'ble Karnataka High Court rendered in the case of ICDS vs. CIT (Supra). It is noted by Hon'ble Karnataka High Court in the judgment rendered in the case of Manipal Finance Corporation Ltd. Vs. ACIT (Supra) that Hon'ble apex court in the judgment rendered in the case of ICDS Ltd. Vs. CIT, 350 ITR 527 has held that if the assets in question are utilized for the purpose of business of the assessee, the requirement of the section stands satisfied notwithstanding non usage of the assets itself by the assessee. Hon'ble Karnataka High Court in the judgment rendered in the case of Manipal Finance Corporation Ltd. Vs. ACIT (Supra) noted that the assets in

question are owned by the assessee and the assessee had leased it to its customers and this is the business of the assessee. Regarding these assets, this is not the fact pointed out before us that almost equal amount of security deposit is received by the assessee from the lessee. Hence, this issue has to be decided on merit. In the present case, to examine these factual aspects, lease agreements have to be looked into but the same is not made available before us. Hence, we restore this issue to CIT (A) for a fresh decision after examining the lease agreements in the light of this judgment of Hon'ble apex court rendered in the case of ICDS Ltd. Vs. CIT and of Hon'ble Karnataka High Court rendered in the case of Manipal Finance Corporation Ltd. Vs. ACIT (Supra). Ground No. 3 in ITA No. 240 & 241/Bang/2018 is allowed for statistical purposes.

9. It was submitted by the learned AR of the assessee that Ground No. 3 in A. Y. 1998 – 99 in ITA No. 242/Bang/2018 is regarding disallowance of depreciation on assets leased to Khatima Fibers Ltd. Rs. 51,01,950/- and to M/s Mohan Mekin Ltd. Rs. 19.98 Lacs. He submitted that the disallowance was made on this basis that out of total cost of the assets, the assessee has financed only a part amount. He pointed out that as per the AO, in respect of Khatima Fibers Ltd., the cost is Rs. 51,01,950/- and the assessee financed only Rs. 45,55,950/- and in the case of M/s Mohan Mekin Ltd., as per the AO, the cost is Rs. 22,25,047/- and the assessee financed only Rs. 19.98 Lacs. On this basis, the AO concluded that the assessee has not purchased the asset because in case of purchase, the assessee has to pay full cost and not part cost and hence, as per the AO, this is a finance transaction only and not a lease transaction. He submitted that the lease agreement with M/s Mohan Mekin Ltd. Is available on pages 1 to 42 of a separate paper book filed for ITA No. 242/Bang/2018 and similarly, lease agreement with M/s Khatima Fibers Ltd. Is available on pages 43 to 78 of the same paper book. It was submitted that this is a case of lease transaction and not a finance transaction. Learned DR of the revenue supported the orders of the lower authorities.

10. We have considered the rival submissions. We find that in Para 5.4.6 of his order, it is noted by CIT (A) that in respect of transaction with M/s Mohan Mekin Ltd., in the covering letter dated 11.02.1998 to the lease agreement between the assessee and this party, it is stated that it is a lease finance of Rs. 19.98 lacs and the cost of purchase is Rs. 22,25,057/-. Similarly, in Para 5.4.7 of his order, it is noted by CIT (A) that in respect of transaction with M/s Khatima Fibers Ltd., as per two invoices dated 18.12.1997 and 27.12.1997 each of Rs. 25,50,975/-, total cost is Rs. 51,01,950/- and the lessee has paid Rs. 5.46 Lacs being excise duty portion to the suppliers directly and only the balance amount of Rs. 45,55,950/- was financed by the assessee. These two invoices are available on pages 55 & 56 of the paper book and as per the same, excise duty portion is Rs. 2.73 Lacs in each invoice total Rs. 5.46 Lacs. This categorical finding of CIT (A) that total cost is not borne by the assessee could not be controverted by the learned AR of the assessee and hence, it is seen that full cost is not borne by the assessee. It may be that the lessee has paid excise duty portion and claimed it as input credit in excise. Be that as it may but this is certain that full cost is not borne by the assessee because it is not shown to us that the assessee has accounted for full cost and the balance amount is payable by the assessee to the supplier or to the lessee. When full cost is not borne by the assessee, how the assessee can claim ownership and claim depreciation. Therefore, we find no merit in this ground and it is rejected.

11. Regarding ITA No. 243/Bang/2018 for A. Y. 1999 – 2000, it was agreed by both sides that the issue involved in this appeal is same as in ITA No. 239/Bang/2018 for A. Y. 1995 – 96 and this issue is about allowability of depreciation on lease transactions. In this regard, we have already held in Para No. 5 above that the depreciation is not allowable in view of earlier tribunal order in assessee’s own case for A. Ys. 1992 – 93 to 1994 – 95 in ITA Nos. 17, 48 & 87/Bang/2000 dated 06.10.2003, copy available on pages 23 to 29 of the paper book in which the tribunal held that the lease transaction is sham because the assessee on the one hand pays the value of machinery and at the same time receives the equivalent amount as deposit and thus, there is no out

flow of fund so as to validly make payment for purchase price. It is seen that no difference in facts is pointed out in the present year or in any other year. When, the lease transaction itself is sham as per the earlier tribunal order in assessee's own case under similar facts, no other argument or judgment cited in the written submissions reproduced above is required to be considered. Hence, we decline to interfere in the orders of the lower authorities on this issue in all years including the present year.

12. ITA No. 244/Bang/2018 for A. Y. 1999 – 2000 and ITA No. 246/Bang/2018 for A. Y. 2000 – 2001 are in the proceedings u/s 154 of I T Act and the issue involved in these two appeals is about allowability of interest u/s 244A. Regarding these two appeals, separate written submissions are filed by the learned AR of the assessee on 08.08.2019 as per the direction of the bench. The same is reproduced herein below:-

> "*Ground:*
> *The learned Appellate Officer has erred in upholding the action of the Assessing Officer in not granting interest u/s 244A on the refund due as per order of ITAT in an order passed u/s 143(3) r.w.s 254 dated 31.12.2010 for the assessment year under appeal, holding the "assessee should be gracious to acknowledge its mistake" and not agitate for "what is not due to him"*
>
> *1. a) The deduction of income tax at source under chapter XVII B of the Income Tax Act were made by various entities who pay assessee, rent, interest, services, etc. Under Income Tax (Sixth Amendment) Rules 2009 [310 ITR st 17] inserted Rule 37BA by which credit for the tax deducted is now given on the basis of information given by deductor to income tax authority. Earlier, the credit for the same was given on the basis of TDS certificates (Form 16A) received from deductors and furnished by an assessee to the Income Tax Department.*
>
> *b) The assessee used to give credit to the deductors (customers) only on the basis of Form 16A received by it though a customer would have been debited as per mercantile system of accounting. The TDS certificates accounted in a financial year were listed and used to be submitted along with return filed for an assessment year and the department used to give credit for the same.*
>
> *2. a) When the instruction for giving credit for TDS changed, that the credit for the same must be given on the basis of accounting of*

income, the assessing officers began to give credit for all TDS certificates filed properly, by transferring the prior year's certificate to the dockets (Assessment record) of earlier years or returning these certificates to the assessees to file it properly with covering letters as the Department may not be readily finding the back records.

b) However, situation changed drastically when the department introduced the system of "scrutiny assessment" as well as adverse market condition for NBFC." The lessees who took the fixed assets on lease from the assessee did not pay the lease rent properly and the assessee had to recourse to recover proceedings through court. When the borrowers refused to pay the amount borrowed as per terms of loan, the assessee had to approach the court and get a decree. The amount due was recovered in instalments from judgement debtors or in one lump sum. The TDS certificates (16A) would have been issued for all the years in subsequent years and credit for the Form 16A would have been in the subsequent years as per system followed and TDS claim would have been made in the later year. The A.O. used to hold the Form 16A so filed as defective Form 16A and never gave credit for the same.

c) In the assessment for Asst Year 2001-02 for example, credit for TDS of Rs.73,97,954 was refused on the ground that these are relating to earlier years. Copy of the intimation is enclosed as Annexure-1. No credits for the same were given for these amounts in the respective years by transferring the certificates for respective years. The A.O.s refused to give credit for Form 16A collected from records for a.y. 2001-02 and claimed properly for a.y. 1995-96 to 2000-01. The A.O. refused to give credit for Form 16A received for earlier years in terms of court decree at a later date. Credit for TDS ought to have been given when an order u/s 143(3) is passed or an application u/s 154. Applications filed u/s 154 have been rejected for certain assessment years and the assessee has come in appeal against the said orders. As per the order u/s 154, the A.O. has refused to give credit for TDS on some pretext or other. This could also be due to the adverse remarks of the C&AG against the Department granting interest on refunds when there was no provision in the budget for granting such interest. The CIT-A also refused to give relief stating that non-credit of TDS was not appealable u/s 246A(1)(a).

3. This non-credit of TDS was dealt with by the ITAT in respect of claim for credit of such TDS in its orders in ITA No 346/Bang/2008 and 347/Bang/2008 for Asst year 1999-2000 and 2000-01 and the Tribunal directed the granting of the same after verification. Said common order is enclosed (Annexure-2). The AO in his original orders u/s 254 rws 143(3) for Asst year 1999-2000 and 2000-01 giving effect to the ITAT order did not grant credit for the TDS. Subsequently on application by appellant he passed orders under

> *Section 154 for both assessment years and granted the credit for TDS after due verification. However, he has not granted interest under Section 244A on the ground that the delay is attributable to the appellant. The CIT-A has upheld the action of the AO on the ground that onus is on the appellant to show that the income referred to in the certificate has been offered to tax in the relevant assessment year (per para 5.4 of the order) without which AO is unable to give credit. According to the CIT-A "the appellant should be gracious to acknowledge its mistake and not agitate for what is not due to him."*
>
> *4. If the contention of the CIT-A was correct, the AO could not have denied credit for the TDS in intimation under Section 143(1) simply on the ground that the certificate related to earlier assessment year. He has no way of concluding that the income reflected in the certificate has not been offered to tax in Asst Year 2001-02 in which the TDS was claimed, without carrying out assessment as required under Section 143(3). Having concluded without any proof in proceeding u/s 143(1), that the income reflected in the certificate has been offered to tax by the appellant in an earlier assessment year, he is bound to suo moto grant credit of the tax for that earlier assessment year. He erred in rejecting the certificates as "defective". If further evidence was required from the appellant of offering the income to tax in earlier assessment year he could very well have asked for the same. Hence refusing to grant interest on the ground that the delay is attributable to the appellant is a grave injustice as interest on refund under Section 244A is mandatory. The appellant could not claim the TDS in the relevant year because of the delay in the deductor issuing the certificates and same was claimed in the year in which certificates were received from the deductors. The provision for excluding period of delay attributable to the deductor has been introduced in subsection (2) of Section244A only from Asst year 2017-18 and cannot apply to earlier years.*
>
> *5. Hence the AO be directed to grant interest on the refund which is due to the appellant as prayed for.*"

13. As per these submissions of the learned AR of the assessee, this is the only contention raised that when the AO did not allow credit of TDS in A. Y. 2001 – 02 on this basis that corresponding income is not offered to tax in that year, the AO should have suo moto allowed credit of TDS in correct year. We find no merit in this claim because this not the case of the assessee that corresponding income was offered to tax in the same year in which TDS credit is claimed and the AO wrongly disallowed the claim of TDS credit. This is admitted position of fact that the assessee claimed TDS credit in A. Y. 2001 – 02 and offered

corresponding income for tax in an earlier year and therefore, the delay in granting of refund is attributable to the assessee and as a consequence, interest u/s 244A is not allowable. In our considered opinion, if the TDS credit is claimed in a year in which corresponding income is not offered to tax, the AO has to disallow such claim of TDS credit in that year and it is not practically possible for the AO to allow such credit in the correct year in which corresponding income is offered to tax and it is for the assessee to point out the year in which such income is offered to tax and then the AO can allow credit of TDS in that year but in such case, delay in granting refund is attributable to the assessee and therefore, interest u/s 244A is not allowable. We therefore, decide this issue against the assessee in both years.

14. Regarding ITA No. 245/Bang/2018 for A. Y. 2000 – 2001 and in ITA Nos. 247 to 255/Bang/2018 for A. Ys. 2001 – 02, 2003 – 04 to 2008 – 09 and 2011 – 12 to 2012 – 13, it was agreed by both sides that the main issue involved in these appeals is same as in ITA No. 239/Bang/2018 for A. Y. 1995 – 96 and this issue is about allowability of depreciation on lease transactions. In this regard, we have already held in Para No. 5 above that the depreciation is not allowable in view of earlier tribunal order in assessee's own case for A. Ys. 1992 – 93 to 1994 – 95 in ITA Nos. 17, 48 & 87/Bang/2000 dated 06.10.2003, copy available on pages 23 to 29 of the paper book in which the tribunal held that the lease transaction is sham because the assessee on the one hand pays the value of machinery and at the same time receives the equivalent amount as deposit and thus, there is no out flow of fund so as to validly make payment for purchase price. It is seen that no difference in facts is pointed out in the present year or in any other year. When, the lease transaction itself is sham as per the earlier tribunal order in assessee's own case under similar facts, no other argument or judgment cited in the written submissions reproduced above is required to be considered. Hence, we decline to interfere in the orders of the lower authorities on this issue in all years including the present year.

15. As per a separate written submission filed by the learned AR of the assessee on 10.08.2019 as per the leave granted by the bench, it is submitted that there are two additional issues in some appeals. As per the same, one issue is this that amounts forfeited by the depositors in terms of the scheme approved by the High Court of Karnataka cannot be subjected to tax and it is stated in written submissions that this issue is in A. Y. 2006 – 07 to 2008 – 09. Second issue is stated to be about MAT credit in A. Y. 2008 – 09. For ready reference, these written submissions are reproduced hereinbelow:-

"*Written Submission on Issues Involved in the Appeal other than Depreciation on Leased Assets.*

A. Ground:
(For Asst.Year 2006-07, 2007-08, 2008-09, 2011-12 and 2012-13)
The Appellate Officer has erred in ignoring the decision of the High Court of Karnataka in the case of Manipal Finance Corporation Ltd that the amount forgone by deposit holders is a capital receipt not taxable to income tax and confirming the addition now made by assessing officer.

1. The appellant had claimed before the A.O. in the returns filed for Asst Year 2006-07, 2007-08 and 2008-09 that the amounts forfeited by the Depositors in terms of Scheme approved by the High Court of Karnataka was not income subject to tax. The A.O. has not accepted the same and following additions have been made for each of the assessment years under appeal :

AY	*Amount*
2006-07	*34,27,268*
2007-08	*1,87,18,276*
2008-09	*3,77,52,631*

The appellant subsequently changed its stand and from Asst Year 2009-10, included the forfeited deposits as income. Said return for A Y 2009-10 and 2010-11 have been accepted u/s 143(1). Original stand of the appellant that forfeiture of portion of deposits by depositors was not income, was upheld by the Bangalore Tribunal in the case of both ICDS Ltd (in the case of debentures) and Manipal Finance Corporation Ltd and the orders of the Tribunal was confirmed by the High Court in CIT vs Industrial Credit and Development Syndicate Ltd [2006] 285 ITR 310W (Kar) and Commissioner of Income Tax vs Manipal Finance Corporation Ltd [2015] 53 Taxmann.com 313 (Karnataka). Accordingly, the appellant pressed its grounds before CIT-A for allowing its ground of appeal that forfeited portion of deposit is not income subject to tax. The Written Submission filed

before the CIT-A are reproduced in pages 2 to 4 of CIT-A order in ITA No. 22/Udup/CIT(A) Mang/2008-09 for A Y 2006-07. The CIT-A has not allowed the appellant's claim only for the reason that the appellant had changed its stand and in a subsequent year the amounts earlier taken to Capital Reserve were transferred to the Profit & Loss A/c.

2. In this connection the submission of the appellant is as under:
The treatment of a transaction in the accounts cannot determine the taxability thereof. The Honourable Bangalore Tribunal and the Karnataka High Court in the case of ICDS Ltd in 283 ITR 310 (Kar) held that the amount taken to Profit & Loss Account was a capital receipt and not chargeable to tax. In the case of CIT vs Manipal Finance Corporation Ltd. [2015] 53 Taxmann.com 313 the Honourable High Court in para 11 of the order has held as under:

> *"11. In the instant case, no-doubt the assessee received the deposits. The deposits were repayable with interest. The assessee sustained loss in the business. They framed a scheme of compromise/arrangement. During the course of such a claim before the High Court, the assessee entered into an arrangement with the depositors who were willing to receive a portion of the amount deposited by them towards settlement of their claim. Therefore, those depositors were paid a portion of the money which they had deposited. With such payment, the entire liability to pay the amount received stood extinguished. However, by such extinguishment of the liability, the assessee did not receive any amount either by forfeiture or by discount and it is a case of sheer inability to pay the amount received by way of deposits. Under those circumstances, though such rebate or remission has benefitted the assessee insofar as discharging his liability to the depositor, in reality it did not result in any income at the hands of the assessee unless there is accrual or receipt of income by the assessee, it would not constitute income for the purpose of levy of tax. The income to be taxed under the Act should be real income and not fictional one. Therefore, the tribunal was justified in holding that the balance amount of deposit which was not repaid under the arrangement, did not constitute an income and therefore, the assessee is not liable to pay any tax under the said context.*

Therefore, the substantial questions of law is answered in favour of the assessee and against the revenue."

Accordingly, it is clear from the above observations of the High Court that the amount of deposit foregone can never be income, notwithstanding any change in the stand of the Appellant in subsequent year. Accordingly, the ground be allowed as prayed for.

The SLP filed by the Department against this order has been dismissed.

B. Ground (For Asst Year 2008-09)
"The learned CIT(A) has erred is not allowing the claim of the appellant that MAT paid for A.Y 1997-98,1998-99,1999-00 and 2000-01 should be deducted before determining the tax payable on regular basis or under MAT."

This ground has been raised as a matter of abundant precaution. The Honourable Tribunal may issue direction to AO to verify and allow eligible MAT Credit (if any)."

16. We find that as per Ground No. 4 in A. Y. 2006 – 07, ITA No. 251/Bang/2018 and in A. Y. 2007 – 08, ITA No. 252/Bang/2018 and as per Ground No. 5 in A. Y. 2008 – 09, ITA No. 253/Bang/2018, the assessee has raised this issue that amounts forfeited by the depositors in terms of the scheme approved by the High Court of Karnataka cannot be subjected to tax. We find that this issue was decided by CIT (A) in A. Y. 2006 – 07 as per Para No. 5.4.9 to 5.4.13 of his order and for ready reference, these paras are reproduced hereinbelow:-

"*5.4.9 The submissions of the appellant (incorporated in para 4.1 and 4.2) were considered. After this well considered change in the accounting policy over a period of four year time, the AR before me relied on Karnataka High Court decision in the case of Manipal Finance Corporation Ltd in 53 taxmann.com 313 (Karnataka) and the Department Circular No. 14(XI-35) dated 11.4.1955 and emphasized that Department should not take advantage of an assessee's ignorance to collect more tax out of him than is due from him.*

5.4.10 The Manipal Finance Corporation Ltd decision is not applicable to the present case as the appellant itself treated the difference between the face value of the deposits and the amount paid in final settlement as revenue receipts and income by filing revised computation for AY 2006-07, AY 2007-08 and AY 2008-09. The appellant also transferred Rs.1134.58 lakhs (pertaining to A.Y.s 2006-07, 2007-08, 2008-09 and A.Y.2009-10) from capital reserve to P & L A/c., as mentioned in para-5.4.5 above. In the case of Manipal Finance Corporation Ltd the difference between the face value of the deposits and the amount paid in final settlement was treated as capital receipts by the taxpayer.

5.4.11 The AR's reliance on the Board circular is without any basis as the change in accounting policy was made consciously over a period of time after thoroughly considering the nature of receipts,

ascertaining its real income position with the books of accounts. The reliance on CBDT circular at this juncture is only abuse of CBDT circular which was meant to help the genuine mistakes in claims.

5.4.12 The Hon'ble Supreme Court decision in the case of CIT v T V Sundaram lyengar & Sons Ltd. (224 ITR 344) is clearly applicable to the facts of the assessee's case as the appellant itself credited difference between the face value of the deposits and the amount paid in final settlement to the P&L a/c.

5.4.13 The reasons given by the AO for the addition were considered by me and I agree with them. The AO passed a speaking order dealing with all the issues. There is no reason to interfere with the assessment order. The addition made by the AO is upheld. The grounds on the issue are rejected."

17. As per these paras reproduced from the order of CIT (A), it is seen that only objection of CIT (A) for not following the judgment of Hon'ble Karnataka High Court rendered in the case of Manipal Finance Corporation Ltd., 228 Taxman 271 is this that in the present case, the assessee has treated the difference as revenue receipt but in that case, the assessee treated it as capital receipt. This is by now a settled position of law that treatment in the books by the assessee is not decisive. This is also a settled position of law that taxability of a receipt cannot be on this basis that the assessee offered it for taxation. If a receipt is a capital receipt as held by Hon'ble Karnataka High Court in the judgment rendered in the case of Manipal (Supra), it cannot be taxed merely because the assessee treated it as revenue receipt or offered it for taxation. No other difference in fact is noted by CIT (A). Learned DR of the revenue also could not point out any other difference in facts. Hence, respectfully following this judgment of Hon'ble Karnataka High court, we decide this issue in favour of the assessee.

18. Regarding the next issue in A. Y. 2008 – 09 raised by the assessee as per Ground No. 4 in respect of MAT credit in respect of MAT paid in earlier years from A. Ys. 1997 – 98 to 2000 – 01. We find that before CIT (A), this issue was raised as per Ground No. 4. In para 5.1 of his order, it is held by CIT (A) that there is no merit in this ground because the AO adopted the tax payable under

regular provisions as it was more than MAT. As per written submission reproduced by CIT (A) on page 3 of his order, it is submitted by the learned AR of the assessee that this issue may not arise as on date but it may arise in future. Hence, it is seen that the assessee wants an advance decision. In the written submissions before us also as reproduced above, it is submitted that this ground has been raised as a matter of abundant precaution. Hence, it is seen that before us also, the assessee wants an advance decision. Hence, this ground is rejected.

19. The result of all appeals is summarized below:-

ITA No.	Result
240 & 241/Bang/2018	Partly allowed for statistical purposes.
251 to 253/Bang/2018	Partly allowed for statistical purposes.
Remaining appeals in 239, 242 to 250 & 254 to 255/Bang/2018	Dismissed

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

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th September, 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.