

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1965/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

आयकर अपील सं./ ITA No.1966/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. TTK Protective Devices Ltd. No.6, Cathedral Road, Chennai – 600 086.	बनाम/ Vs.	ACIT, Corporate Circle-3(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AABCT-1184-G		
(□ पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Vikram Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri ARV. Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/Date of Hearing	:	12-07-2022
घोषणा की तारीख /Date of Pronouncement	:	03-08-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2011-12 & 2013-14 arises out of separate orders of learned first appellate authority. The appeal for AY 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-11, Chennai [CIT(A)] dated 29.06.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 29.11.2016. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income tax (Appeals) is contrary to law, facts and in the circumstances of the case.
2. The Commissioner of Income tax (Appeals) erred in confirming the addition of the principal portion of lease rental payments amounting to Rs.15,98,265/- on the ground that the lease is in the nature of financial lease and the principal portion of lease amounts to cost of acquisition of capital assets which is capital in nature.
 - 2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that as per the terms of lease, Lessor is the absolute and permanent owner of the asset and assessee do not have any proprietary right, title or interest in the asset.
 - 2.2 The Commissioner of Income tax (Appeals) ought to have appreciated that notwithstanding the treatment of the lease transaction in the books of account complying with Accountant Standards for Income tax purpose the Lessor is the owner and the amounts paid by Appellant as lease rentals constitute payments for use of the assets leased and hence the entire amount is an allowable deduction.
 - 2.3 The Commissioner of Income tax (Appeals) ought to have appreciated that the CBDT in Circular No.2 of 2001 dated 09.02.2001 has clarified that by itself the accounting standard will have no implication on allowance of depreciation under the Income tax. As a corollary part of the payment of lease rentals cannot be apportioned towards capital payment and disallowed under the I.T Act.
 - 2.4 The Commissioner of Income tax (Appeals) ought to have appreciated that the assessee not being the owner of asset is not eligible to claim depreciation under the Act, the depreciation on leased assets charged in the books of account have been added back and no depreciation was claimed.
 - 2.5 The Commissioner of Income tax (Appeals) ought to have appreciated that Assessee has claimed the lease rent paid on the assets net of the amount already claimed under the head interest in the books of account as expenditure in the computation of income as "Lease rental charges for leased assets (principal only)"
 - 2.6 The Commissioner of Income tax (Appeals) ought to have appreciated that the decision relied on in the case of ACIT Vs B.G.R. Energy Systems – 27 ITR (Tri) 791 (Hyd) is not applicable to the facts of the present case.
3. Without prejudice to the above, and in the alternate depreciation on the asset should be allowed on the leased assets.
4. The Appellant craves leave to adduce additional evidence at the time of hearing.

As evident, the sole issue that arises for our adjudication is assessee's eligibility to claim principal portion of lease rental payments amounting to Rs.15.98 Lacs.

2. The Ld. AR submitted that the issue is covered by our decision in **M/s Sundaram Infotech Solutions Ltd V/s ITO in ITA Nos. 2515/Chny/2018 and ors., order dated 06.07.2022.** A copy of the same has been placed on record. The Ld. Sr. DR, on the other hand, submitted that such claim is not allowable and alternatively, the

depreciation as claimed by the assessee has to be reversed. Having heard rival submissions our adjudication would be as under:

3. During assessment proceedings, it transpired that the assessee procured certain assets on finance lease and capitalize the same in its books of accounts. However, in the computation of income, it claimed principal portion of lease payments amounting to Rs.15.98 Lacs. The Ld. AO held the same to be capital in nature and added the same to the income of the assessee. Though, the assessee preferred further appeal, however, the Ld. CIT(A) relying on the decision of Delhi Tribunal in **Rio Tinto India Pvt. Ltd V/s ACIT in ITA No. 363/Del/2012 order dated 22.06.2012** held the issue against the assessee. Aggrieved, the assessee is in further appeal before us.

4. We find that this issue is now covered in assessee's favour by our decision in **M/s. Tristar Container Services (Asia) Private Ltd., ITA Nos. 937/Chny/2016 & ors., order dated 15.06.2022** which has been followed by us in **M/s Sundaram Infotech Solutions Ltd V/s ITO (supra)**. Our findings in **M/s. Tristar Container Services (Asia) Private Ltd. (supra)** are as under: -

Our findings and Adjudication

6. Upon careful consideration of material facts, we find that the basic facts are not in dispute. The assessee as a lessee takes on lease marine containers and sub-leases the same to its customers. The income thus earned by the assessee is offered to tax. The leased contained are taken under operating lease as well as under finance lease. There is no dispute with respect to tax treatment of asset taken under operating lease. The dispute is only with respect to assets taken under finance lease. The same stem from the fact the assets under finance lease are capitalized in the Balance Sheet as Fixed Asset and depreciation is claimed on the same under the Companies Act. The lease rental payable by the assessee is shown as liabilities. The lease payment would have two components i.e., principal and finance charges. The finance charges have been debited to the Profit & Loss Account and the same has been allowed by Ld. AO. However, in the computation of income, the assessee reverses the depreciation and claim gross lease rental as deduction on the plea that Income Tax Act do not differentiate between finance lease as well as operating lease. We are of the considered

opinion that whatever is the nature of lease, only the lessor is entitled for depreciation as per the decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (350 ITR 527)**. The decision of Delhi Tribunal in **Minda Corporation Ltd. V/s DCIT (69 Taxmann.com 317)** has also support the same view. The case of the revenue is that in case of finance lease, substantial risks and rewards of ownership are transferred to the lessee and therefore, the lessee would be entitled to claim depreciation and not the principal component of lease payment.

7. We find that as per Accounting Standard-19 as introduced by The Institute of Chartered Accountants of India (ICAI) in the year 2001, the lease transactions are bifurcated into two types of lease i.e., finance lease and operating lease. As noted by Coordinate bench of Delhi Tribunal in **Minda Corporation Ltd. V/s DCIT (69 Taxmann.com 317)**, as per AS-19, finance lease is described as a lease that transfers substantially all the risks and rewards in respect of ownership of an asset and title may or may not be transferred under such lease. An operating lease, on the other hand, is described as a lease other than a finance lease. The aforesaid Accounting Standard provides that under the finance lease, the lessee should recognize the asset in its books and should charge depreciation on the same. In the case of operating lease, the Accounting Standard provides that the lessee should recognize the lease payments as an expense in the profit and loss account and the lessor should recognize the asset given on lease and charge depreciation in respect of the same. The aforesaid distinction between finance lease and operating lease is not recognized under the Act. Under the provisions of the Act, depreciation is admissible under section 32 of the Act only to the 'owner' of the asset. Lease charges paid for the use of the asset, without acquiring any ownership rights in the same, are allowable as revenue expenditure under Section 37 of the Act. Thus, what AS-19 provides is the accounting treatment to be given to the two types of leases. It is not determinative of the tax treatment of the lease which has to be computed in accordance with the provisions of the Act. It is trite law that book entries are not determinative of tax liability as per the ratio laid down in **Sutlej Cotton Mills Ltd. v. CIT [1979] 116 ITR 1 (SC)** as well as in **Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC)**. The said proposition has also been reiterated in CBDT Circular No.2 of 2001 dated 09.02.2001 which state that accounting standard issued by ICAI creating distinction between finance lease and operating lease will have no implications under the provisions of the Act. The relevant excerpt read as under: -

"Under the Income-tax Act, in all leasing transactions, the owner of the asset is entitled to the depreciation if the same is used in the business, under section 32 of the Income-tax. The ownership of the asset is determined by the terms of the contract between the lessor and the lessee.

.....

It has come to the notice of the Board that the New Accounting Standard on 'Leases' issued by the Institute of Chartered Accountants of India require capitalization of the asset by the lessees in financial lease transaction. By itself, the accounting standard will have no implication on the allowance of depreciation on assets under the Act."

As observed by Delhi Tribunal, the CBDT's view on the treatment of finance lease is not aligned to the accountant's perspective of a finance lease. For accounting purposes, although the lessee shows the asset in his balance sheet, charges depreciation in accounts and even makes impairment provision, yet the assessee

is not eligible to claim depreciation under the Act, which is to be allowed to the legal owner of the asset. Furthermore, not only the interest/ finance/ other charges component in the lease payments, but the entire lease payments are treated as a deductible expense and no deduction is allowed for the impairment provision. In the hands of the lessor, the entire 'lease rentals' and not merely the finance charges component thereof is taxed as income. The lessor, who is the legal owner of the asset, is entitled to claim depreciation under the provisions of the Act.

8. The Hon'ble Supreme Court in the case of **ICDS Limited Vs CIT (350 ITR 527)**, held that as long as the assessee is entitled to retain the legal title of the asset against the rest of the world then it would be the owner of the asset in the eyes of law. In such a case, the assessee as owner lessor would alone be entitled to claim depreciation notwithstanding the fact that vehicles were registered in the name of the lessee under The Motor Vehicles Act. In this decision, Hon'ble Court referred to its earlier decision in **CIT V/s Shann Finance Pvt. Ltd. (97 Taxman 435)**. The Hon'ble Court also took note of similar decision rendered in CIT v. A.M. Constructions [1999] 238 ITR 775 (AP); CIT v. Bansal Credits Ltd. [2003] 259 ITR 69/126 Taxman 149 (Delhi); CIT v. M.G.F. (India) Ltd. [2006] 285 ITR 142/[2007] 159 Taxman 335 (Delhi); CIT v. Annamalai Finance Ltd. [2005] 275 ITR 451/146 Taxman 627 (Mad.) and agreed with the ratio contained therein. In each of these cases, the leasing company was held to be the owner of the asset and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out.

9. Similar is the decision of Hon'ble Rajasthan High Court in the case of **Rajshree Roadways v. Union of India [2003] 263 ITR 206/129 Taxman 663** wherein Hon'ble Court upheld the assessee's claim of allowability of lease rentals paid as lessee of the vehicles as a revenue expenditure u/s 37(1) of the Act, even though the lease was categorized as finance lease.

10. In the present case, rule of consistency also favors the case of the assessee. It is undisputed position that the aforesaid accounting / tax treatment has been accepted by the revenue in regular assessment proceedings right from AYs 1998-99 to 2010-11. Therefore, facts being pari-materia the same, the revenue is debarred from changing its stand after having accepted this position for so many years.

11. So far as the terms of lease agreement is concerned, upon perusal of sample lease agreement as placed on page nos. 55 to 64 of paper-book of this year, we find that the lease is in the nature of lease purchase. The assessee is required to pay lease rate on per day basis @USD .82 per day which includes reimbursement of domestication costs paid by the lessor. The term of lease is 5 years. On the last day of term, the assessee is required to pay further final payment of USD 1 also. The lessee, at its own expenses, is required to obtain insurance coverage and all responsibility in this regard shall rest with the lessee. The Lessee shall not be entitled for any abatement of rent or reduction thereof. The rents shall continue to be payable in all event unless expressly agreed. If any container is lost, damaged, stolen, destroyed etc., lessee's obligations to pay rental for that container would terminate and the lessor receives an amount equal to the balance of the rent owed for the remainder of the term.

12. As per business conditions, the lessee was required to return all the containers to lessor's depot at the designated locations. The lessee was liable to lessor for all damages to or loss or destruction of the container subsequent to delivery and prior to return to lessor except that what is caused by normal wear

and deterioration. It was the responsibility of the lessee to maintain the containers in good repair and safe operating conditions. Further, the lessee would not have the right to assign this Agreement to any other party without the prior written consent of the Lessor. However, lessee shall have the right to sublet or rent the container on lease under this Agreement, except that any such subletting or rental shall not relieve Lessee of its obligation under the agreement.

13. Upon perusal of terms and conditions of lease agreement, it could be concluded that the ownership of the containers has never been parted with by the lessor and lessee merely pays lease rental to the lessor. In such a case, it would only be the lessor which is entitled to claim depreciation as per the cited decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (supra)**.

14. The Ld. CIT-DR, in the written submissions and by drawing attention to assessee's financial statements, have emphasized the fact that the aforesaid lease transactions are finance lease transactions and therefore, the action of Ld. AO was to be held. We find that there is no quarrel on the proposition since the only dispute under the appeal is tax treatment under finance lease. The operating lease transactions have not been disturbed by Ld. AO and the only dispute is qua deduction of principal component under finance lease transactions. This fact is nowhere in dispute.

15. In further support, Ld. CIT-DR has emphasized the fact that it was the lessee who was responsible to obtain insurance coverage at its own expense and therefore, the assessee was to be considered as owner of the asset. However, we find that this conclusion run contrary to the terms of the agreement as noted by us in preceding paragraphs. It has also been emphasized that in case of casualty to containers while on lease, the lease obligation terminate and the lessor would receive an equal amount to the balance of rent owed for the remainder term which would establish that the assessee was the owner of the assets. Similar plea has been raised to submit the lessee was obligated to pay customs duty, as well as bear cost of maintenance / repairs of the containers. However, there are merely the terms of the agreement and do not culminate into transfer of ownership from lessor to lessee. The terms clearly provide that the assessee was obligated to return the containers to the lessor at the end of lease term.

16. The Ld. CIT-DR has referred to various judicial decisions in support of revenue's case. The decision of Mumbai Tribunal (SB) in **Indusind Bank Ltd. V/s ADIT (19 Taxmann.com 173; 14.03.2012)** is a decision which has been rendered prior to the decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (supra)** which has been rendered on 14.01.2013. Undisputedly, the decision of Hon'ble Supreme Court would have precedence over the decision of Special Bench of Tribunal.

The decision in **Asea Brown Boveri Ltd. V/s IFCI (154 Taxman 512)** is not relevant to the facts of the present case.

Similarly, the case law in **Association of Leasing & Financial Services Company Vs. UOI (29 STT 316)** is in the context of Service Tax and has no application to the facts of the present case.

17. Finally, considering the facts and circumstances of the case, the assessee as a lessee would be entitled for deduction of gross lease rental payments. The assessee's methodology is to be accepted. The lease payments made by the assessee would be revenue expenditure for the assessee. We order so. The alternative claims as allowed by Ld. AO shall stand reversed. The claim of foreign exchange loss on these transactions shall be re-considered / re-adjudicated by

Ld. AO in the light of our above adjudication. The appeal stand partly allowed in terms of our above order.

We find that facts in the present appeal are quite identical and the aforesaid adjudication squarely applies to the present case.

5. So far as the case law of Delhi Tribunal in **Rio Tinto India Pvt. Ltd. V/s ACIT (supra)**, as relied upon by Ld. CIT(A) is concerned, we find that in subsequent decision for AY 2008-09 in the case of that very assessee, the coordinate bench in ITA No.6495/Del/2012, order dated 26.06.2018 noted that the bench did not consider the decision of the Special Bench in **Indusind Bank Ltd. V/s ACIT (15 ITR (T) 89)** as well as other decision of various High Courts. Therefore, the matter was restored back to the file of Ld. AO for fresh consideration in the light of the decision in **Indusind Bank Ltd. (supra)**.

6. We also find that Hon'ble High Court of Madras in **Simpson and General Finance Co. Ltd. V/s DCIT (TCA No.124 to 130 of 2014)** held that entire lease rent would be taxable in the hands of the lessor and the lessor would be entitled for depreciation on leased assets notwithstanding the accounting of the transactions as finance transaction by the lessor. This decision also supports our view as aforesaid.

7. Finally, considering the facts and circumstances of the case, we direct Ld. AO to allow the deduction of principal portion of leased assets. The depreciation, if any, as claimed by the assessee on such assets, shall stand reversed. We order so. The appeal stand allowed accordingly.

8. In the appeal for AY 2013-14, the sole issue that fall for our adjudication is disallowance u/s 14A. The limited prayer of Ld. AR is

that the investment in debentures for Rs.60 Lacs may be excluded while computing the disallowance.

9. The assessee earned exempt dividend income of Rs.29.71 Lacs and offered suo-motu disallowance of Rs.3.63 Lacs. However, Ld. AO, applying Rule 8D(2), computed aggregate disallowance of Rs.5.18 Lacs and added the differential of Rs.1.54 Lacs to the income of the assessee. Upon further appeal, Ld. CIT(A) directed Ld. AO to exclude investment in subsidiary and joint venture entities. Still aggrieved, the assessee is in further appeal before us.

10. We find that investment in debentures would not yield exempt income for the assessee. Therefore, we direct Ld. AO to exclude the same while computing indirect expense disallowance u/r 8D(2)(iii). The appeal stands partly allowed.

11. Both the appeals stand partly allowed.

Order pronounced on 03rd August, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 03-08-2022

JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF