

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 239 to 242, 244 & 246/Bang/2018
Assessment Years : 1995-96 to 2000-2001

M/s. Maha Rashtra Apex Corpn. Ltd., Syndicate House, Manipal – 576 104. PAN: AACCM2741B	Vs.	The Deputy Commissioner of Income Tax, Circle – 1, Udupi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Anil Kumar, CA
Revenue by	:	Shri Venudhar Godesi, JCIT DR

Date of Hearing	:	21-07-2022
Date of Pronouncement	:	28-09-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of an order dated 14/03/2022 passed by *Hon'ble Karnataka High Court* in ITA No.2-7/2022 filed by the sushu against consolidated order passed by this *Tribunal* dated 20/09/2019 in ITA Nos.239-242/ Bang /2018, 244/Bang/2018 and 246/ Bang /2018.

2. We note that, before the *Hon'ble High Court*, the assessee raised following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal is right in perversely denying the Appellant's claim for deduction of depreciation on assets leased merely on the basis that lease agreements were not made available before it, ignoring the lease agreements filed vide

Memo dated 31.07.2019 for AY 1998-99 and the assessment order detailing the clauses of the lease agreements?

2. Whether, the findings of the Tribunal that the lease transactions entered into by the Appellant are sham and perverse?

3. Whether on the facts and circumstances of the case, the Tribunal is right in law in denying depreciation on assets leased by the appellant?

4. Whether on the facts and circumstances of the case, the Tribunal erred in law in failing to follow the decision of the co-ordinate bench of the same jurisdiction rendered in similar set of facts?

Common Substantial Questions of Law in ITA Nos.2 and 3/2022:

5. Whether on the facts and circumstances of the case, the Tribunal has erred in failing to adjudicate the issue relating to depreciation on assets leased by the appellant to educational institutions for the impugned AY despite a specific ground being raised in this regard?

Common Substantial Questions of Law in ITA Nos.3, 4 and 6/2022:

6. Whether on the facts and circumstances of the case, the Tribunal has erred in dismissing as belated, the mistake apparent from record added vide Memo dated 10.08.2020 to the miscellaneous petition filed in time on 03.02.2020?

Common Substantial Questions of Law in ITA Nos.2, 3, 4 and 6/2022:

7. Whether on the facts and circumstances of the case, the Tribunal is justified in perversely dismissing the miscellaneous petitions filed before it despite pointing out glaring errors apparent from records in the original order?"

Common Substantial Questions of Law in ITA Nos.2, 5 and 7/2022:

6. Whether on the facts and circumstances of the case, the Tribunal is right in law in denying depreciation on assets leased by the Appellant to M/s. Khatema Fibers merely for the reason that the appellant did not pay the excise duty component on the assets leased when the same did not form part of actual cost under Explanation 9 to [Section 43\[1\]](#)?

7. Whether on the facts and circumstances of the case, the Tribunal is right in law in denying depreciation on assets leased by the Appellant to M/s. Mohan Meakin on the

basis that the appellant met only part of cost when the appellant had met Rs.19,98,000/- out of Rs.22,25,057/- constituting 89.8% of cost?

Common Substantial Questions of Law in ITA Nos.5 and 7/2022:

7. Whether on the facts and circumstances of the case, the Tribunal is right in upholding the action of the respondent in denying the appellants' claim for interest on refund under [Section 244A](#)?"

3. In para 3 of the order by the *Hon'ble High Court*, the appeals were admitted to consider the substantial question of law number 1 which are common to all the 6 assessment years under consideration and that all other issues alleged in the remaining substantial questions of law arises out of the said main issue.

4. *Hon'ble High Court* after recording the facts that led to the filing of appeals under section 260A of the act, observed and directed this *Tribunal* as under:

"8. Though the assessee has raised several substantial questions of law, we have considered only the substantial question of law No.1 which is the genesis for these appeals. The entire gamut of the order impugned revolves around the controversy whether the transactions involved in the case are lease or financial arrangement. In order to answer this controversy, it was necessary for the appellant-assessee to place on record the copies of the lease agreements. It may be true that the Tribunal was examining the matter in the second round but that itself would not preclude the assessee to place on record the copies of the lease agreements for the examination of the Tribunal notwithstanding certain clauses of the lease agreements extracted by the Assessing Officer in the assessment order. The assessee instead of furnishing the lease agreement copies has taken a circuitous method of defending its action of having submitted the copies of the lease agreements in the first round of litigation, so in the Miscellaneous Petition. In the absence of furnishing the relevant lease agreements, the Tribunal had no other option but to give weightage to the finding of the Assessing Officer as recorded in the order impugned.

9. *However, in view of the undertaking given by the learned Senior Counsel appearing for the appellant- assessee that the copies of the lease agreements would be furnished before the Tribunal within a period of four weeks from today, which is sine qua non for deciding the issue whether the transactions are lease or financial arrangement, we are of the considered opinion that the interest of justice and equity would be met in setting aside the impugned orders and restoring the matters to the file of the Tribunal to provide an opportunity to the appellant-assessee to furnish the lease agreements before the Tribunal.*

10. *If such lease agreements are furnished before the Tribunal within a period of four weeks from today, the Tribunal shall consider the same in accordance with law and shall take a proper decision in an expedite manner after providing an opportunity of hearing to the appellant-assessee. It is needless to observe that all the rights and contentions of the parties are left open to be urged before the Tribunal including the issues raised in the form of substantial questions of law before this Court. After considering all these issues, the Tribunal shall pass appropriate orders in accordance with law in an expedite manner.*

With the aforesaid observations and directions, the appeals are disposed of answering the substantial question of law No.1 in favour of the assessee and against the Revenue, keeping open the other substantial questions of law as aforesaid.

The appellant-assessee shall appear before the Tribunal on 11.04.2022 and shall take further orders thereof.”

5. Brief facts are as under:

5.1 The assessee is a public limited company carrying on the business of a nonbanking financial institution and classified by RBI as a high purchase finance and equipment leasing company. 5.2 The assessee filed with return of income for assessment years 1995-96 to 2000-01. After issuing statutory notices and considering the reply filed by the assessee the assessment order was passed under section 143 (3) of the act by disallowing the depreciation on the lease the assets by holding it to be a financial lease. On an appeal before the Ld.CIT(A) the claim of assessee was allowed. The Ld.AO

also observed that the total amount invested in the asset was received as Lease Security deposit and interest payable on the lease was equivalent to the lease rent receivable

5.3 Against this order revenue filed appeal before this *Tribunal*.

4. This *Tribunal* vide common order dated 19/01/2007 for assessment years 1995-96 to 1997-98, 1999-2000 and 2000-2001 for assessment year 1998-99 to 2000 01 restored the matter to the assessing officer on the issue of depreciation on leased assets, to decide afresh based on the guidelines of the *Hon'ble Supreme Court* in case of *Asea Brown Boveri Ltd. vs. Industrial Finance Corporation of India* reported in 154 *Taxman* 512. The *Tribunal* also held that no expenditure should be deducted while allowing deduction under section 80M.

5. The Ld.AO passed the OGE on 31/12/2010 denying the appellant's claim for depreciation in respect of leased transaction by holding that the same is a financial transaction by relying on the decision of *Hon'ble Supreme Court* in case of *Asea Brown Boveri Ltd. vs. Industrial Finance Corporation of India (supra)*.

6. This view was also upheld by Ld.CIT(A). The appeal was once again filed on similar issue before this *Tribunal* in the second round of litigation. During the course of the hearing, assessee had brought to the notice CBDT Circular No. 2 of 2001 dated 09/02/2001 and also the decision of *Bangalore Bench* in case of *Manipal Finance Corporation Ltd. vs. ACIT* reported in 49 *taxmann.com* 353 on identical issue of claim of depreciation on buy and lease back transactions.

7. The *Tribunal* in the second round of appeal took note of the fact that the decision of *Hon'ble Karnataka High Court* in case of *ICDS Ltd.* reported in (2007) 161 *taxmann.com* 293 has been reversed by

Hon'ble Supreme Court reported in 350 ITR 527. Having regard to the decision of *Hon'ble Supreme Court*, the *Tribunal* remanded the issue back to the Ld.AO for fresh consideration after examining the leased transaction in the light of the ratio laid down by *Hon'ble Supreme Court*. This decision of the *Tribunal* dated 20/09/2019 was challenged by assessee before *Hon'ble High Court*.

8. We have considered the entire history of litigation on this issue contested by assessee in two different rounds of appeal before this *Tribunal* that travel till *Hon'ble High Court*. It is a fact that the assessing officer did not have the benefit the decision of *Hon'ble Supreme Court* to verify the lease agreements in respect of the assets on which the depreciation was disallowed. The lease agreements has been placed on record by the assessee however verification of the relevant facts in respect of the leased assets are to be carried on by the assessing officer. In the interest of justice, we direct the Ld.AO to pass the order giving effect to this order by verifying the lease agreements based on the principles laid down by *Hon'ble Supreme Court* in case of *ICDS (supra)*.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, this common ground raised by assessee for all the assessment years under consideration stands allowed for statistical purposes.

9. The second common issue that is challenged in the present appeals are in respect of the verification that needs to be carried out as to whether the amount equivalent to security deposit was received by the assessee as lease rent. This issue also needs to be verified by the Ld.AO as it is connected with the first common issue which is already remanded to the Ld.AO.

10. We note that for A.Y. 1998-99, the Ld.AR filed written submissions regarding MODVAT credit that does not form part of Grounds of Appeal before us. Even there is no Addl. Ground on this issue. Hence we refrain from adjudicating the same.

11. For A.Y. 1999-2000, there is additional issue regarding non-granting of TDS credit.

We note that the Ld.CIT(A) has already directed the Ld.AO to grant the TDS credit, based on TDS certificate filed corresponding to the income accounted for and offered to taxation for the relevant year.

We do not find any infirmity in such direction. Assessee is directed to file all TDS certificate and the Ld.AO shall consider the claim in accordance with law.

Accordingly, this ground raised by the assessee stands allowed for A.Y. 1999-2000.

Accordingly, all the appeals filed by the assessee stands allowed for statistical purposes.

In the result, all the appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 28th September, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th September, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.