

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA Nos.3633 & 3634/Mum/2002

ITA No.801/Mum/2003

(A.Ys. 1996-97 to 1998-99)

Alta Leasing & Finance Limited, Alta Bhavan, Senapati Bapat Marg, Mumbai - 400 020	Vs.	DCIT, Circle 6(1) Aayakar Bhavan, M.K.Road, Mumbai - 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCA7117P		
Appellant	..	Respondent

ITA Nos.3686 & 3687/Mum/2002

ITA No.1806/Mum/2003

(A.Ys. 1996-97 to 1998-99)

DCIT, Circle 6(1) R. No. 506, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai -20	Vs.	M/s Alta Leasing & Finance Ltd., Alta Bhavan, Dadar, Mumbai - 400 028
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCA7117P		
Appellant	..	Respondent

Appellant by :	H.P. Mahajani
Respondent by :	Samruddhi Hande

Date of Hearing	16.09.2022
Date of Pronouncement	27.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

These 6 appeals filed by the revenue and by the assessee are pertained to assessment year 1996-97 to assessment year 1997-98 directed against different order of CIT(A). Since common issue on similar facts are involved in these cases, therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 3686/Mum/2002 filed by the revenue and ITA No. 3633/Mum/02 filed by the assessee as lead case and their findings will be applied to the other cases.

ITA No. 3686/Mum/2002 (Revenue's Appeal)

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs. 60,56,000/- on Automatic Load Monitoring Systems machine, more so as the documents showing proper opportunity given to the assessee are on records and without appreciating the fact that no such asset was found to be transported by the supplier.*
2. *On the facts and in the circumstances of the case and in law, the C.I.T.(A) erred in deleting the disallowance of depreciation of Rs.24,50,000/- in respect of Pollution Control Equipments more so as the fact that neither the assessee company nor the supplier could submit any evidence of transportation of the machinery or its parts during the course of spot inquiries made by the Income Tax authorities at the premises of M/s Brownstone International Pvt. Ltd. (Supplier)."*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs.5.26,790 on Low Speed Fixed Type Aerators with accessories more so when the assessee has not submitted any evidence regarding the transportation of the asset to the Assessing Officer during the course of assessment proceedings*
4. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in entertaining the additional evidence by way of accepting the documents in respect of the asset such as bill, delivery challans, transport receipts etc. in contravention of Rule 46A of 1T Rules, 1962*

5. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs.3,04,170/- on pumps, without appreciating the fact that the assessee company had not produced any evidence for transportation of the pump, to the Assessing Officer during the course of the assessment proceedings.*
6. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in entertaining additional evidence by accepting evidence in support of transportation of the assets in contravention of Rule 46A of I.T Rules, 1962.*
7. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs.19,28,560/- on Equalisation Tank and accessories more so as sufficient opportunity was given to the assessee and Shri Mayank Patel's statement was given to the assessee and the assessee failed to furnish any evidence to contradict the statement of Shri Mayank Patel."*
8. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of 3,76,000/- on boiler more so when neither the assessee nor the supplier had given any evidence regarding the transportation of the boiler and when the signatory to confirmation, i.e. Shri Amrutbhai Pathadia, did not confirm the lease transaction.*
9. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs.14,96,196/- in respect of gas cylinder without appreciating that no evidence of transportation of the gas cylinders was produced to the Assessing Officer and without appreciating the fact that the bills produced by the assessee did not tally with the bills obtained by the department in the field inquiries "On the facts and in the circumstances of the case and in law, the CIT(A) erred in*
10. *entertaining the additional evidence by accepting copies of purchase bill, freight claim bills and evidence in respect of transportation of cylinders, in contravention of Rule 46A of the I.T. Rules, 1962."*
11. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs.1,56,000/- on boilers without appreciating the findings of the Assessing Officer that date of commission of the boiler was 20.10.97 and warranty has been shown on 10.11.98 which makes it clear that use of the machinery was not made during the financial year relevant to A.Y. 1997-98.*

12. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs,6,21,69,689/ on the alleged lease transaction, more so when this transaction has been treated as mere finance transaction and therefore, not entitled to depreciation as the ownership of the asset is not with the assessee.*
13. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of depreciation of Rs 2,71,77,981/-on opening WDV of the assets without appreciating the fact that these transactions are held as mere finance transactions and the assessee is not entitled to any depreciation as it is not the owner of the assets."*

ITA No. 3633/Mum/2002 (Assessee's Appeal)

- (1) *On the facts and in the circumstances of the case and in law the learned CIT(A)erred in rejecting the claim of the appellant for depreciation on assets leased toRAVI STEEL TUBES, HYDERABAD.*

Without prejudice to the above, on the facts and in the circumstances of the case and in law, the learned CIT (A) ought to have at least accepted the alternate contention of the appellant that it was entitled to deduction as a business loss, the loss suffered by it in the transaction of lease entered into by it with RAVI STEEL TUBES, HYDERABAD

The appellant's claim for depreciation or the alternate claim for deduction of loss be directed to be allowed.

- (2) *On the facts and in the circumstances of the case and in law the learned CIT(A)erred in rejecting the claim of the appellant for depreciation on assets purchased from M/s BAL MUKUND BAJRANGLAL, KOLKATTA and given on lease by the appellant as part of its business of leasing*

On the facts and in the circumstances of the case and in law the learned CIT(A)erred in confirming that the lease transactions are not genuine and that theappellant had only provided finance to the lessee.

The claim of the appellant for depreciation in respect of the assets in question be allowed.

- (3) *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in rejecting the claim of the appellant for depreciation on assets purchased from KAYRPEE VANIJYA and leased to BORON DERIVATIVES LTD.*

On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming that the lease transaction is not genuine and that the appellant had only provided finance to the lessee.

The claim of the appellant for depreciation in respect of the assets in question be allowed.

- (4) *On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming disallowance of depreciation on Heat Pump purchased from Thermax Limited on 31.3.1997 and immediately given on lease on the limited ground that the asset in question was not put into use even in the leasing business carried on by the appellant*

The appellant having purchased the asset on 31.3.1997 and having entered into a lease agreement with the lessee during the FY 1996-97 and the lease rental under the agreement having accrued to the appellant in the FY 1996-97 itself, claim of the appellant for depreciation ought to have been allowed."

2. Fact in brief is that return of income declaring total income of Rs. 40,46,530/- and MAT income at Rs.32,12,515/- was filed on 28.11.1997. The assessee was in leasing and finance business. The assessment u/s 143(3) of the Act was finalized on 21.03.2000 determining total income of Rs.6,39,62,394/-. The further relevant fact are discussed while adjudicating the grounds of appeals filed by the Revenue and Assessee as under:

Ground No. 1: Disallowance of depreciation of Rs.60,56,000/-:

3. During the course of assessment the A.O noticed that assessee has purchased 4 automatic load monitoring system including duties and other charges for the amount of Rs.60,50,000/- vide invoice number AEL/SLV/014/96-97 dated 31.03.1997 from Asian Electronics Limited. These assets were purchased by the assessee from Silvasa, Vapi Road as because, the factory of Asian Electronics Ltd. was situated at Silvasa. The

A.O had carried out verification through the DDIT(Investigation) Surat who found that the transaction were of bogus nature because it was found during the survey at factory premises of Asian Electronics Ltd., Surat that it had not issued any invoice in the name of the Bank of Punjab ltd but they have issued invoices in the name of Andhra Pradesh Electricity Board Hyderabad. It was further reported that party had supplied 20 numbers of AELMS which were transported through M/s Lalji Madji Transport Company. It was reported that invoices were issued in the name of Andhra Pradesh Electricity Board without mentioning of Bank of Punjab Ltd. Therefore, the A.O has made addition of Rs.60,50,000/-. On query the assessee explained that the system was brought byM/s Aeta leasing Finance Ltd. and same was leased to M/s Asian Electronics ltd. The very system was sub-leased by M/s Asian Electronics Ltd. To Andhra Pradesh State Electricity Board. However, the A.O had not agreed with the submission of the assessee stating that Shri Dayanand R. Shetty Asst. manager had denied any dispatch of machine on 31.03.1997. Therefore, addition of Rs.60,56,000/- was made.

During the course of appellate proceedings before the Id. CIT(A) the assessee filed copy of lease agreement dated 24.03.1997 executed between Alta Leasing & Finance Ltd. and M/s Asian Electronics Ltd. under the lease agreement the assessee leased 4 automatic load monitoring system to Asian Electronics Ltd. from whom they were purchased and in turn, Asian Electronics Ltd. further leased these assets i.e 4 automatic load monitoring system to Andhra Pradesh State Electricity Board Hyderabad. During the course of appellate proceedings

before the Id. CIT(A) the present A.O. and also the A.O who had passed the assessment order were called at the time of hearing this appeal on 21.03.2002. The assessee stated that A.O has decided the issue only on the basis of statement of Shri Dayanand R. Shetty, Assistant Manager of Asian Electronics Ltd and the copy of statement was not at all provided to the assessee, therefore, no opportunity to cross examination was given to the assessee. The A.O has also not considered the other relevant supporting material as elaborated above that the 4 automatic load monitoring system were given by the assessee on the basis of lease agreement. During the course of hearing the Id. CIT(A) had asked the A.O and the AO replied that the statement of Shri Dayanand R. Shetty was not provided to the assessee. The assessee had also pointed out that said statement on the basis of which the claim of depreciation was disallowed was not at all pertained to the transaction relating to the lease assets and the said statement was related to the transaction dated 29.09.1996 which was not at all related to the assessee. Therefore, the Id. CIT(A) held that A.O has considered the irrelevant statement of Shri Dayanand R. Shetty to decide this issue in the case of the assessee without providing any opportunity to the assessee to rebut the same. Therefore, the Id. CIT(A) held that A.O has failed to substantiate that these leased transaction were bogus in question. The Id. CIT(A) further stated that A.O has wrongly made addition of Rs.60,50,000/-but the assessee has claimed only 50% depreciation amounting to Rs.30,28,000/- and the same was allowed.

4. Heard both the side and perused the material on record. Without reiterating the facts during the course of assessment on the basis of statement of the Assistant Manager of Asian Electronic Ltd. surat the A.O has disallowed the claim of depreciation. It is undisputed fact that A.O has not provided any copy of statement of the said manager before making disallowance of the claim of depreciation to the assessee. The revenue also could not controvert these facts that statement of Shri Dayanand R. Shetty was not related to the transaction made by the assessee. The ld. CIT(A) after taking into consideration the relevant supporting evidences i.e copies of invoices, sale register, explanation of AOs as discussed supra considered that leased transaction relating to 4 automatic load monitoring system were genuine. Looking to the above facts and finding of ld. CIT(A) we don't find any merit in the appeal of the revenue therefore the same stand dismissed.

Ground No. 2: Disallowance of Depreciation of Rs.24,50,000/-:

5. During the course of assessment the A.O disallowed depreciation in respect of assets purchased by the assessee from 3 supplier based in Mumbai viz. Brownstone International Pvt. Ltd., Kunal Enviro Engineering & HVD Pumps Contract Corporation. The AO stated that assessee had not purchased any machinery from these parties and these were only accommodation entries. The A.O further stated that on the copy of invoices there was no serial number, no sale tax number, no CST number was there and there was no evidences on transportation of goods etc. filed by the assessee. The assessee explained that transactions were finance leases and the initial purchase order/instructions were received

from the lessees and assessee became a part of the transaction therefore, the assessee had submitted copies of lorry receipt and goods receipts notes by lessees. The assessee explained the confirmation from the lessees and also that lessees had not claimed depreciation. However for the A.O had not accepted the submission of the assessee.

6. The assessee filed the appeal before the Id. CIT(A). The assessee submitted that M/s Brownstone International Pvt. Ltd. sold water pollution control Equipment to the assessee which was leased out to Lona Industries Ltd., Mumbai. It was submitted that the assessee purchased water pollution control equipment from M/s Brownstone International Pvt. Ltd. and in turn it was leased out to Lona Industries Ltd. In support of its contention the assessee filed copies of bill dated 26.03.1997 issued in the name of Alta Leasing & Finance Ltd. and cost of the equipment had been shown at Rs.49 lacs. It was further submitted that this water pollution control equipment was only to be manufactured at the site where it was to be installed. Therefore necessary material to be used for this equipment was purchased by the manufacturers and it was used to manufacture this equipment at the site on which it was installed and commissioned. During the course of appellate proceedings before the Id. CIT(A) the details of various material purchased were also filed. The assessee had also filed copy of bills in respect of purchase of material used for installation of the said machinery. During the course of hearing the Id. CIT(A) brought this fact to the knowledge of the present A.O as well as the A.O who made the assessment order and who were also present at the time of hearing this appeal before the Id. CIT(A). The

assessee had submitted that the water pollution control equipment was manufactured at the site itself after purchasing the necessary material to be used for the manufacturers therefore there was no need for transportation as required by the A.O. The ld. CIT(A) has taken into consideration all the material on record as evidence in support of the purchase of the assets, their transportation and their acceptance by the lessee and other factors relating thereto and the bills raised by the supplier in the name of the assessee, payment made etc. The ld. CIT(A) also stated that A.O had failed to make enquiry to ascertain the real facts in existence at the site where the equipment was manufactured and installed. Therefore, the ld. CIT(A) allowed the depreciation of Rs. 32,80,960/- to the assessee on the said assets which were purchased by the assessee from M/s Brownstone International Pvt. Ltd., M/s Kunal Enviro Engineers and M/s HVD Pump Contract Corporation.

7. Heard both the side and perused the material on record. Without reiterating the facts as elaborated the ld. CIT(A) held that at the time of hearing both the A.Os were present and all the relevant supporting bills, vouchers and evidences that water pollution control equipments were erected at the site of the lessee were filed and the A.O had not carried out enquiry from the lessee to disprove the non-existence of the leased assets in question. In view of the above facts and detailed findings of the ld. CIT(A) we don't find any infirmity in the decision of ld. CIT(A), accordingly this appeal of the revenue stand dismissed.

Ground Nos. 3 to 6: Disallowance of depreciation of Rs.5,26,790/- on low speed fixed type aerators with accessories:

8. During the course of assessment the A.O noticed that assessee claimed that it has purchased assets from Kunal Enviro Engineers the total cost was shown at Rs.10,16,080/-. The assets were given on lease to Chemstar Organics India Ltd. The A.O observed that no evidence of transportation was made available therefore had disallowed the whole claim of depreciation by treating it as bogus transaction.

9. During the course of appellate proceedings before the Id. CIT(A) the assessee submitted that M/s Kunal Enviro Engineers as well as M/s Chemstar Organics India Ltd. were independent parties and they were in no manner related with the assessee company. It was also submitted that affluent treatment plant was also manufactured at the site where it has been installed according to the submissions of Chemstar Organics India Ltd. It is further submitted that assessee company has asked Kunal Enviro Engineer to supply accessories/components for this plant at the site of the factory of M/s Chemstar Organics India Ltd. After completing the erection of the plant the assessee entered into a lease agreement with the lessee on 05.03.1997 and accordingly claimed depreciation on the amount of Rs.5,26,790/-. The assessee also submitted that A.O has neither made any enquiry from the lessee nor ascertained the true fact of the case. The assessee has also filed supporting evidence that Chemstar Organics India Ltd. has received goods from M/s Kunal Enviro Engineer, Bombay and the transport receipt was also filed. It

was also submitted that these documents were also filed before the A.O which were not properly considered by him at the time of assessment. During the course of appellate proceedings before the ld. CIT(A) all these facts were confronted to the present A.O as well as the A.O who had made the assessment in the case of the assessee. The ld. CIT(A) stated that no inquiry had been made from M/s Chemstar Organics India Ltd. and the physical existence of the assets in question had not been verified by the department before arriving the at the conclusion that the assets were bogus. Considering these facts and circumstances the ld. CIT(A) has allowed the appeal of the assessee.

9. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the revenue could not controvert the facts reported by the ld. CIT(A) that no inquiry has been conducted by the A.O from the lessee M/s Chemstar Organics India Ltd. and both bills and documents were confronted to the A.O who could not brought any material to disprove the genuineness of the transaction, therefore, we don't find any error in the decision of ld. CIT(A), accordingly grounds no. 3 to 6 of the revenue stand dismissed.

Ground No. 7: Disallowance of depreciation of Rs.19,28,560/- on equalization Tank & accessories:

10. During the course of assessment the assessee purchased various items of plant and machinery from M/s Mcon Engineers Ahmedabad relating to supply and installation of Aerated detritus chambers (equalization tank)2 number including compressed air service aeration grid outlet piping and plumber chamber etc. The effluent treatment plant was erected and installed at the factory site of Chemstar Organics India Ltd. for which the material were supplied by Kunal Enviro Engineers and M/s HBD Pumps Contracts Corporation. The A.O was of the view that M/s Mcon Engg. Had neither made any sale nor provided any service to the assessee. The A.O stated that M/s Mcon Engg and Mayank patel admitted that he was doing work of only erection of plant or machinery and mainly civil structure and not engaged in the business of installation of machinery.The A.O has treated the transaction as bogus transaction and disallowed the claim of depreciation of Rs.36,57,119/-.

11. During the course of appellate proceedings before the ld. CIT(A) the ld. CIT(A) has discussed the issue with the present A.O as well as the A.O who had passed the assessment order. The ld. CIT(A) stated that affluent treatment plant was erected and installed at the factory site of Chemstar Organics India Ltd. for which the material were supplied by Kunal Enviro Engineers and M/s HBD Pumps Contracts Corporation. The effluent treatment platn has been

installed by M/s Mcon Engineers at the site for which the bill of Rs.36,57,119/- has been raised by M/s Mcon Engg. in the name of Aeta Leasing and Finance Ltd. on 15.1.1997. The bill had been signed by Mayank M. Patel, one of the partner of M/s Mcon Engineers. The A.O has not allowed the cross examination of Mr. Mayank M. Patel to ascertain the facts of this case that whether assets leased out by the assessee were installed by M/s Mcon Engineers or also whether those assets were at all leased out by the assessee company or not to M/s Chemstar Organics India Ltd. The ld. CIT(A) held that the assessee had proved its claim before the A.O by way of producing the necessary evidences relating to the purchases of the assets and their destination and the existence of the lessee as well as the party who had installed those assets as per the direction of the lessee. Therefore, the ld. CIT(A) has allowed the claim of depreciation.

12. Heard both the sides and perused the material on record. During the course of appellate proceedings before the ld. CIT(A), the present A.O as well as the A.O who had passed the assessment order were present along with the authorized representative of the assessee. The relevant materials and facts of the case were discussed with both the officers and they were asked to give their argument.

On the basis of material on record and discussion, the Id. CIT(A) had come to the conclusion that the assessee had made the purchases of various components which had been used for the erection of effluent treatment plant at the factory site of M/s Chemstar Organics (India) Ltd. which had ultimately been installed by M/s Mcon Engineers. The Revenue had not brought any other relevant material to disprove the facts and findings of the Ld. CIT(A), therefore, we don't find any error in the order of Id. CIT(A), therefore the same stand dismissed.

Ground No. 8: Disallowance of depreciation of Rs.3,76,000/-:

13. The assessee has claimed that it had purchased a 300 kg/ltr High efficiency Boiler consisting of furnace, super heater, preheater Economiser, chimney, 30 fit with blower etc, from Avinashi Engineer Company Ahmedabad at a cost of Rs.3,75,000/- and claimed depreciation thereon. In the ground of appeal it was wrongly mentioned as Rs.3,76,000/- instead of Rs.3,75,000/-. The said Boiler was leased to Parashwanath Industries, Dhannot, Dist. Mehsana (Gujarat). At the time of assessment proceedings in the year 2000 the revenue had made inquiries from the son of Mr. Amrutbhai Patadia who could not give detail of the proprietary concern M/s Avinashi Engineering Company. He stated that Mr. Amrutbhai Patadia had left India 2 years ago and he was not aware

about the transaction of this Boiler taken place in the year 1997. Therefore, the A.O has disallowed the claim of depreciation.

14. During the course of appellate proceedings before the Id. CIT(A) it was submitted that Mr. Amrutbhai Patel was the proprietor of M/s Avinashi Engineering Company which had supplied the above referred Boiler. The Boiler has been leased out by the assessee to Parswnath Industries. The bill dated 05.02.1997 for Rs.3,75,000/- was raised in the name of Alta Leasing & Finance Ltd. It was also submitted that in 1997 Mr. Amrutbhai Patel was in India and he only left India in 1998. The A.O had not brought on record real fact by making inquiry from the son of Mr. Amrutbhai Patel when he was not available in India. The assessee has also furnished a confirmation letter from Parswnath Industry dated 01.03.2020 at the time of assessment proceeding where it had confirmed that M/s Avinashi Engineering Company had supplied the said boiler along with accessories vide invoice challan no. 135/97 dated 05.02.1997 amounting to Rs.3,75,000/- under lease agreement with Alta Leasing & Finding Ltd.

15. During the course of appellate proceedings the Id. CIT(A) has asked the comments of the present assessing officer as well as the A.O who had passed the assessment order and all these facts were discussed with both of them who were present along with the authorized representatives of the assessee before the Id. CIT(A).

However, the authorities could not give any further evidence to rebut the claim of the assessee and not able to disprove the genuineness of the bill and the confirmation certificate issued in favour of the assessee. Therefore, the Id. CIT(A) has deleted the addition of Rs.3,75,000/-.

16. Heard both the sides and perused the material on record. In the light of the facts and detailed finding reported by the Id. CIT(A) as elaborated above in this order, we consider that only on the basis of inquiry made by the A.O from the son of Mr. Amrutbhai Patel when he was not available was not sufficient to disallow the claim of the assessee, therefore, we don't find any infirmity in the decision of Id. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 9 & 10: Disallowance of depreciation of Rs.14,96,196/- in respect of Gas Cylinder:

17. The A.O noticed that assessee had shown purchases of 360 high pressure gas cylinder from M/s Everest Kanto Cylinder Ltd. @ Rs.3996/- per cylinder to the amount of Rs.14,96,102/-. These cylinders were leased out to Kolhapur Oxygen & Acetylene Pvt. Ltd. Kolhapur. The A.O observed that copies of the bills and particulars were not tallied. He also observed that amount of the bills was not same. Bhavnagar party was charged CST whereas the assessee's bill

had shown central excise. Because of such discrepancies, the A.O had disallowed the claim of depreciation of Rs.14,96,196/-.

18. The ld. CIT(A) has deleted the addition.

19. Heard both the sides and perused the material on record. During the course of appellate proceedings before the ld. CIT(A) the ld. Counsel has explained that the basic value per cylinder of Rs.3475/- after including excise duty of Rs.521/- cylinder price comes to Rs.3996/-. These cylinder have been leased out to M/s Kolhapur Exygen &Acelylene Pvt. Ltd. It was also submitted that manufacturing unit of Everest Kanto Cylinder Ltd. was at Tarapur, Mumbai and having sales depo at Bhavnagar Gujarat where the manufactured cylinder were transported and stored for their sale. It was submitted that the goods when clear from the factory at Tarapur were subject to excise duty and only then they were allowed to be removed from the factory to be taken at Bhavnagar sales depo by stock transfer. It was further submitted that on stock transfer to sales depo, the manufacturar, M/s Everest Kento Cylinder Ltd. was not subjected to payment of sale tax because this transfer of stock did not amount to sale of the goods. It was also submitted that bill No. 561 dated 26.02.1997 and bill No. 564 dated 26.02.1997 were issued from the factory at Tarapur for stock transfer from the factory to Bhavnagar depo. These bills were not the bill issue for the sale of these cylinder to the assessee but they

were meant for their internal purpose for removing the goods from the factory to the sales depo at Bhavnagar. Therefore, the A.O had wrongly considered these bills to have been issued in favour of the assessee. It was further stated that central excise at the rate of 15% has been shown in the bills under which goods were transferred from factory to Bhavangar depo and 4% CST has been charged by the supplier when the goods were sold to the assessee from Bhavanagar depo. It was further submitted that before excise duty the value of per cylinder comes to Rs.3745/- and after consideration of excise duty the rate per come to Rs.3996/- which was not considered by the A.O. The supporting evidences as copies of purchase bills of 180 cylinders along with transportation made through Janta Rajni Roadways & Shivam Roadline were filed in support alongwith the freight claimed by them. During the course of appellate proceedings before the ld. CIT(A), these facts and supporting evidences were brought to the knowledge of the A.O who has passed the assessment order and the present A.O at the time of appellate proceedings. However, no further evidence or submission made by the assessing officer to disprove the facts and material brought to their knowledge.

In the light of the above facts and the detailed finding of the ld. CIT(A) in his order at page no. 45 to 49 we don't find any reason

to interfere in the decision of ld. CIT(A), therefore, these ground of appeal are also dismissed.

Ground No. 11: Disallowance of depreciation of Rs.1,56,000/- of boilers:

21. During the course of assessment the A.O noticed that assessee had purchased the Boiler from Thermax Ltd. Pune for Rs.3,19,488/- which was leased out to Sodium Metal Pvt. Ltd. Baroda. The A.O had disallowed the depreciation on the reason that the boiler was not put to use within the accounting year relevant to assessment years. However, the ld. CIT(A) has allowed the claim of depreciation.

22. Heard both the sides and perused the material on record. During the course of appellate proceedings before the ld. CIT(A) the assessee had submitted that it had purchased a boiler from Thermax Ltd. Pune for Rs.3,19,488/- vide invoice dated 18.03.1997. It was further submitted that the boiler has been leased out to Sodium Metal Pvt. Ltd. Baroda. It was also submitted that the said boiler was transported from Pune on 18.03.1997, date on which it was purchased by the assessee company. During the course of appellate proceedings before the ld. CIT(A) both the A.O who had passed assessment order and the present A.O at the time of appellate proceedings were present before the CIT(A). These facts were brought to the knowledge of both the A.O that in fact the said

boiler was transported from Pune on 18.03.1997 however, without any reasoning claim of 100% depreciation was disallowed. Therefore, the Id. CIT(A) held that assets had been put to use during the accounting year relevant to the assessment year 1997-98, therefore, 50% of the depreciation to the amount of Rs.1,56,000/- was allowed to the assessee.

23. During the course of appellate proceedings before us the revenue could not controvert the aforesaid facts and material as elaborated above by the Id. CIT(A) and his findings given at page no. 49 to 50 of his order therefore we don't find any merit in the appeal of the revenue, therefore, this ground of appeal also stand dismissed.

Ground No. 12: Disallowance of depreciation of Rs.6,21,69,689/-
:

24. The A.O was of the view that the assessee's total claim of depreciation in respect of assets used by the assessee in its business of leasing were in the nature of finance lease. The A.O stated that in finance lease, lessor was not concerned with operational aspect of the equipment and was concerned only with recovery of periodic lease rentals. It is also stated that lessor was not concerned with loss or damage to the equipment and the purpose of the agreement was to provide security to the loan advanced by the assessee. The A.O was of the view in the case of

ownership it was the owner who would have to bear the loss arising out of destruction or damage to the equipment whereas in this case of the assessee it was the lessee who had to bear the loss. The A.O had stated that considering the nature of the transaction the lessor cannot exercise rights of ownership either during the lease period or any time hereinafter. The A.O had also referred the fixed period of lease during which the lessee had no option to cancel the agreement. At page no. 30 to 31 the A.O had given his conclusion for holding the transaction to be in the nature of finance transaction.

25. During the course of appellate proceedings before the Id. CIT(A) it was submitted that the transaction of the assessee were admittedly finance lease, however the assessee remained the owner of assets. The assessee submitted lease agreement to substantiate the ownership of the assessee lessor. The assessee has also referred clause 6 of the agreement which state that the equipment shall remain the personal property and shall continue to be in the ownership of the lessor. Further lessee was prevented from carrying out any alteration to the equipment or to remove any component thereof. As per clause 13 of the agreement the lessee has to hold the equipment as the bailee of the lessor and not claim any right, title or interest in the equipment other than that of a lessee. The clause 15 provide that in the events of any loss or damage the lessee shall replacethe equipment within 30 days of the date of occurrence of such loss or damage with an equipment which in the opinion of the

lessor is comparable. Clause 18.2(2) provides that upon termination of the lease the lessor shall without notice to the lessee be entitled to remove and reprocess the equipment. Clause 18.6 provide that lessor shall be entitled to sell, release or otherwise dispose of the equipment. Clause 19 provides that no title of right in the equipment shall pass the lessee except the right of lease in respect thereof granted to the lessee. It was submitted that the lessor had shown the lease assets as fixed assets in its audited accounts. During the course of appellate proceedings before the Id. CIT(A) the assessee has also placed reliance on the decision of jurisdictional High Court of Bombay in the case of Prakash Industries Ltd. held that the lessor bank was the owner of the leased assets. The assessee has also placed reliance on the decision of the Supreme Court in the case of Shaan Finance Pvt. Ltd. (231 ITR 308) where the Hon'ble Supreme Court held that a leasing company whose business consists of hiring out machinery was entitled to investment allowance u/s 32A of the Income Tax Act. The Id. CIT(A) has also given reference of other decision relied upon by the assessee i.e in the case of United Technologies Ltd. (73 ITD 150) Micro Land Ltd. (61 ITD 446) (Bangalore), Kirloskar Investment & Finance Ltd. (67 ITD 504) (Bangalore) and Karmchand Thapar & Brothers (66 ITD 39) DGP Windsor (India) Ltd. (74 TTJ 291) (Mum). The assessee has also submitted before the Id. CIT(A) that explanation 4A added to Sec. 43(1) by the Finance (No.2) Act 1996 on the manner

of determination of actual cost in the case of a sale and lease back transaction is suggestive of the fact that it is a lessor who is entitled to depreciation. After taking into consideration of the submission and fact of the case the ld. CIT(A) has stated that A.O has not made any inquiry to disprove the fact that assessee was not the owner of leased assets and he had only provided finance. The ld. CIT(A) has also taken into consideration the various judicial pronouncements including decisions of jurisdictional High Court and Mumbai benches of the ITAT and held that the transaction entered into by the assessee were not finance transaction but genuine lease transaction. The assessee was the legal owner of the lease assets and was therefore entitled to depreciation in respect of these assets. After taking into consideration the facts and finding of the ld. CIT(A) as elaborated in detail at page 51 to 61 of his order, we don't find any infirmity in his decision that the assessee had leased out those assets as part of its regular business of leasing which it had been carrying out for the last several years. During the course of appellate proceedings the revenue has not brought any material to controvert the facts and findings of the ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 13: Disallowance of depreciation of Rs.2,71,77,981/- on opening WDV of the assets:

26. During the course of assessment the A.O had disallowed the depreciation of Rs.2,71,77,981/- on the opening WDV of leased assets. However, the Id. CIT(A) has allowed the claim of the revenue.

27. Heard both the sides and perused the material on record. During the course of appellate proceedings before the Id. CIT(A) the assessee submitted that the total addition on account of disallowance depreciation which had been made by the A.O in the assessment order was Rs.6,17,05,625/-. Out of this amount Rs.1,24,77,413/- was related to the assets which had been claimed as leased out during the year and which have been held as bogus by the A.O, Rs.11,93,822/- related to the asset which the A.O held as not installed during the years. An amount of Rs.20,85,649/- was pertained to lease out assets during the year where transaction of the lease were genuine but the A.O has categorized them as financial transaction.

28. The balance depreciation of Rs.2,71,77,981/- were pertained to assets which had been shown in the opening block of the blocks of assets being WDV thereof. The assessee submitted that the depreciation of Rs.2,71,77,981/- was worked out on the WDV of the assets of different nature which were leased out in preceding years to various parties and the WDV of the same has been shown in the opening block of this assets in the return of the assessee which had never been held as either bogus or not in existence. The assessee

submitted that since these assets were leased out to various parties in the preceding years, therefore, assessee was entitled to depreciation on these assets under different block of assets as reflected in the books of accounts. After taking into consideration the facts and material on record the ld. CIT(A) observed that these assets were in existence in the preceding year under respective block of assets and assessee had carried forward the written down value of all these assets as on 01.04.1996 and during the year under consideration these assets were under the ownership of the assessee, therefore, the assessee was entitled for depreciation. During the course of appellate proceedings before us the revenue has not brought any material or any other evidence to disprove the facts and finding of the ld. CIT(A), therefore, we don't find any reason to interfere in the decision of ld. CIT(A), therefore this ground of appeal of the revenue also stand dismissed.

29. In the result the appeal of the revenue stand dismissed.

ITA No. 3633/Mum/2002 (Assessee's Appeal)

Ground No. 1:

30. All the 4 grounds of appeal filed by the assessee are pertained to the issue of rejecting the claim of depreciation of assets of transaction with 4 different parties i.e Ravi Steel Tubes, Hyderabad; (ii) Balmukund, Bajranglal, Kolkata; (iii) Kayrpee Vanjya & Boron Derivatives Ltd.; and (iv) Tharmax Limited. During the course of

assessment the A.O noticed that assessee has claimed lease transactions for Rs.30,04,400/- for which purchases made from M/s Advance Tech Usine Hyderabad and leased to Ravi Steel Tubes Hyderabad and claimed depreciation of Rs.15,02,200/- @ 50%. During the course of assessment the A.O has carried out verification from the DDIT(Investigation) Hyderabad and found that the transaction was not genuine. Therefore, these facts were brought to the notice of the assessee vide letter dated 21.02.2000. The assessee vide letter dated 04.03.2000 admitted that these lease transaction made from Advance Tech Usine Hyderabad was bogus and offered the same for taxation. However, the assessee has made claim for deduction for the loss of money lost in the transaction. The ld. CIT(A) rejected the claim for deduction for business loss that assessee had not proved the loss claimed by it. During the course of appellate proceedings before us the ld. Counsel submitted that assessee has signed a memorandum of settlement with Mr. Ravi Kumar proprietor of Ravi Steel Tubes on 10.07.2003 and submitted that the claim of loss should be allowed.

On the other hand the ld. D.R supported the order of lower authorities.

30. Heard both the sides and perused the material on record. It is undisputed fact that assessee vide its letter dated 04.03.2000 had admitted that the aforesaid transaction were bogus transaction and

offered the same for taxation on the basis of inquiry made by the DDIT(Investigation) Hyderabad. We have also gone through the copy of memorandum of settlement filed by the assessee placed at page no. 41 of the paper book in the form of memorandum of settlement made with Mr. Ravi Kumar proprietor of Ravi Steel Tubes on 16.06.2003. During the course of assessment when these facts were confronted to the assessee it had categorically accepted that these were the bogus transactions vide its letter dated 04.03.2000. Even the Id. CIT(A) has passed order on 22.03.2002 sustaining the disallowance after taking into consideration the material on record. However, after the order of the Id. CIT(A) the assessee had claimed that it had signed memorandum on 16.06.2003 on the basis of which it had put its claim of loss out of the transactions which had already been proved to be a bogus transactions. In the light of the above facts and findings, we find that this memorandum was signed on 16.06.2003 after passing of assessment order by the A.O on 21.03.2000 and even after passing the order by the Id. CIT(A) on 27.03.2002 claiming as settlement of the amount receivable, therefore, we don't find any merit in this appeal of the assessee, therefore this ground of appeal of the assessee stand dismissed.

Ground No.2:

31. During the course of assessment the A.O noticed that assessee had purchased S.G. rolls scrap, SG roll, alloy Steel rolls etc. from

M/s Balmukund, Bajranglal. However, the lessee in this case was Jalan Ispat Casting Ltd. and the total depreciation claimed was of Rs.15,76,096/-. The inquiry was made from DDIT(Inv.) Calcutta. During the course of assessment after verification of the bills and nature of transaction, the A.O found that the goods supplied by M/s Balmukund Bajranglal to the assessee company were not tallied with the goods purchased by M/s M/s Balmukund Bajranglal for making supply to the assessee and the goods otherwise were not in the nature of machinery and plant which was claimed to be given on lease by the assessee. Therefore, the claim of depreciation at Rs.15,76,096/- was not allowed. The ld. CIT(A) has confirmed the disallowance made by the A.O.

32. During the course of appellate proceedings before us the ld. Counsel contended that the transactions were genuine transaction and the rolls have been the leased to Jalan Ispat and neither parties has denied the transactions.

33. Heard both the sides and perused the material on record. During the course of assessment the A.O has categorically discussed the anomalies in the bills/invoices of this transaction at page 12 to 13 of the assessment order. It was found that the goods supplied by M/s Balmukund Bajranglal to the assessee company either did not tally with the goods purchased by M/s Balmukund Bajranglal for their supply to the assessee or the goods were not in

the nature of machinery and plant which could be given on lease by the assessee. The finding of the A.O was based on the material fact of contradictory evidences from the copies of bills/invoices and from the evidences collected from the inquiry conducted by the DDIT, Investigation Kolkatta as elaborated in the finding of A.O given at page no. 13-14 of the assessment order. After taking into consideration specific finding of the A.O and material on record we don't find any infirmity in the decision of ld. CIT(A), therefore, this ground of appeal of the assessee stand dismissed.

Ground No. 3:

34. During the course of assessment the A.O noticed that assessee had purchased second hand furnace from a party named Kayrpee Banijya, Bilaspur and given on lease to Gujarat & Boron Derivatives Pvt. Ltd. situated at Baroda and claimed depreciation of Rs.2,26,200/- being 50% cost of Rs.4,52,400/-. The A.O has made inquiry through the DCIT, Bilaspur and found that item purchased were old and that the factory of the supplier had been closed since 1991 and there was no manufacturing activity taken place in that factory, therefore the A.O has disallowed the claim of depreciation. The ld. CIT(A) has sustained the disallowance made of the A.O.

36. Heard both the sides and perused the material on record. During the course of assessment the AO has specifically made inquiries through the Deputy Inspector of Income Tax Bilaspur and

found that the factory of the supplier had been closed since 1991 and there was no manufacturing activity and the said company was dealing in manufacturing of chemical and not manufacturing of machinery. Even Shri Shailesh Vohra manager of M/s Kayrpee Baniya Bilaspur had categorically admitted that no transaction has been made with Alta Leasing & Gujarat Boron Derivatives Pvt. Ltd. After taking into consideration the aforesaid material fact at this stage, we don't find any relevancy in the claim of the assessee that A.O has not made verification from the lessee. Therefore, considering the detailed finding of the A.O supported with relevant evidences as elaborated in his order at page 14 to 15 of the assessment order we don't find any reason to interfere in the decision of Id. CIT(A) accordingly this ground of appeal of the assessee stand dismissed.

Ground No. 4:

37. During the course of assessment the A.O noticed that assessee claimed purchasing of vapour absorption heat pump model A 311/4 on 31.03.1997 from Tharmax Limited, Pune for Rs.20,25,743/- and claimed depreciation of Rs.10,37,822/-. It was claimed that heat pump was leased to Sayaji Hotel Ltd. Baroda and was transported from Pune on 30.03.1997. During the course of assessment the A.O stated heat pump was purchased from Tharmax Ltd. Pune on 31.03.1997 and had left the premises of manufacturer only on

31.03.1997, therefore, the use of the asset during the F.Y. 1996-97 was not established. Therefore, the A.O has disallowed the claim of 50% depreciation made by the assessee. The ld. CIT(A) has sustained the disallowance made by the A.O.

38. During the course of appellate proceedings before us the ld Counsel has contended that in respect of depreciation what is important was using of the asset by the lessor itself in its business of leasing and not by the lessee in its own business.

On the other hand the ld. D.R supported the order of lower authorities.

39. Heard both the sides and perused the material on record. It is undisputed fact that the said asset was purchased on the last day of F.Y. 1996-97 on 31.03.1997 at Pune and it could not be proved with relevant supporting evidences that how such asset had been transported from Pune on 30.03.1997 as claimed by the assessee as per para 7.2 of the assessment order. Therefore, we don't find any infirmity in the decision of ld. CIT(A) accordingly, this ground of appeal of the assessee also stand dismissed.

40. In the result, the appeal the assessee and the revenue are stand dismissed.

ITA No. 3687/Mum/2002 (Revenue Appeal)

Ground No. 1: Deleting the disallowance of Rs.6,63,90,317/-:

41. The fact and issue involved in this ground of appeal is pertained to the issue on claim of depreciation on written down value of the assets under respective block of assets. Since, this assets on which the depreciation has been claimed by the assessee in this year were in existence in the preceding years under respective block of assets and on the similar fact on identical issue we have adjudicated the appeal of the revenue vide ITA No. 3686/Mum/2002 for A.Y. 1996-97 vide ground no. 13, therefore applying the finding of ground of appeal 13 of ITA No. 3686/Mum/2002 the appeal of the revenue stand dismissed.

Ground No. 2: Deleting the disallowance of depreciation of Rs.30,78,000/- on Electronic Load Monitoring System:

42. All the facts of these transactions are similar to the facts regarding the transaction with this party in the assessment year 1997-98. In this case also has given in the finding of Id. CIT(A) that the expenses of the lease assets was not in dispute and also that the assets were sold leased back to Asian Electronic and that these assets were further leased to Andhra Pradesh State Electricity Board. The supplier who constitute the assets to the Andhra Pradesh State Electricity Board had also confirmed all the facts of the transaction including the assets. The assessee was in the business of leasing and the assets have been dispatched on

28.09.1997. Therefore, applying the finding of ground no. 1 of ITA No. 3686/Mum/2002 this ground of appeal of the revenue also stand dismissed.

43. In the result, the appeal of the revenue stand dismissed.

ITA No. 3634/Mum/2002 (Assessee's Appeal)

Ground Nos. 2 & 3:

44. The fact and issue involved in this two grounds of appeal of the assessee are similar to the ground Nos. 1,2,3 & 4 of the assessee which we have adjudicated vide ITA No. 3633/Mum/2002 therefore, applying the finding of ITA No. 3633/Mum/2002 these two grounds of appeal of the assessee are stand dismissed.

Ground No. 1: Disallowance at Rs.8525/- u/s 43B of Income Tax Act:

45. This ground of appeal of the assessee has not been pressed by the assessee, therefore the same stand dismissed.

ITA No.1806/Mum/2003 (Revenue's Appeal)

Ground No.1: Deleting the disallowance of depreciation of Rs.1,75,65,167/-:

46. In the appeal of the revenue deleting the disallowance of depreciation of Rs.1,75,65,167/- as comprised of Rs.38,90,580/-

being depreciation disallowed by the A.O out of opening block of assets and Rs.1,36,74,587/- being depreciation on addition of assets made during the year which were disallowed by the A.O but deleted by the ld. CIT(A). Insofar as disallowance of depreciation out of opening block (WDV) of Rs.38,90,580/- are concerned the ld. CIT(A) has deleted the same following his order for A.Y. 1997-98 & 1998-99, therefore applying the finding of ground no. 13 of ITA No.3686/Mum/2002 this ground of appeal of the revenue stand dismissed. Regarding the other transaction pertaining to the depreciation of Rs.1,36,74,587/- the ld. CIT(A) has deleted the same following his order for A.Y. 1997-98 vide ground No. 12 of ITA No. 3686/Mum/2002. Since, the A.O has simply made the disallowance on the ground that all the transaction were finance transaction and not leased transaction without disproving relevant supporting evidences produced by the assessee, therefore, applying the finding of the CIT(A) as mutatis mutandis vide ground no. 12 of ITA No. 3686/Mum/2003 the appeal of the revenue also stand dismissed.

47. In the result the appeal of the revenue stand dismissed.

ITA No.801/Mum/2003 (Assessee Appeal)

Ground No. 1: Reopening of assessment u/s 147 was not pressed by the assessee therefore the same stand dismissed.

Ground No. 2:

48. This ground of the assessee pertained to its claim of depreciation in respect of the following lessee:

- i. Bellary Steel & Alloys Ltd.
- ii. Strong Steel Ltd.
- iii. Consolidated Cobalt Chemicals Ltd.
- iv. Sodium Metal Pvt. Ltd.
- v. Consolidated Cobalt Chemicals Ltd.

In respect of Bellary Steel and Alloys the ld. CIT(A) has confirmed the disallowance of depreciation of Rs.25,11,350/-. The fact and issue involved in these grounds of appeal are similar as we have adjudicated vide ITA No. 3633/Mum/2002 therefore applying the finding of ITA No. 3633/Mum/2002 these grounds of appeal of the assessee stand dismissed.

49. In the result, both the appeals of the assessee and the revenue stand dismissed.

50. Resultantly, all the appeals of the assessee and revenue are dismissed.

Order pronounced in the open court on 27.09.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 27.09.2022

PS: Rohit

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

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY
ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai