IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.989/Bang/2023
Assessment Year : 1996-97

M/s. Canara Bank, FM Wing, Head Office, 112, J C Road, Bengaluru – 560 002. **PAN : AAAJS 1557 Q**	Vs.	DCIT, Circle – 2(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. Ananthan, Advocate
Revenue by	:	Shri. Subramanian S, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.03.2024
Date of Pronouncement	:	08.03.2024

O R D E R

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 11.10.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 1996-97.

2. The grounds raised read as follows:

1. The order of the learned CIT(A) is against the law and facts of the case.

2. The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer did not comply with the directions of the Hon'ble ITAT.

2.1. The learned CIT(A) erred in holding that the learned Assessing Officer complied with the directions of the Hon'ble ITAT in allowing the cross examination the person on whose statements reliance was placed.

3. The learned CIT(A) erred in upholding the disallowance of the depreciation by the learned Assessing Officer

3.1 The learned CIT(A) failed to appreciate the fact that no reliance can be placed on a statement of a person who has not been cross examined by the assessee.

3.2 The learned CIT(A) failed to appreciate the fact that the appellant bank had discharged the burden of proving the existence of the machinery.

3.3 The learned CIT(A) failed to appreciate the fact that the learned Assessing Officer did not find any deficiency in the evidence produced by the appellant bank.

4. Without prejudice to the above, the learned CIT(A) erred in taxing the entire lease income after holding that the transaction was a finance transaction.

4.1 The learned CIT(A) failed to appreciate the fact that only the interest income can be taxed and not the entire lease rent received.

The appellant craves the permission to add. amend, modify, alter, revise. substitute. delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.

3. Brief facts of the case are as follows:

Assessee is a nationalized bank. For the Assessment Year 1996-97, the return of income was filed on 29.11.1996 declaring total income of Rs.192,45,20,300/-. Assessment was completed under section 143(3) of the Act vide order dated 19.03.1999. Subsequently, assessment was reopened and reassessment completed under section 143(3) r.w.s. 147 of the Act on 28.03.2002

wherein the total income was determined at Rs.275,66,28,842/-. In the said reassessment order completed, assessee's claim of depreciation on assets leased to M/s. Bellary Steels and Alloys Ltd., (BSAL) amounting to Rs.1,98,18,272/- was disallowed. The reason for denying the claim of depreciation according to AO was that consequent to a survey conducted on 01.08.2000 in the premises of the lessee, it was found that leased assets were non-existent. The AO had strongly relied on the statement of Managing Director of BSAL.

4. Aggrieved by Order of Assessment, assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee and granted depreciation of Rs.198,18,272/-. The Revenue being aggrieved filed appeal before the ITAT. The ITAT restored the matter to the AO. The ITAT directed that AO to give assessee, copies of all the records he has relied on and also afford an opportunity to the assessee to cross-examine the persons whose statements he had used in making the above said disallowance of depreciation. Pursuant to the order of the ITAT, AO passed order on 08.03.2017. The AO held that in spite of several notices issued to the MD of BSAL, he had not appeared, hence, the assessee could not be provided with an opportunity to cross-examine him. Further, the AO held that it is proved with fair amount of certainty in the original assessment order that these leased assets did not exist. Hence, the AO concluded that the aforesaid claim of depreciation is to be denied.

5. Aggrieved by the Order of AO dated 08.03.2017, assessee filed appeal before the CIT(A). The CIT(A) confirmed the view taken by the AO vide the impugned order dated 11.10.2023.

6. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed two sets of Paper Books enclosing therein

the details of leasing of the assets, orders of the AO and CIT(A) in the original round of proceedings, etc. In the other set of Paper Book, assessee has enclosed the case laws relied on. The learned AR reiterated the submissions made before the income tax authorities.

7. The learned DR, on the other hand, supported the orders of the AO and the impugned order of the CIT(A).

8. We have heard the rival submissions and perused the material on record. Admitted facts are that there was a survey in the premises of BSAL (Lessee) on 01.08.2000. A statement was recorded from MD of M/s. BSAL wherein it was stated that all lease transactions were only financial transaction entered into in order to repay the earlier loan outstanding and that he was not in a position to prove the existence of the supplies of MS Rolls (leased assets). Consequent to survey, the assessment in hands of assessee was reopened and assessment was completed vide order dated 28.03.2002. The AO, in the reassessment order, held that assessee could not prove the actual purchase or existence of the assets and denied the claim of depreciation. On further appeal, the CIT(A) allowed the appeal of the assessee. The CIT(A), after examining the material on record, held that assessee has been able to furnish necessary evidence with regard to purchase of the leased assets and the existence of the same. Therefore, CIT(A) directed the AO to grant the depreciation on the leased assets. On further appeal by the Revenue, the Tribunal restored the matter to the AO. The relevant finding of the Tribunal reads as follows:

> *"15. The difference between this case and those dealt in paras 2 to 11 above is that this case emanates from a reassessment conducted by AO through a reopening and not from any order giving effect to the directions or orders of higher authorities. What we find is that Tribunal had in the other cases remitted the matter back to the AO so that rules of natural*

justice were followed. Hence here also the CIT (A), in our opinion, ought have remitted the matter back to AO so that AO could give the assessee the statements he relied on and also give an opportunity for cross examination. in our opinion, therefore ends of justice will be met if the matter is remitted back to the AO. AO shall give the assessee copies of all the records he relied on and also accord an opportunity to the assessee to cross examine the persons whose statements he wants to use against the assessee. AO shall also be free to consider any other binding judgments of higher courts that come to his notice where it has been held that MIs. Bellary Steels & Alloys Ltd was engaged in bogus lease transaction enabling financial / leasing companies to claim depreciation on non-existent assets, and take an independent view."

9. Against the above order of the Tribunal, the Revenue filed appeal before the Hon'ble High Court of Karnataka under section 260A of the Act. The Hon'ble High Court vide judgment dated 02.11.2020 in ITA No.333/2016 dismissed the appeal of the Revenue.

10. Pursuant to the ITAT order, AO passed order giving effect to the Tribunal order (AO's order dated 08.03.2017). The AO, during the course of order giving effect proceedings, had issued notice to the MD of BSAL to appear before him in order to provide an opportunity to the assessee to cross-examine the MD. Since the MD did not appear, the AO confirmed the disallowance of the depreciation claimed by holding that in the original proceedings, it has been established that leased assets did not exist. Further, the AO also referred to the judgment of the Hon'ble jurisdictional High Court in the case of M/s. BSAL (lessee in the present case) reported in 370 ITR 226 (Karnataka) (ITA Nos.225 to 227/2010, judgment dated 29.01.2014), in support of his conclusion that the lessee (BSAL) has been consistently engaged in bogus lease transaction enabling financial / leasing companies to claim depreciation on non-existent assets. The view taken by the AO was confirmed by the CIT(A).

11. The AO had solely relied on the survey conducted in the premises of the lessee in concluding that existence of machinery was doubtful. In the instant case, the assessee bank had entered into the master lease agreement dated 08.07.1995, copies of which were furnished to the AO. Apart from the same, the following documents were also furnished to the AO :

Sl. No	Particulars
1	Letter of Confirmation dated 16.09.1995
2	Invoices dated 08.06.1995, 18.08.1995, 19.08.1995, 20.08.1995 and 21.08.1995
3	Delivery challans dated 18.08.1995, 19.08.1995, 20.08.1995 and 21.08.1995
4	Lorry Receipts dated 18.8.95, 19.08.1995, 20.08.1995 and 21.08.1995
5	Inspection Reports
6	Insurance Policy from 03.11.1999 to 02.11.2000

12. The above documents are enclosed in the Paper Book furnished by the assessee before the Tribunal from pages 1 to 21. In addition to the documentary evidence, periodical inspections were conducted by the assessee to ensure physical availability of assets. For example, the inspection report dated 25.09.2002 and letter dated 17.12.2009 from M/s Asset Reconstruction Co. (India) Ltd. ("Aral"), Mumbai substantiating the fact of acquisition of the assets pertaining to BSAL As per Inspection Report dt. 25-09-2002, the officials confirmed that the total number of rolls found at BSAL's premises during inspection were 208, as against 94 rolls leased by the assessee. On the other hand, it is pertinent to note that the AO during reassessment proceedings merely relied on the fall-out/result of the Survey conducted by the DD1T(Inv), Hubli on 01-08-2000 to arrive at the conclusion that

the leased assets were not in existence. Not even a cursory attempt was made to verify the veracity of the documentation furnished by the assessee in support of the lease transaction. Moreover, a perusal of the Inspection Report dt. 25-09-2002 and subsequent communication with Arcil reveals that the equipment did exist on the date of Inspection, i.e. 25-09-2002, which is subsequent to the Survey operation conducted on 01-08-2000 and such inspection was done to enable the assessee bank to initiate suitable action and. take up the matter before M/s Asset Reconstruction Co. (India) Ltd., Mumbai.

13. Further, assessee had collected lease rentals from Assessment Year 1996-97 till 1999-2000. The lease rentals so collected were offered to tax in the respective Assessment years. The documents produced before the AO (placed from pages 1 to 6 of the Paper Book) as well as the system prevailing in the bank confirm beyond doubt that assets were available with the lessee and the assessee being a legal owner of the assets was eligible to claim depreciation. The AO had failed to take cognizance of these details and merely relied on the statement of the M/s. BSAL and concluded (after a lapse of more than 5 years from the original lease agreement) that the assets did not exist and the depreciation was not allowable. Further, even at the time of survey conducted by DDIT, 361 rolls were actually found at the premises of the lessee whereas the bank had given on lease only 94 rolls. There is nothing on record to suggest that out 361 rolls, 94 rolls does not belong to assessee Bank.

14. On the facts of the instant case, assessee had discharged its onus to prove the genuineness of the transaction by furnishing necessary documents in support of the claim. On the contrary, AO had failed to furnish copies of the material obtained during the course of survey conducted in premises of BSAL. The AO has also failed to provide assessee an opportunity to cross-examine the MD of

BSAL. The major reason for making the disallowance of claim of depreicaiton is the statement of the MD which is untested statement and has not been corroborated by any other evidence. Under such circumstances, when assessee has been able to corroborate its claim of leased equipment with incontrovertible evidence, we direct the AO to grant depreciation allowance.

15. Before concluding, it is to be mentioned that the case law relied on by the AO and the CIT(A) in the case of CIT and Another Vs. Bellary steels and Alloys Ltd., reported in 370 ITR 266 is distinguishable on facts. The above case was not concerned with the relevant Assessment Year viz., 1996-97. Further, in the list of lessors mentioned in the Hon'ble High Court judgment, the name of the assessee does not figure. For the aforesaid reasons, we hold that CIT(A) is not correct in confirming the disallowance of the depreciation claimed. It is ordered accordingly.

16. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(LAXMI PRASAD SAHU)	**(GEORGE GEORGE K)**
Accountant Member	**Vice President**

Bangalore.
Dated: 08.03.2024.
/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.