

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA 2819/Mum/2023 (Assessment Year 2015-16)

Dy. CIT Circle 3(3)(1), Mumbai	Vs.	Reliance Corporate IT Park Limited, Bldg. No.3,5, TTC Industrial Area, Ghansoli S.O., Navi Mumbai- 400701 PAN AABCD7169H
(Appellant)		(Respondent)

Appellant By : Ms Sanyogita Nagpal (CIT-DR)
Respondent By : Shri Nimesh Vora & Ms. Moksha Mehta

Date of Hearing : 19.03.2024	Date of Pronouncement : 04.04.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

Whether the respondent-assessee is entitled to claim depreciation on leased assets viz. Plant & Machinery under a "Finance Lease" is a question which falls for determination in this appeal.

2. The challenge in this appeal by the Revenue, is to the order dated 14.06.2023, passed by the CIT (A) [NFAC, Delhi], which in turn arose out of the order, dated 26.12.2018, passed by the DCIT Cir 3(3)(1), Mumbai, ('AO' for short) for assessment year 2015-16.

3. The assessee is in the business of providing IT support services, business and infrastructure support services and manpower supply. The assessee had a polymer plant located at TTC Industrial Area, Ghansoli, Thane. The respondent – assessee has leased out the said Plant to M/s. Reliance

Industries Ltd. (lessee) under an agreement dated 31.12.2008. That lease is said to be a 'Finance Lease', within the meaning of AS-19 as prescribed by the Institute of Chartered Accountants of India (ICAI).

4. The respondent assessee filed its Return of Income (RoI) for assessment year 2015-16 on 26.11.2015 declaring a loss of Rs. 217,50,96,860/- under the normal provisions of the Act and book profit u/s. 115JB of the Act at Rs 15,84,09,654/-. The case was selected for scrutiny. The AO asked for certain details/information, which were accordingly furnished by the assessee. It may be mentioned that the assessee, inter alia, claimed depreciation on the leased assets, viz. the said plant, at Rs 11,34,00,000/-, which was disallowed by the AO mainly on the ground that under AS-19 "Finance Lease" envisages transfer of all risk and rewards, in favour of the lessee, incidental to the ownership of an asset. Consequently, the Assessing Officer disallowed the claim of depreciation. Feeling aggrieved the respondent-assessee carried the matter in appeal before the CIT(A).

5. The CIT(A) after considering the rival contentions and the Circular no. 2 of 2001 dated 09.02.2001, issued by the CBDT, as well as the decision of this Tribunal in assessee's own case for the earlier years including assessment year 2011-12, has come to the conclusion that the twin conditions as required by section 32 of the said Act about the ownership/title of the asset and the asset being used for the business purpose of the assessee have been satisfied in this case. In that view of the matter, the appeal came to be allowed, which brings the Revenue before this Tribunal.

6. We have heard the parties. Perused record.

7. It is submitted by the learned CIT-DR that the CIT(A) was not justified in deleting the disallowance on account of the depreciation on assets (Finance Lease) in as much as, in a finance lease, all the risks and rewards, incidental

to the ownership of the asset, are transferred to the lessee. It is submitted that, AS-19 in such a case of Finance Lease, allows the lessee to claim depreciation on the asset and not the lessor.

8. On the contrary, it is submitted by the learned AR for the respondent assessee that the maintenance of the books of account as per AS-19 may not have any relevance as to the claim of depreciation which will be governed by the provisions of the Income Tax Act. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in *Sutlej Cotton Mills vs. CIT* [1979] 116 ITR 1 (SC) and *Kedarnath Jute Mfg. Co. Ltd. vs. CIT* [1971] 82 ITR 363 (SC), which have been referred to by the CIT(A) in the impugned order. It is next submitted that the CBDT has also taken cognizance of the Accounting Standards issued by the ICAI creating a distinction between finance lease and an operating lease. However, by virtue of Circular no. 2 of 2001, the CBDT has clarified that the same will have no implications under the provisions of the Act. It is submitted that it is not in dispute that under the terms of the leave and licence agreement dated 31.12.2008, the assessee continues to be the owner of the asset and the same has been leased out after the assessee having used it for its business purpose for a period of 5 years. It is submitted that admittedly the lessee has not claimed any depreciation during the relevant period on the leased asset. He submitted that, therefore, the CIT(A) was justified in deleting the disallowance.

9. We have considered the rival circumstances and the submissions made. The issue may not detain us long as the same is covered by the decision of this Tribunal in earlier years and there being no change in the material circumstances for the year under consideration. It is not in dispute that under the terms of the leave and licence agreement, the assessee continues to be the owner of the asset during the lease period and that it was leased out after a period of 5 years. The CBDT vide Circular no. 2 of 2001 had an occasion to

notice the distinction drawn by the Accounting Standards issued by the ICAI between a finance lease and an operating lease. The relevant part of the circular may be reproduced below :

"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."

(Emphasis supplied)

10. It is not in dispute that, during the relevant period, the lessee has not claimed any depreciation on the leased asset. That apart, we find that the said issue has been decided in favour of the assessee by this Tribunal initially for the assessment year 2011-12 and thereafter for assessment years 2013-14 and 2014-15 in ITA No. 1893 and 1894/Mum/2020 decided on 17.02.2022. We are in respectful agreement of the findings recorded therein and do not find any reason to take a different view. It is not necessary to reproduce the said findings, lest at the cost of prolixity. It is not in dispute that this Tribunal had decided the issue in favour of the assessee for the earlier years.

11. In that view of the matter, no interference in the impugned order is called for. Accordingly, the appeal stands dismissed.

Order pronounced in the open court on 4th April, 2024

Sd/-
[B R Baskaran]
ACCOUNTANT MEMBER
Mumbai, Dated : 4th April, 2024
SA

Sd/-
[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai