

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2021/Del/2021  
(ASSESSMENT YEAR 2011-12)**

M/s Rio Tinto India Private Ltd. 21 <sup>st</sup> Floor, DLF Building No.5 Tower A, DLF Cybercity Phase-III, Gurugram Haryana-122002 PAN:AAACR5591A <b>(Appellant)</b>	Vs.	ACIT Circle-19(1) New Delhi <b>(Respondent)</b>
--	-----	--

Assessee by	Shri Nageshwar Rao, Advocate & Ms Anshika Agarwal, Adv.
Respondent by	Shri P.N. Barnwal, CIT- DR

Date of Hearing	16/05/2024
Date of Pronouncement	26/06/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been preferred by the Assessee against the final assessment order dated 30/11/2021 passed U/s 143(3) r.w.s.144C of the Income Tax Act, 1961 (hereinafter called 'the Act')

subsequent to the direction of the Ld. Dispute Resolution Panel (DRP) vide direction dated 13/09/2021 for Asst. Year 2011-12.

**2.** The brief facts of the case are, the assessee filed its return of income on 30/09/2011 and revised the return of income on 19/11/2012 by declaring Nil income under the normal provisions of the Act and book profit of Rs.2,57,77,405/- u/s 115JB of the Act. The case was selected for scrutiny by issue of notice u/s 143(2) and duly served. The case was referred to TPO u/s 92CA of the Act for assessing Arm's Length Price of the international transaction.

**3.** The relevant facts relating to the ground raised by the assessee are, the Assessing Officer observed that assessee made the principal payment of lease rental amounting to Rs.7,31,504/-. The Assessing Officer observed that in Assessment Year 2008-09, the ITAT Bench in the case of assessee's own case given the following directions, the same was reproduced by the AO in his order. For the sake of clarity the same are reproduced hereunder:-

**"10. Principal payments on lease rentals**

*10.1 Further, on the issue of principal payment on lease rental amounting to Rs 7,31,504/-, Hon'ble ITAT has restored the issue back to the file of the AO to decide the same in the light of the direction of the Tribunal in*

*assessment year 2008-09. The relevant extract is reproduced as under:-*

*"Para 22. Without going into the merits or demerits of the deduction claimed by the assessee, we are of the view that in view of the issue being set aside by the Tribunal to the file of AO in later decision relating to assessment year 2008-09, we deem it fit to restore this issue back to the file of AO to decide the same in the light of the direction of the Tribunal in assessment year 2008-09 Hence, grounds no. 1 to 3 raised by the assessee are allowed for statistical purposes"*

*10.2 Accordingly, notice u/s 142(1) was issued on 26.11.2021 requesting to file submission / supporting document in respect of addition made on account of principal payment of lease rental amounting to Rs. 7,31,504/-, In response to the above notice, the assessee has filed written submission on 29.11.2021*

*10.3 The Hon'ble ITAT in its judgment for AY 2008-09 in the case of the assessee company has directed the AO to follow the decision of Indusind Bank Ltd. vs. Addl. CIT (2012) 15 ITR (T) 89 (Mum)."*

With the above observations, the Assessing Officer issued notice u/s 142(1) on 26/11/2021 asking the assessee to file the relevant submissions/supporting documents relating to payment of lease rentals. Further, the Assessing Officer observed that as per the directions of ITAT, in the case of *IndusInd Bank Limited vs. Addl. CIT 2012] 19 taxmann.com 173/15 ITR (T) 89 (Mumbai-Tribunal)*, AO to follow the decision. Accordingly, the Assessing Officer by following the above decision calculated the consequential depreciation of Rs.3,58,883/- and the relevant conclusion is reproduced at para 10 of the order. Accordingly, he made the net disallowance of Rs.3,72,621/-.

**4.** Aggrieved with the final assessment order passed u/s 143(3) r.w.s 144C r.w.s 254 of the Act, the assessee is in appeal before us raising the following grounds:-

*“Based on the facts and circumstances of the case and in law, Rio Tinto India Private Limited (hereinafter referred to as "RTIPL" or "Appellant") craves leave to prefer an appeal against the order dated 30 November 2021 ("impugned order") passed by Assistant Commissioner of Income Tax, Circle 19(1), New Delhi (hereinafter referred to as "the learned Assessing Officer" or "the Ld. AO") under section 143(3) read with section 144C read with section 254 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on the following grounds, which are without prejudice to each other:*

*1. That the Ld. AO has erred in facts of the case and in law in making a disallowance of INR 3,72,621/- (principal payment of INR 7,31,504 minus consequential depreciation of INR 3,58,883) in respect of lease rental paid by the Appellant, termed as 'principal payment towards finance lease', in respect of motor vehicles taken on lease by the Appellant alleging that such payments is towards acquisition of capital asset and accordingly, is a capital expenditure.*

*2. That the Ld. AO has erred in solely relying in the case of IndusInd Bank Ltd. vs. Additional Commissioner of Income Tax (2012) 15 ITR (T) 89 (Mumbai) without appreciating the subsequent judgement of Hon'ble Supreme Court in case of I.C.D.S. Ltd. v. CIT reported in (2013) (350 ITR 527) (SC) and judgements of jurisdictional Delhi Tribunal in case of NIIT Ltd. v. Deputy Commissioner of Income-tax, LTU, Central Circle-16(1), New Delhi [2019] 112 taxmann.com 66 and M/s. Minda Corporation Limited, vs. DCIT, Circle 6 (1) [2016] 69 taxmann.com 317, wherein it was held that lessee is eligible for deduction of lease rental as revenue expenditure.*

*3. That the learned AO erred in facts and law in initiating the penalty proceedings under Section 271(1)(c) of the Act.*

*The above grounds are independent and without prejudice to each other. The Appellant craves to leave to add, withdraw, amend or vary the above grounds of appeal before or at the time of hearing.”*

**5.** At the time of hearing, the Ld. AR brought to our notice page 61 of PB wherein Co-ordinate Bench in assessee's own case in Assessment Year 2010-11 has considered the similar issue and remitted the issue back to the file of AO to follow the decision of ITAT for Asst. Year 2008-09 and further, he brought to our notice page 226 of the PB wherein similar issue was considered in the case of M/s Minda Corporation Limited vs. DCIT, in ITA No.1962/Del/2012 dated 31/07/2015, after considering the various judicial precedent decided the issue in favour of the assessee and prayed that the issue under consideration is finance lease, therefore, the issue should be decided based on the subsequent developments relating to the issue under consideration.

**6.** On the other hand, the Ld. DR brought to our notice para 10.1 of the assessment order and submitted that the issue under consideration is same issue as dealt by the Hon'ble ITAT in Assessment Year 2008-09. In this appeal also, the similar direction was given and remitted the issue back to the file of Assessing

Officer. In this regard, he relied on the decision of Kaithar Jute Mills (P.) Ltd. vs. CIT, [1979] 120 ITR 861 (Calcutta).

7. Considered the rival submissions and material placed on record, we observed that the issue under consideration is payment of lease rent and the Assessing Officer has considered the type of lease as finance lease. In this regard, there are several conflicting decisions from the various Court. The issue under consideration is elaborately dealt by the Co-ordinate Bench of ITAT, Delhi in the case of *M/s Minda Corporation Limited vs. DCIT, in ITA No.1962/Del/2012*, dated 31/07/2015. For the sake of clarity, the same is reproduced below:-

*“5. We have heard the rival submissions and perused the material on record. We shall take up for consideration the issue on merits.*

*The brief facts in relation to the disallowance are as follows. The assessee company acquired vehicles worth Rs.27,88,776/- on financial lease. In terms of Accounting Standard 19-"Leases" ('AS-19') issued by the Institute of Chartered Accountants of India ('ICAI'), the assets acquired under financial lease were capitalized in the books of accounts and consequent liability thereon was also created. However, for the purposes of the Act, the lease rental of Rs.9,29,592/- (apart from finance charges already debited in the profit and loss account) paid by the assessee in the year under consideration was claimed as deduction under section 37 of the Act. The AO disallowed the aforesaid claim of deduction on the ground that since the payments made by the assessee was in the nature of a 'finance lease', the same was required to be capitalized and not allowable as deduction under section 37 of the Act. Further, depreciation was also not allowed on the purported cost of the fixed asset.*

5.1 After having heard rival submissions, we are of the view that AS-19 on accounting for "Leases" issued by the ICAI is only applicable for accounting the lease transaction in the books of accounts. It is a settled law that treatment in the books of accounts is not determinative of liability towards income-tax for the purpose of the Act. The liability under the Act is governed by provisions of the Act and is not dependent on the treatment followed for the same in the books of accounts. For above proposition, reference is made to *Sutlej Cotton Mills Ltd. vs. CIT: 116 ITR 1 (SC)* and *Kedarnath Jute Mfg. Co. Ltd. vs. CIT: 82 ITR 363 (SC)*. AS-9 on accounting for leases classifies lease transactions for accounting purposes as under:

- (i) Finance Lease
- (ii) Operating Lease

5.2 Finance Lease, in AS-19, is described as a lease that transfers substantially all the risks and rewards in respect of ownership of an asset: 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.

5.3 The Circular No.2 of 2001 dated 09.02.2001 (247 ITR (St.) 53) issued by the Central Board of Direct Taxes (CBDT) has opined that the aforesaid 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 of the said Circular are reproduced herein 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."*

5.4 Thus, 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 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.

5.5 The aforesaid legal position finds support from the decision of the Hon'ble Supreme Court in the case of ICDS Ltd. vs. CIT -350 ITR 527, wherein the Hon'ble Court held that the lessor is the owner of the lease property in case of finance lease, entitled to depreciation of the same. The pertinent observation of the Hon'ble Court is reproduced hereunder:

*"The revenue's objection to the claim of the assessee is founded on the lease agreement. It argued that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding one per cent of the original cost of the vehicle, making the assessee in effect a financier.*

*However the revenue's contention cannot be accepted. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eye of law. A scrutiny of the sale agreement cannot be the basis of raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee"*

5.6 The Hon'ble Rajasthan High Court in the case of Rajshree Roadways vs. Union of India [2003] 129 Taxman 663 upheld the assessee's claim of allow ability of lease rentals paid as lessee of the Trucks as a revenue expenditure under section 37(1) of the Act, even though the lease was categorized as finance lease.

5.7 The other relevant judgments are as follows :-

(i) *The decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Banswara Synthetic Ltd. 216 Taxman 113. wherein the High Court while following its earlier decision in the case of Rajshree Roadways (supra) observed that lease rentals paid by an assessee in case of a finance lease is allowable as an revenue expenditure under section 37(1) of the Act.*

(ii) *The decision of the Karnataka High Court in the case of Banashankari Medical & Oncology Research Centre Ltd [2009] 316 ITR 407 is also to the same effect. In that case, the assessee had taken certain equipments on lease for which it had paid a certain sum as deposit which was to be adjusted against the lease rentals and besides that, the assessee was also paying finance/interest charges to the owner of equipment. The entire amount of lease rentals paid during the year, was claimed by the assessee as revenue expenditure under section 37(1) of the Act, which was upheld by the High Court.*

(iii) *The decision of the Jharkhand High Court in the case of CIT vs. Tata Robins Fraser Ltd 253 CTR 227, wherein it was held that a lease agreement providing lessee a right to purchase an asset is not Hire Purchase Agreement until such right is exercised by the lessee.*

*5.8 In view of the aforesaid reasoning and the judicial precedents, we hold that disallowance of Rs.9,29,592/- is not justified on facts and circumstances of the case. It is ordered accordingly.”*

**8.** Respectfully following the same, we are inclined to allow the appeal filed by the assessee. Further, we observed that the Ld. DR relied on the decision of Hon'ble Kolkata High Court which is relating to Assessment Year 1955-56. There were several conflicting decisions and much water was flown. Therefore, the above decision cannot be relied upon and further several clarifications were issued by the CBDT itself. Coming to the decision of Co-ordinate Bench in assessee's own case for Asst. Year 2008-09, we observed that in Assessment Year 2010-11, the same decision was followed and

remitted the issue back to the file of Assessing Officer to follow the same. However, none of the counsels brought to our notice the consequential order passed by the Assessing Officer in Asst. Year 2010-11. Since, the issue is covered in favour of the assessee by the subsequent decision of various Benches, we are inclined to follow the decision of M/s Minda Corporation Limited (supra) and the decision of Hon'ble Supreme Court in the case of ICDS ltd. (supra). Accordingly, the appeal filed by the assessee is allowed.

**9.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on 26<sup>th</sup> June, 2024.

Sd/-

**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

Dated: 26/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI