

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1179/Mds/2014

निर्धारण वर्ष / Assessment Year : 1997-98

M/s Cholamandalam Investment  
and Finance Company Ltd.,  
Dare House,  
No.2, N.S.C. Bose Road,  
Chennai - 600 001.

v. The Assistant Commissioner of  
Income Tax,  
Company Circle I(3),  
Chennai - 600 034.

PAN : AAACC 1206 H  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Milind S. Kothari, CA

प्रत्यर्थी की ओर से/Respondent by : Dr. Milind Madhukar Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 14.09.2015

घोषणा की तारीख/Date of Pronouncement : 13.11.2015

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – I, Chennai, dated 20.01.2014 and pertains to assessment year 1997-98.

2. The only issue arises for consideration is with regard to depreciation on the boilers and windmill leased out by the assessee.

3. Shri Milind S. Kothari, the Ld. representative for the assessee, submitted that the assessee is engaged itself in the business of finance and leasing. In the course of its business activity, the assessee leased out boilers to M/s Kothari Sugars and Chemicals Limited. The assessee also leased out windmill and boiler to M/s Mookambikai Spinning Mills Ltd. The assessee claimed depreciation at the rate of 100%. However, the Assessing Officer restricted the same to 50% on the ground that the asset, namely, boilers and windmill are put to use for less than 180 days. Referring to the order of this Tribunal in the first round of litigation, the Ld. representative submitted that this Tribunal remitted the matter back to the file of the Assessing Officer to find out the date on which the asset was delivered to the lessee and thereafter determine the depreciation allowable to the assessee. In spite of this direction of the Tribunal, the Assessing Officer as well as the CIT(Appeals) proceeded on the presumption that the asset was not put to use. According to the Ld. representative, the assessee is engaged itself in the business of leasing of asset, therefore, the

moment it hands over to the lessee, it would amount to put to use of the asset for the purpose of assessee's business. According to the Ld. representative, it is immaterial whether the lessee has actually put to use the machinery/asset for trial run and usage. It is for the lessee either to use the asset in their business or to keep the same for the reasons best known to them. As far as the assessee is concerned, according to the Ld. representative, the moment the asset was delivered to the lessee, it would amount to put to use, therefore, the assessee was entitled for depreciation. Since the asset was delivered to the lessee, according to the Ld. representative, the assessee was entitled for depreciation at the rate of 100%.

4. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that no doubt, the assessee is engaged in the business of leasing, therefore, when the asset was delivered to the lessee, it would amount to put to use the machinery/asset. In the case before us, what was leased out is the brand new boiler and brand new windmill. It is a common knowledge that boiler and windmill are not available in the market in a ready built condition. Therefore, the assessee cannot purchase

boiler and windmill on outright basis and lease out the same instantly. The specific case of the assessee is that the assessee purchased new boiler and windmill and thereafter it was leased out. Therefore, the assessee has to purchase various components which constitute boiler and windmill and it has to be assembled and installed to call the asset as a boiler or windmill. If the various parts of the boiler and windmill are not assembled to constitute boiler and windmill, it cannot be construed as boiler and windmill at all. Therefore, mere delivery of various components of boiler and windmill cannot be construed as delivery of the asset. Since the assessee claims that what was leased out is boiler and windmill, the assessee has to necessarily prove before the authorities below that various components, which constitute boiler and windmill, were purchased and assembled before the same was delivered to the lessee. These aspects were not established by the assessee before this Tribunal even though there was a specific direction by this Tribunal to find out the date of delivery. Therefore, the authorities below found out that the assessee is entitled for depreciation at the rate of 50%. Referring to the order of the CIT(Appeals), the Ld. D.R. pointed out that even though the parts of the machinery were delivered on the day prior to 9.10.1996, the

asset itself can be construed to have been delivered on 9.10.1996 on which the various components were assembled and the asset was brought into existence. According to the Ld. D.R., unless the asset, namely, boiler and windmill, was brought into existence, the same cannot be delivered to lessee. Therefore, on the basis of the invoices for purchase of various components, the assessee cannot claim any depreciation.

5. We have considered the rival submissions on either side and perused the relevant material on record. This is the second round of litigation before this Tribunal. In the first round of litigation, the Tribunal found that even though there was a reference in the Schedule of agreement that the asset was already delivered, the date of delivery was not mentioned. Therefore, both the representatives for assessee and the Revenue had agreed before this Tribunal to remit the matter to the file of the Assessing Officer to ascertain the correct date of delivery to the lessee and on that basis, depreciation allowable has to be determined. The Assessing Officer on the basis of the direction of this Tribunal, found that the assessee leased out the boiler said to be acquired from M/s Thermax Ltd. The lessee admitted before the Assessing Officer by

letters dated 31.01.2000 and 13.03.2000 that the installation of boilers was completed in the premises on 09.10.1996. The Assessing Officer also found that the components and accessories of the boiler were delivered in the premises on 21.03.1997. In respect of the windmill, the authorities below found that even though various components and accessories were delivered on 28.08.1996, the assembling of the components completed only on 31.01.1997 and thereafter the windmill was delivered to the assessee and it was started commissioning.

6. It is not in dispute that in the case of leasing business, the moment the asset was delivered to the lessee, it has to be construed that the asset was put to use by the lessor. In the case before us, it is not in dispute that the boiler and windmill are not available in the market as such. It is an admitted fact that the assessee has to purchase various components and accessories of boiler and windmill and it has to be assembled and installed to make it as an asset, namely, boiler and windmill so as to enable the same to lease out to the lessee. Therefore, mere purchase of components and accessories of boiler and windmill cannot be construed as delivery of asset. It is for the assessee to bring into

existence the asset, namely, boiler and windmill. The material available on record clearly shows that even though the components and accessories of boiler and windmill were delivered in the month of August, 1996, the assembling and installation were completed in the months of January, 1997 and March, 1997 respectively. Therefore, the boiler could have been delivered to the lessee only in the month of January, 1997 and the windmill in the month of March, 1997. In other words, unless various components and accessories of the boiler and windmill are assembled and constituted to full-fledged boiler and windmill, this Tribunal is of the considered opinion that there cannot be any delivery of the asset, namely, boiler and windmill. Therefore, full-fledged asset, namely, boiler and windmill came into existence only on 21.03.1997 and 31.03.1997 respectively. Therefore, this Tribunal do not find any infirmity in the order of the lower authority. Accordingly, the same is confirmed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 13<sup>th</sup> November, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 13<sup>th</sup> November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-I, Chennai
4. आयकर आयुक्त/CIT –I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.