

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4110 OF 2017

Uttara Foods and Feeds Pvt. Ltd. ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

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WRIT PETITION NO.4109 OF 2017

Uttara Foods and Feeds Pvt. Ltd. ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION (ST) NO.7952 OF 2017

Trend Smith (India) ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

WITH

WRIT PETITION (ST) NO.7954 OF 2017

Pranksters Inn Pvt. Ltd. ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Abhijit B. Kadam a/w Ms. Akanksha Gond, for the
Petitioner in WP/4110/2017 & WP/4109/2017.

Mr. Mutahhar Khan a/w Mr. Chandrajit Das i/b Parinam
Law Associates, for the Petitioner in WP(St)/7952/2017 &
WP(St)/7952/2017.

Mr. S. H. Kankal, AGP, for the State – Respondent
WP/4109/2017.

Mr. Y. D. Patil, AGP, for the State – Respondent in WP/4110/2017

Ms. Sulbha Chipade, AGP, for the State – Respondent in WP(St)/7952/2017.

Ms. Savina Crasto, AGP, for the State – Respondent in WP(St)/7954/2017.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 21, 2026

PRONOUNCED ON : SEPTEMBER 23, 2026

JUDGMENT:

1. Writ Petition No. 4109 of 2017 is treated as the lead petition because the facts and issues involved in all four petitions are similar.
2. The present petitions have been filed under Article 227 of the Constitution of India. By these petitions, the Petitioners challenge the Order dated 14th October 2016 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune.
3. The facts and circumstances which have given rise to Writ Petition No. 4109 of 2017 are as follows.
4. The Petitioner has approached this Court to challenge the Order dated 14th October 2016 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune. By the said Order, Respondent No.2 held that the Revenue Share Agreement executed between the Petitioner and Respondent No.6, which had been submitted for adjudication before the Collector of Stamps, Mumbai

in Adjudication Case No. ADJ/M/1947/2011, was short-levied to the extent of stamp duty of Rs.8,14,809/-. Respondent No.2 accordingly directed the Petitioner and Respondent No.6 to pay the said amount within 10 days. The Petitioner states that the Petitioner and Respondent No.6 had entered into a Revenue Share Agreement. The said Agreement was submitted for adjudication before the Collector of Stamps, Mumbai, by filing an application bearing Case No. ADJ/M/1947/11/Certi/1706/11. After following the procedure prescribed under the Maharashtra Stamp Act, the Competent Authority adjudicated the document and, by Certificate dated 13th June 2011, determined the stamp duty payable at Rs.2,91,280/-. The Petitioner paid the stamp duty and charges as determined by the Competent Authority. Thereafter, the document was presented for registration before the office of the Sub-Registrar, Mumbai City-II, Worli. It was registered on 16th June 2011 at Serial No.4707/2011. The said document is hereinafter referred to as “the said Document”.

5. According to the Petitioner, due to certain difficulties, the transaction between the parties could not be completed. As a result, the said Document was never acted upon or given effect to by the parties. The parties cancelled the transaction contemplated by the said Document. Respondent No.6, by letter dated 5th March 2016, informed the Collector of Stamps that the Revenue Share Agreement dated 16th June 2011 could not be acted upon because the necessary permissions from the BMC could not be obtained. Respondent No.6 informed the authority that the Petitioner had never started any business from its premises and that the

transaction between the parties had been cancelled. It was stated that Respondent No.6 had not received any revenue or rent from the Petitioner from the date on which the Agreement was executed. Since the transaction had not been completed and the said Document had not been acted upon, the parties approached the Competent Authority for cancellation of the document. The parties were informed that they would have to approach the Collector of Stamps for adjudication of the stamp duty payable in relation to the cancellation. The Petitioner states that, by that time, its office address had changed and the relevant company records and documents were not readily available. The Petitioner approached the concerned office after some time and informed the authority about the cancellation of the transaction. However, the authority declined to consider the Petitioner's request on the ground that the prescribed period of limitation had expired. The Petitioner filed an application under the Right to Information Act seeking the relevant information and documents. The said application was submitted to and acknowledged by the authority on 7th July 2016.

6. According to the Petitioner, after the document had been cancelled and after a considerable period had passed, the Petitioner received a communication from the authority calling upon it to pay the alleged deficit stamp duty. The Petitioner received a Notice dated 14th June 2016 issued under Section 53-A of the Maharashtra Stamp Act, 1958 in respect of Document No.1947/2011. By the said Notice, the Petitioner was called upon to remain present personally or through an authorised

representative, produce the instrument in question and place its defence before the authority. After receiving the Notice dated 14th June, 2016 issued under Section 53-A of the Maharashtra Stamp Act, 1958, the Petitioner appeared before Respondent No.2 and filed a detailed reply dated 12th July, 2016. In the said reply, the Petitioner pointed out that the calculation of the alleged deficit stamp duty had no proper basis. It was stated that the transaction contemplated by the parties had never been acted upon and had subsequently been cancelled. The Petitioner contended that there was no question of demanding any stamp duty.

7. The Petitioner stated that the Cancellation Deed had been submitted before the authority, but no action had been taken on it. The Petitioner requested that the entire relevant record, documents and information be called for from the concerned authority. This request was made because the Petitioner had applied for those documents under the Right to Information Act by its application dated 7th July 2016. The Petitioner contended that, until the documents and information sought by it were supplied, Respondent No.2 ought not to proceed with the enquiry arising from the Notice dated 14th June 2016. The Petitioner requested that sufficient opportunity be given to produce the necessary documents and material and to properly defend its case. The Petitioner requested Respondent No.2 to provide the documents and information sought under the RTI application dated 7th July 2016 and grant an opportunity of hearing.

8. The Petitioner states that, by its letter dated 26th August 2016 addressed to Respondent No.2, it informed Respondent No.2 that the Agreement executed between the Petitioner and Respondent No.6 had been cancelled by a Deed of Cancellation dated 25th August, 2016. The Petitioner states that it had paid the stamp duty determined by the Competent Authority at the time when the said Document was adjudicated. According to the Petitioner, there was no basis for demanding any stamp duty as alleged by Respondent No.2 in the Notice dated 14th June, 2016. According to the Petitioner, despite these facts and the submissions placed before Respondent No.2, Respondent No.2 proceeded with the matter without properly considering the applicable provisions of law and the facts placed on record by the Petitioner. The Petitioner states that Respondent No.2 did not provide the documents and information sought by the Petitioner in its application dated 7th July 2016, despite the specific request made for those documents.

9. Respondent No.2 passed the impugned Order dated 14th October 2016 in Revision Case No.65/2014. By the said Order, Respondent No.2 held that the document executed between the Petitioner and Respondent No.6 was short-levied to the extent of stamp duty of Rs.8,14,809/-. Respondent No.2 accordingly directed the Petitioner and Respondent No.6 to pay the said amount within 10 days. The Petitioner is aggrieved by the Judgment and Order dated 14th October 2016 passed by Respondent No.2 in Revision Case No.65/2014. The Petitioner has approached this Court under Article 227 of the Constitution of

India on the following grounds, amongst others. Each of the grounds is urged without prejudice to the other grounds.

10. Learned Advocates for the Petitioners submits that the Lower Authority ought to have examined the terms of the said Agreement and ought to have found that they do not show that the document is a lease. According to the Petitioners, the basic requirements necessary to treat a document as a “Lease” are not present in the present case. It is submitted that the proceedings initiated by the Authority have no proper basis and are liable to be quashed and set aside. Learned Advocates for the Petitioners submits that the Authority failed to consider that the essential requirements for treating a document as a “Lease” are absent from the document executed between the Petitioners and Respondent No.6. According to the Petitioners, merely because the document relates to the use of certain premises, it cannot be treated as a lease unless the necessary ingredients of a lease are found in the document. Learned Advocates for the Petitioners submits that the Lower Authority committed an error in holding that the Revenue Share Agreement executed between the Petitioners and Respondent No.5, and earlier adjudicated by the Lower Authority in Adjudication Case No. ADJ/M/1947/2011, could be treated either as an “Agreement creating obligations alone chargeable to stamp duty” under Article 5(h)(A)(iv)(b) of the Schedule to the Maharashtra Stamp Act, 1958, or as a “Lease” under Article 36 thereof. According to the Petitioners, the document does not satisfy the requirements of either such classification.

11. Learned AGP for the Respondents submits that the proceedings arose because of an objection raised by the Audit Team of the Accountant General (II), Nagpur, during its internal inspection of the office of Respondent No.4. The Audit Team examined the Agreement executed by the Petitioners and found that the document involved in Adjudication Case No. ADJ/M/1947/2011 had been wrongly classified. According to the Respondents, this wrong classification resulted in short levy of stamp duty of Rs.8,14,809/-.

12. Learned AGP for the Respondents submits that the audit objection was based on the terms and recitals of the documents. Although the documents were described as “Revenue Sharing Agreements”, according to the Audit Team, their terms showed that they were, in substance, lease deeds for a period of 15 years. It is submitted that stamp duty could not have been levied under Article 5(h)(A)(iv)(b) of the Bombay Stamp Act, 1958. According to the Respondents, the documents were required to be assessed under Article 36(iii) of the said Act.

13. Learned AGP for the Respondents relies upon the following portion of the audit objection:

“PARA 11: SHORT LEVY OF STAMP DUTY DUE TO MISCLASSIFICATION OF DOCUMENT RS. 18,98,010/- DOC NUMBER 4707 AND 4836 OF 2011.

As per Article 36(iii) of the Bombay Stamp Act, 1958, where the lease purports to be for a period exceeding ten years and but not exceeding twenty-nine years with a renewal clause, contingent or otherwise, then stamp duty is leviable as on a conveyance under clause (a), (b), (c) or (d), as the case may be, of Article 25 on 50 percent of the market value of the

property. It has been held that the stamp duty payable upon an instrument must be determined by referring to the terms of the document and the Court is not entitled to take into consideration evidence de hors the instrument (AIR 1935 Rang 243). Similarly, it was held that the document is to be stamped according to its effect and intention gathered from the document as a whole.”

14. During the scrutiny of Revenue Sharing Agreement deed, the recital of the document revealed that, though the documents were named as Revenue Sharing Agreements, these were nothing but lease deeds for a period of 15 years. The Department had overlooked this fact and levied stamp duty under Article 5(h)(A)(iv)(b), meant for creation of any obligation, right or interest and having monetary value but not covered under any other Article. Since lease is covered under Article 36(iii) of the Bombay Stamp Act, 1958, levy of stamp duty under Article 5(h)(A)(iv)(b) was incorrect, resulting in short levy of stamp duty of Rs.18,98,010/- as detailed below.....”

15. The audit objection set out the calculation of the alleged short levy in respect of Document Nos. 4707 and 4836 of 2011. In relation to Document No.4707, the adjudication number was ADJ/M/1947/11. The lessor was shown as M/s. Trend Smith (India) and the lessee as M/s. Uttara Foods and Feeds Pvt. Ltd. The property was situated at Malbar, bearing C.S. No.1519, in Valuation Zone No.7/60 of the ASR.

16. The audit calculation referred to the applicable rates for the shop and upper floor office/commercial premises and the area of the premises. The area referred to included Apartment 1A of

677.22 sq. ft., Shop GA of 810.21 sq. ft., equivalent to 75.27 sq. mtrs., and Apartment 1B of 677.22 sq. ft. The total area was shown as 1904.63 sq. ft. The value of Shop GA was calculated at Rs.4,55,38,559/-.

17. The audit calculation referred to the area in square metres of 176.94 and the value of Shop GA 1 on the mezzanine floor at Rs.2,82,00,678/-. The total value was shown as Rs.8,91,95,454/-. After applying depreciation on the assumption that the building was 30 to 40 years old, the value was reduced by 40% and the net value was calculated at Rs.5,35,17,272/-. Since the lease was treated as being for a period of 15 years, the audit objection proceeded on the basis that, under Article 36(iii), 50% of the market value was required to be taken for calculating the stamp duty. On that basis, the value was calculated at Rs.2,67,58,636/-. Stamp duty at 5% under Article 25(b) was then calculated at Rs.13,37,932/-. Against the stamp duty of Rs.2,54,730/- levied, the audit objection calculated the short levy at Rs.10,83,202/-. In respect of the other document, the audit calculation similarly referred to the net value of Rs.4,42,43,542/-. After taking 50% of the market value on the basis that the lease was for 15 years, the value for stamp duty purposes was calculated at Rs.2,21,21,771/-. Stamp duty at 5% under Article 25(b) was calculated at Rs.11,06,089/-. Against the stamp duty of Rs.2,91,280/- levied, the short levy was calculated at Rs.8,14,809/-.

18. The audit objection showed the alleged total short levy in respect of both documents at Rs.18,98,010/-. In the present case, the dispute concerns Document No.4707 of 2011 and the alleged

short levy of Rs.8,14,809/- in relation to the said document.

19. Learned AGP for the Respondents submits that, on the basis of the aforesaid audit objection, the Authority found that stamp duty of Rs.8,14,809/- had been short-levied in respect of Document No.4707 of 2011. The said document was the subject matter of Adjudication Case No. ADJ/M/1947/2011. It is submitted by the learned AGP for the Respondents that the proceedings before the Authority were commenced pursuant to the audit objection. The Authority was justified in examining whether the document had been correctly classified at the time of its earlier adjudication and in determining the stamp duty payable on the document in accordance with the relevant provisions of the Bombay Stamp Act, 1958.

Reasons and Findings

20. I have considered the submissions made by the learned Advocates appearing for the Petitioners as well as the Respondents. I have gone through the Revenue Share Agreement and the important clauses relied upon by both sides. The main question which arises for consideration is whether the document is only an agreement creating rights and obligations, as submitted by the Petitioners, or whether in law it operates as a lease and stamp duty is payable under Article 36. Since similar questions arise in all these four petitions, the findings recorded herein would apply to all the four petitions.

21. The Petitioners submit that the document is described as a “Revenue Share Agreement” and that the necessary ingredients of

a lease are not found in the document. The Respondents submit that the name of the document is not important. According to them, if the recitals and operative clauses are read together, the document is really a lease for 15 years. In my view, this question cannot be decided only from the title given to the document. What is required to be seen is what rights have been created between the parties under the document. The same question has to be considered in each of the four petitions on the basis of the respective agreements which are under challenge.

22. The principle stated by the Supreme Court in *State of Maharashtra v. Atur India (P) Ltd.*, (1994) 2 SCC 497, is relevant for deciding this question. In paragraph 24, the Supreme Court, referring to Woodfall, held the difference between an agreement for lease and an lease. The relevant portion reads:

“A contract for a lease is to be distinguished from a lease, because a lease is a conveyance of an estate in land, whereas a contract for a lease is merely an agreement that such a conveyance shall be entered into at a future date.”

23. The same paragraph states:

“Although no specific words are necessary to create a lease, yet there must be words used which show an intention to demise”.

24. Therefore, what is required to be seen is whether the document creates a present right in the property or whether it only provides that a lease will be created at some later stage. The question cannot be decided merely because the parties have chosen to give some different name to the document.

25. The Supreme Court has held in paragraph 25 of *Atur India* that:

“A lease is a transaction which as of creates a tenancy in favour of the tenant.”

26. It has been stated that:

“Whether an instrument operates as a lease or as an agreement for a lease depends on the intention of the parties, which intention must be ascertained from all the relevant circumstances.”

27. Therefore, the present documents have to be read as a whole. The intention of the parties cannot be found by looking at only one clause. At the same time, one clause cannot be read in such a manner that the rights given under the other clauses are ignored. This principle applies equally while considering all four petitions.

28. In the present case, the document first states that the owner was in possession of the identified premises and that the second party approached the first party “to take on the schedule premises for using commercial purpose including to open restaurant”. It records that the first party agreed to allow the second party to use the premises. Therefore, from the beginning, the transaction was concerning the use and possession of immovable property by the second party for carrying on its business. The nature of the transaction has to be understood from these terms and not merely from the heading given to the document. Clause 1 of the Agreement provides that the first party “shall give and allow the Party of the Second Part to carry on their business in the said premises” for a “minimum period of Nine (9) Years as an Initial

period and after that Six (6) years as a renewal period”. Thus, the document is not merely saying that a lease may be executed in future. The document gives a right to the second party to use the identified premises for a fixed and substantial period. Such a provision is important while deciding the real nature of the transaction.

29. Clause 6 is important. The second party agreed to carry out alterations and make the premises usable, on the condition that the first party would allow the second party to continue its business for nine years and for six years. The first party agreed that it “shall not, in any circumstances whatsoever, terminate this Agreement or claim possession from the Party of the Second Part” during that period, except in the circumstances mentioned in the Agreement. This shows that the possession given to the second party was intended to continue for the agreed period. The owner could not simply take it back whenever it wanted. Such a right is more than a permission which can normally be withdrawn.

30. The clauses relating to possession are quite clear. Clause 9 provides that the first party “shall hand Over the vacant and peaceful Possession” of the premises to the second party immediately on execution of the Agreement. Thus, the document contemplated delivery of possession to the second party. It was not a case where possession was to be given only after some separate lease deed was executed in the future. This clause has to be given proper meaning while deciding whether the instrument creates a present right.

31. The right given to the second party is described as uninterrupted use. Clause 7(iii) states that the second party would be entitled to carry on business for nine years and six years “without any interruptions”. Clause 7(vi) similarly provides that the first party shall permit the second party to carry on the business “uninterruptedly and without any interference” for the agreed period. These clauses show that the second party was intended to have continuing possession and enjoyment of the premises during the agreed period.

32. The manner in which the consideration was fixed does not support the submission of the Petitioners. Under Clause 2, the second party agreed to pay one percent of the net turnover every month, subject to a minimum amount of Rs.5,00,000/-. It was agreed that the amount would increase every year. Merely because the consideration is described as a share in the revenue, with a minimum assured amount, it does not mean that the transaction cannot be a lease. The manner in which consideration is calculated cannot by itself decide the nature of the document.

33. The security deposit is one circumstance which can be looked at, though by itself it is not sufficient to decide the issue. Clause 10 records an interest-free refundable security deposit of Rs.60,00,000/- for performance of the terms of the Agreement. It was to be refunded at the end of the agreed term or on determination of the Agreement according to its terms. This shows that the arrangement was a substantial commercial arrangement involving continued possession and use of the premises. The later clauses show the nature of possession which was intended to be

given. The second party was permitted to carry on commercial activity, including restaurant business. It was permitted to put up boards and signages and to make fittings and alterations necessary for its business. Clause 27 refers to “leased Premises” and permits the second party to remove its furniture, fittings, air conditioners, counters and other installations at the expiry or termination of the Agreement. These words cannot be looked at separately. They are part of the overall arrangement under which the second party was given continuing commercial possession and use of the premises. The provisions relating to termination are important. Clause 22 states that the first party could not terminate the Agreement till the expiry of the minimum nine-year period and the six-year renewal period, except in case of breach and after following the procedure mentioned in the Agreement. Clause 24 provides that the second party would be entitled to use the premises uninterruptedly for the initial nine years and the six years and that the renewal “shall be as a matter of course and not within the discretion of the Party of the First Part”.

34. All these terms have to be considered together. The owner agrees to hand over vacant and peaceful possession. The second party gets the right to use the premises for a definite long period. The owner cannot take back possession during that period except in the specified circumstances. The second party is entitled to uninterrupted use. A substantial security deposit is taken. Periodic consideration is payable. The premises are to be used for the agreed commercial activity. When all these terms are read together, it becomes clear that a present right to possess and enjoy the

premises has been created in favour of the second party. It is not only a promise that some right may be created later.

35. This is the important difference between an agreement for a future lease and a lease. In paragraph 26 of *Atur India*, the Supreme Court considered an instrument which created an estate and observed:

“It creates an estate and not merely a set of rights and obligations.”

36. The Supreme Court held that the distinction is:

“the difference between something which creates an estate and something which creates merely a set of rights and obligations.”

37. The present Agreement, when read as a whole, falls on the first side of this distinction. It creates a present and continuing right to possess and use the identified premises during the agreed period. Therefore, it cannot be treated merely as an agreement to execute a lease at some future time.

38. The Petitioners have relied upon Clause 28. The said clause states:

“No right or interest is created or intended to be created by the party of the First Part in favour of the Party of the Second Part as tenant, lessee, and licensee or otherwise.”

39. This clause has to be considered. If it is read separately, it supports the case of the Petitioners. But the character of the document cannot be decided only by relying upon this one clause. The entire document has to be read. The Supreme Court has stated in paragraph 25 of *Atur India* that the intention has to be

“ascertained from all the relevant circumstances”. Therefore, Clause 28 cannot be allowed to override the other clauses which give possession, fix the period, restrict termination and provide for uninterrupted use. In fact, the Agreement contains expressions which point in the other direction. Clause 27 refers to “the leased premises” and to expiry or termination of “this lease deed”. Clause 16 refers to the property as partly “leased”. These expressions alone cannot decide the issue because the words used by the parties cannot determine the stamp duty payable. However, when these expressions are read along with the clauses relating to possession and the period of use, they support the conclusion arising from the operative terms of the Agreement.

40. The Petitioners rely upon the fact that the document is called a “Revenue Share Agreement”. This submission cannot be treated as decisive. The document has to be stamped according to its true effect. Merely giving a particular name to the document cannot take it outside the Article which applies to it. What has to be seen is what right was created. In the present case, the revenue sharing arrangement is the method used for deciding the consideration payable to the owner. It does not remove the right of possession and use which is otherwise created under the Agreement.

41. It is submitted that no lease was created because the second party did not commence its business. This submission cannot change the nature of the document. At the time of execution, the Agreement was made with the clear intention that possession would be given, and the premises would be used for the specified business. Clause 9 records immediate handover of vacant and

peaceful possession. Whether the business was started later, or whether the transaction was subsequently cancelled, is a later event. Such later event cannot by change a document creating a present right into a document which only proposed to create such right.

42. The same position applies to the subsequent Deed of Cancellation relied upon by the Petitioners. The issue before the Authority was the proper classification of the instrument which had been executed and presented for registration and the stamp duty payable on it. The subsequent cancellation does not change the rights and obligations which were created under the original Agreement when it was executed. On the material before the Court, there is nothing to show that the original Agreement was only a proposal to execute a lease in future. On the contrary, the Agreement provided for immediate possession and use of the premises.

43. It is necessary to consider the submission of the Petitioners that the document should be covered under Article 5(h)(A)(iv)(b). This provision applies to creation of “any obligation, right or interest and having monetary value, but not covered under any other article”. The words “but not covered under any other article” are important. Therefore, this provision cannot be applied where the instrument is covered by another Article of the Schedule. Once the document is found to be a lease, Article 36 is the specific provision which applies for levy of stamp duty on such instrument. The residuary provision under Article 5(h)(A)(iv)(b) cannot then be applied only because the parties have described the document

as a revenue sharing arrangement. Therefore, after finding the true nature of the document to be a lease, the Petitioners' reliance on Article 5 cannot be accepted.

44. The audit objection relied upon by the Respondents was based on the same reasoning. It recorded that although the documents were called “Revenue Sharing Agreements”, the recitals showed that they were “nothing but lease deeds for a period of 15 years”. On that basis, the Audit Team took the view that Article 36(iii), and not Article 5(h)(A)(iv)(b), was applicable. The audit objection considered the 15-year period and calculated the alleged short levy. Thus, the objection was not based only on the title of the document. It was based on the terms appearing in the document.

45. On considering the document, I find that the substance of the audit objection is supported by the Agreement. The Revenue Share Agreement creates a present right in favour of the second party to possess and use identified immovable premises for a fixed and substantial period. At the same time, corresponding obligations are imposed upon the owner not to disturb such possession except in the circumstances provided in the Agreement. These are important features of a lease.

46. The principle stated in paragraph 28 of *Atur India* supports this conclusion. The Supreme Court, while referring to *Tiruvembai v. Lilabai*, held that an agreement to lease, in the relevant statutory sense, must be a document which “effects a demise and operates as a lease”. A document which only gives a right to obtain a lease

in future stands on a different footing. The present Agreement does not merely give a future right to ask for a lease. It provides for immediate possession and use of the premises. Clause 9 provides for immediate delivery of possession. Clause 1 fixes the period. Clauses 6, 7 and 24 provide for continued and uninterrupted use during that period.

47. I find, after reading the Agreement as a whole, that the real nature of the transaction is that a present right was given to occupy and use the identified premises for a fixed period in return for periodic payment, subject to the other terms of the Agreement. Therefore, in substance, the document operates as a lease. This remains so even though it is called a “Revenue Share Agreement” and even though Clause 28 says that no tenancy, leasehold or other interest was intended to be created.

48. The submission of the Petitioners that the essential ingredients of a lease are completely absent cannot be accepted from the document. The contrary is seen from the provisions relating to immediate possession, fixed period, uninterrupted use, restriction on termination, payment of consideration and continued occupation. The document creates an interest in the property for the agreed period. Therefore, it cannot be treated only as an agreement creating obligations under Article 5(h)(A)(iv)(b).

49. The submission of the Respondents that the document was required to be assessed under Article 36 deserves acceptance. The audit objection correctly raised the question whether the instrument had been wrongly classified at the time of its original

adjudication. After examining the Agreement, I reach the same conclusion. The alleged short levy was not based only upon the name given to the document. It was based upon the effect of the terms contained in it.

50. The Petitioners have stated that the documents sought by them under the Right to Information Act were not supplied before the proceedings were completed. This submission has been considered. However, the issue before the Court can substantially be decided from the instrument, which is the document whose stamp duty is in dispute. Since the important question is the effect of that document, any additional material which does not alter its terms cannot change the result. No material has been shown which can take away the rights of possession and use given under the Agreement.

51. I hold that the Revenue Share Agreement, though described by the parties by that name, is in substance and effect a lease of the identified premises for the agreed period. It is governed by the specific provision relating to leases and cannot be placed under the residuary provision of Article 5(h)(A)(iv)(b). The same conclusion follows in respect of the other three petitions, the documents in each case containing substantially similar terms and raising the same issue regarding their true character.

52. Consequently, the basic submission of the Petitioners that the document is not a lease and that the Authority could not assess it under Article 36 cannot be accepted. The finding that the instruments were required to be assessed as leases is supported by

the terms of the respective Agreements themselves. The challenge raised in all four petitions fails on the principal ground urged by the Petitioners.

53. Therefore, the challenge to the impugned orders, insofar as it is based on the ground that the documents are Revenue Share Agreements and cannot attract Article 36, cannot succeed. The subsequent cancellation of the documents or the fact that the business was not commenced does not change the character of the instruments at the time when they were executed for deciding the issue before the Court. I have considered the other submissions made on behalf of the Petitioners, but none of them is sufficient to alter the conclusion reached from the Agreements themselves.

54. On considering all the material placed before the Court, I hold that the documents executed between the respective parties were not merely agreements creating obligations for the future. They created present rights of possession and enjoyment for the agreed period and answer the description of leases. The assessment of stamp duty under the provision applicable to leases was justified. The contrary submissions of the Petitioners are rejected. Consequently, all the four Writ Petitions are liable to be dismissed. The impugned orders passed by the competent authority and the consequential proceedings arising therefrom do not call for interference in exercise of the writ jurisdiction of this Court.

55. All four petitions Writ Petition No.4110 of 2017, Writ Petition No.4109 of 2017, Writ Petition (St) No.7952 of 2017, Writ Petition (St) No.7954 of 2017 are accordingly dismissed.

56. At this stage, Mr. Kadam, learned Advocate for the Petitioner seeks continuation of the ad-interim relief granted earlier.

57. The ad-interim relief granted earlier, if any, shall continue to operate for a period of four weeks from today.

(AMIT BORKAR, J.)