

In the High Court of Judicature at Madras

Dated :: 21.07.2015

Coram ::

**The Hon'ble Mr. Justice R. Sudhakar
and
The Hon'ble Ms. Justice K.B.K. Vasuki**

**Tax Case (Appeal) Nos: 759,
950 and 951 of 2007**

T.C. (A) No: 759 of 2007

Integrated Finance Co. Ltd.
112 Thyagaraja Road
T. Nagar, Chennai – 17.

... Appellant

-vs-

The Deputy Commissioner of Income Tax
Company Circle I
Chennai – 600 034.

... Respondent

Tax Case Appeal under Section 260 A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, "A" Bench,
Chennai dated 04.08.2006 in Int. A. No: 62 of 2003

T.C. (A) No: 950 of 2007

Integrated Finance Co. Ltd.
112 Thyagaraja Road
T. Nagar, Chennai – 17.

... Appellant

-vs-

The Joint Commissioner of Income Tax
Special Range VIII
Chennai – 600 034.

... Respondent

Tax Case Appeal under Section 260 A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, “A” Bench,
Chennai dated 19.07.2006 in Int. A. No: 28 of 2003

T.C. (A) No: 951 of 2007

Integrated Finance Co. Ltd.
112 Thyagaraja Road
T. Nagar, Chennai – 17.

... Appellant

-VS-

The Joint Commissioner of Income Tax
Special Range VIII
Chennai – 600 034.

... Respondent

Tax Case Appeal under Section 260 A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, “A” Bench,
Chennai dated 19.07.2006 in Int. A. No: 30 of 2003

For appellants : Mr. Vijayaraghavan

For respondents : Mr. T.R. Senthilkumar
Jr. Standing Counsel for
I.T. Department

.. ..

COMMON ORDER

This Court has framed the following substantial questions of law
for consideration while admitting these tax case appeals :

“ 1. Whether the Appellate Tribunal was right in law in holding that the finance charges received on purchase and hire back transactions is in the nature of loan and hence chargeable to interest tax ignoring the CBDT Circular No. 760 dated 13.1.1998 as well as the test laid down by the Supreme Court extracted thereon for determining whether a transaction is a loan transaction or not ? and

2. Whether the Appellate Tribunal was right in law in holding that the real intention of parties in all cases of purchase and hire back transactions is only to obtain finance and not to hire the asset ?”

2. The assessee's contention that the sale on Hire Back transaction should be treated on par with regular Hire Purchase transaction and therefore, the interest on loans and advances are not chargeable to tax under the Interest Tax Act was rejected by the assessing officer and was confirmed by the Commissioner (Appeals).

3. The issue as summarised by the Commissioner (Appeals) in one of the orders, which is identical in all the three cases, is as follows :-

“ 7. The second point of dispute is regarding the interest received on purchase and hire back transactions as under :-

<u>Asst. Year</u>	<u>Amount</u>
1997-98	Rs. 13,07,790
1998-99	Rs. 1,29,898

It was contended before the assessing officer that the sale and hire back transactions are no different from the regular hire purchase transactions and therefore cannot be treated as loans and advances under the provisions of Interest Tax Act. The assessing officer, however, found that in the present case, certain hire purchase transactions are with the parties who were already in possession of the assets which were the subject matter of hire purchase contract. In cases where the asset is pre-existing with the client, then the hire purchase contract is in effect a loan transaction whereby a loan relatable to the value of the asset is given by the appellant and recovered in installments just like any other loans though the term used for such repayment are hire purchase installments. Therefore, in essence the transactions involving sale and hire back are a mechanism to raise funds on the security of concerned asset and do not involve acquisition of any fresh asset as in the case of normal hire purchase transactions. The assessing officer, therefore, held that the finance charges arising from the purchase and hire back transactions involving

second hand assets come within the meaning of term "interest" defined under Sec. 2 (7) of the Interest Tax Act. "

4. The findings rendered by the Commissioner (Appeals) at paragraph 8 of his order dated 5.12.2002 is as follows :

" 8. I have carefully considered the submissions of the learned counsel for the appellant and perused the requisite material available on record. Admittedly, the hire purchase / lease transactions in question involved old/second hand assets, inasmuch as these transactions were entered with the parties who were already in possession of the assets which were the subject matter of the contracts. The assets were pre-existing with the customers and therefore the hire purchase and lease back transactions in respect of old vehicles are basically the loan transactions entered into to secure the loan amount against the said vehicles. I am, therefore, in total agreement with the findings of my predecessor in the appellate order cited supra in the appellant's own case earlier assessment year. The addition for both the years is therefore confirmed. The appellant fails. "

5. Consistently, the Commissioner (Appeals) have upheld such orders and the Tribunals have also followed the same. The Tribunal, in the instant case, taking note of the Circular No. 760 issued by the CBDT dated 13.01.1998 came to the conclusion that in the absence of an agreement or document produced by the assessee to prove that it is a sale-cum-hire back transaction, held that the findings of the lower authority that it is a financial transaction in respect of an old asset cannot be found fault with and confirmed the order of the C.I.T. (Appeals).

6. We have heard the learned counsel on either side and perused the orders passed by the Tribunal in all the appeals.

7. The department's objection on this issue before the Tribunal is as follows :

“ 3. On the other hand, the Id. DR submitted that this issue has already been adjudicated in the case of the assessee in Int. T.A. Nos. 57, 58, 134 to 136/Mds/1999 and 57/Mds/2003, where it has been held by the Tribunal vide para 8 that transactions regarding old vehicles are only finance transactions and would come under the purview of

interest-tax. He submitted that no evidence has been produced before

the Tribunal or even before the lower authorities to prove that such transactions involved bonafide sales and ultimately amount to hire purchase transactions only. "

8. The Tribunal, taking note of the decision of the Supreme Court as well as the CBDT Circular came to hold that, in the light of the decision of the Supreme Court, more particularly paragraph 5 of the CBDT Circular, the transaction in each case should be examined for the purpose of charging interest tax and such of those transactions which are not in the nature of hire purchase should be subject to levy of interest under the Interest Tax Act.

9. We find that the reason given by the Tribunal, which we set out hereunder, is in conformity with the circular and the decision of the Supreme Court :

" 4. We have considered the rival submissions carefully. Paragraphs 4 & 5 of the Circular No. 760 issued by the CBDT reads as under :

" 4. In this connection, the Assessing Officer

should keep in mind the tests laid down by the Supreme Court in the case of *Sundaram Finance v. State of Kerala* (AIR 1996 SC 1178) wherein it has been held as under -

“ If there is a bonafide and completed sale of goods evidenced by documents, anterior to and independent of subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction even though the reason for which it was entered into was to raise money ”

“ the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loan advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financing transactions.

5. Accordingly, instead of routinely treating all hire-purchase transactions as merely financing transactions, the Assessing Officers may be advised to examine each transaction in the above light and charge interest-tax in such of those transactions which are not in the nature of hire-purchase. ”

From the above, it is clear that transactions can be treated as hire purchase transactions only if there is bonafide and complete sale of goods, as evidenced by documents. **But no agreements or documents have been produced before us for such verifications.** This issue was earlier decided by the “A” Bench of the Chennai Tribunal in the case of the assessee in Int. TA Nos. 57, 58, 134 to 136/Mds/1999 and 57/Mds/2003 vide order dated 25.7.2005, whereby vide para 8 it was held as under :-

“ 8. We have considered the rival submissions carefully and have gone through the relevant material on record as well as the decisions cited by the parties. We agree with the contention of the Id. DR. As observed by the Special Bench of the Tribunal in the case of Mideast Portfolio Management Ltd. v. DCIT (supra), normally court must proceed on the basis of the declared intention of the parties to a document/transaction/arrangement. However, if such intentions are under doubt or are challenged, then court is duty bound to find out the real intention of the parties by looking at the real intention exhibited in the documents. The decisions relied on by the Id. Counsel of the assessee are quite distinguishable. In case of Unimed Technology Ltd. v. DCIT (supra), the case was decided u/s. 143 (1) of the I.T. Act and thus has no bearing on the issues before us. Similarly in case of Consortium Finance Ltd. v. JCIT (supra), the issue before the Bench was whether lease transaction was genuine or not and thus has no application to the case before us. In New Deal Finance & Investments Ltd. v. DCIT (supra), the issue involved was whether depreciation is allowable in case of sale and lease back transactions or not. In Karam Chand Thapar Bros vs. DCIT (Supra), again the issue involved was whether depreciation was allowable in case sale and lease back transaction or not. As far as the case of Harita Finance Ltd. v. ACIT (Supra) is concerned, there new assets were involved and financing of new assets is quite different from financing of old assets. The Tribunal in case of Harita Finance Ltd. v. JCIT, TVS Lakshmi Credit Ltd. vs. JCIT and TVS Finance & Services Ltd. has clearly held vide para 4 of the consolidated order that in case of refinance transactions involving old assets, such refinance charges

collected by the assessee will come within the purview of interest defined in the Interest-tax Act. In case of old assets what the recipient is looking for is finance and agreement for obtaining such finance may be framed in any manner, but the real intention is only to obtain finance and not to hire the asset. Keeping in view all these circumstances, we set aside the order of the Id. CIT (Appeals) and decide this issue in favour of the Revenue.

5. We would like to note that in the absence of any documentary evidence, the only conclusion which can be reached in the case of old assets is that such transactions were entered into for the purpose of finance only. For example, if somebody is already owning a car and if he goes to the financier for obtaining finance, then his intention is not to sell the car, but to obtain finance against security of his vehicle. Therefore, it cannot be said that such transaction was entered with the intention of sale. Therefore, we go by our earlier order, where the issue was discussed in detail and a conclusion was reached that in case of old assets, transaction would amount to finance transaction only which is subject to interest – tax. In these circumstances, we find nothing wrong with the order of the Id. CIT (Appeals) and confirm the same.”

10. We are unable to accept the contention of Sri.Vijayaraghavan learned counsel appearing for the assessee that if the sale precedes the Hire Purchase Agreement, it would still fall within the definition of Sale and Hire Back Transaction. The later part of paragraph 4 of the circular issued by the CBDT, which we extracted above would be

applicable to the facts of the present case as we find that all the authorities have consistently held that there is no proof of actual sale though it is claimed as Sale and Hire Back transaction. As all these are findings of fact, we have no other option but to accept the department's plea and reject the assessee's contention.

11. Accordingly, we answer the first question of law raised in favour of the revenue and against the assessee. Consequently, the second question of law does not arise for consideration. All the tax case appeals stands disposed of. There shall be no orders as to the costs.

Index : Yes / No
Website : Yes / No
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(R.S.J.) (K.B.K.V.J.)
21.07.2015

To

1. The Deputy Commissioner of Income Tax
Company Circle I
Chennai – 600 034.
2. The Joint Commissioner of Income Tax
Special Range VIII
Chennai – 600 034.

R. Sudhakar, J.
and
K.B.K. Vasuki, J.

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