IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal Nos. 3 to 8 of 2018

Tristar Container Services (Asia)
Private Limited, No. 18,
Swamy Sivananda Salai,
Chepauk, Chennai - 600 005.

...Appellant in all the appeals

-vs-

The Assistant Commissioner of
Income Tax, Corporate Circle III(1),
Chennai - 600 034.

...Respondent in all the appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 29.03.2017 in ITA Nos. 937 to 942/Mds/2016, for the Assessment years 2007-08 to 2012-13 arising against the order of the Commissioner of Income Tax (Appeals II) Chennai 34 in I.T.A. Nos. 96, 97/15-16/CIT(A) II dated 10.02.2016, I.T.A. No. 563/2013-2014 & 247/2014-2015/CIT (A) 11, dated 22.02.2016, I.T.A. Nos. 98 & 99/CIT(A) 11/2015-2016 dated 22.02.2016 respectively, arising upon the assessment orders of the Assistant Commissioner of Income Tax (OSD), Corporate Circle 3, Assistant Commissioner of Income Tax, Company Circle III(2), Deputy Commissioner of Income Tax, Company Circle III(2) dated 25.03.2015, 28.03.2013, 30.03.2014 respectively for the assessment year 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 & 2012-2013, respectively (PAN.AAA.C74043K)

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For Appellant (in all the appeals)	:	M/s.R.Sankara Narayanan Senior Counsel for Mr.N.P.Vijay Kumar
For Respondent (in all the appeals)	:	Ms.V.Pushpa for Mr.M.Swaminathan

JUDGMENT

[Judgement of the Court was delivered by

T.S.Sivagnanam,J.]

These appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') are directed against the common order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 29.03.2017 in ITA Nos.937 to 942/Mds/2016, for the Assessment years 2007-08 to 2012-13.

2.These Appeals have been filed raising the following Substantial Questions of Law:

> "(i)Whether or not lease rentals paid by the appellant under the Lease Agreement constitute revenue expenditure an therefore an allowable expenditure under the Income Tax Act, 1961?
>
> (ii)Whether or not the findings rendered by the Tribunal on the treatment of accounts relating to containers and lease expenditure contrary to materials made available before the Tribunal?"

3.The assessee filed the return of income for the relevant years, and by way of illustration, we take up the facts relating to the return of income for the assessment year 2007-08. This return was filed on 29.10.2007 returning an income of Rs.64,73,426/-. The return was taken up for scrutiny by issue of notice under Section 143(2) of the Act. The assessee participated in the assessment proceedings, details were called for and books of accounts and other records were produced. The assessment was completed under Section 143(3) of the Act.

4. Subsequently, assessment was re-opened by issue of a notice under Section 148 of the Act. The assessee objected to the re-opening by filing their objections. One of the issues which was subject matter of the assessment proceedings was, with regard to the lease rental payments for containers. The assssee claimed that the whole of lease rental as revenue expenditure. The Assessing Officer disallowed the same on the ground that the lease is financial lease and principal component of the lease rentals are capital expenditure in nature. It appears that an alternate submission was made and the Assessing Officer allowed the same as a claim for depreciation.

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5. The assessee carried the matter by way of appeals before the CIT(A)-XI. The Commissioner confirmed the findings of the Assessing Officer holding that the financial lease is the lease that substantially transfers all the risks and rewards incident to the ownership of an asset. Against the said order, the assessee filed appeal before the Tribunal. One of the grounds raised before the Tribunal was that CIT(A) failed to appreciate that the Act does not differentiate leases as Finance and Operating and in all cases of lease, the lease rentals are considered as revenue both in the hands of Lessor and Lessee.

6. Further, it was submitted that CIT(A) failed to note that the resident lessors have offered lease rental as income for income tax purpose and have been accordingly assesssed in their tax assessments. Further, it was contended that the CIT(A) failed to note that the direction given by him in his order would result in double taxation in respect of lease rental in question. The Tribunal by the impugned order, dismissed the assessee's appeal. The finding rendered by the Tribunal in paragraph 7 reads as follows:-

> "We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the containers were taken as lease. A copy of the agreement available at paper-book shows that it is a lease-cum-purchase containers. It is not clear from the agreement whether it is a finance lease or operating lease. The fact remains that the assessee treated the containers as capital asset and alternatively claimed depreciation also. The alternative claim of depreciation was allowed by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed."

7. We have heard Mr.R.Sankara Narayanan, learned Senior Counsel for Mr.N.P.Vijay Kumar, learned counsel for the assessee and Ms.V.Pushpa for Mr.M.Swaminathan, learned Counsel for the respondent/Revenue.

8.The assessee's case is that, they being a company registered under the Companies Act are bound to maintain its books of accounts for compliance with Accounting Standards and as per Accounting Standard 19, the assessee treats the containers taken on finance lease as assets in its books of account and depreciates these assets over a period of time in its books of account even though it is not the legal owner of the containers.

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9. It is the further case of the assessee that Accounting Standard 19 was introduced in the year 2001 and requirement of capitalising the assets taken under Finance lease was brought in from the said year. Till then even for accounting purpose all the lease rentals were charged as revenue expenditure and the question of capitalising the assets does not arise. It was further contended that for income tax purposes, the assessee has claimed the whole lease rentals as revenue expenditure.

10. The learned counsel on the either side referred to the relevant conditions in the agreement. The learned counsel for the assessee referred to the business conditions dated 15.08.2001, more particularly, Clause 3(b), which deals with the lessee's liability to the lessor for all damage to or loss or destruction of the containers. Reference was made to Clause 6 (b), which deals with default remedies and Clause 10, which deals with subleasing and assignment. These clauses were referred to by the learned Senior Counsel to emphasize as regards the ownership rights.

11.Ms.V.Pushpa, the learned Counsel for the Revenue referred to the rate schedule and in particular Clause B, which states that the term of the agreement shall be 5 years commencing on the day of pick-up by the lessee and expires on 14.08.2006. The learned counsel also referred to the other conditions contained in paragraph IV(C) which deals with casualty and paragraph E, which deals with Security Interest. Thus, the interpretation given by the assessee and the revenue wholly revolves around the interpretation of terms and conditions of lease agreement. Parallelly, what is to be borne in mind is the stand taken by the assessee that they are bound under the provisions of the Companies Act to follow Accounting Standard 19.

12.The other issue would be whether the alternate claim of depreciation can be made by the assessee can be the sole reason for rejecting the other grounds. Bearing in mind the above grounds raised by the parties, if we peruse the order passed by the Tribunal, we find that the Tribunal has not examined the factual position which it was bound to do as the last fact finding body. The Tribunal having rendered a finding that it is not clear from the agreement, whether it is finance lease or operating lease, could not have rendered the finding in the next line with regard to how the assessee treated the containers while claiming depreciation. We find that the claim for depreciation was an alternate plea and it is settled legal position that the assessee under the Provisions of Income Tax

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Act can raise alternate plea despite the fact, the alternative pleas may be in conflict with each other.

13.We may refer to Accounting Standard 19 issued in the year 2001 and in particular, the Chapter relating to classification of leases and in Clause 8 of the said Chapter, it has been stated that whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than its form. Illustrations have been given pointing out the examples of situation which would normally lead to a lease being classified as finance lease. However, the Tribunal did not make any endeavour to appreciate the documents examining the effect of Accounting Standard 19 as projected by the assessee. Therefore, we are of the considered view that the matter has to be decided afresh by the Tribunal by examining the documents, effect of Accounting Standard 19 as pointed out by the assessee and then take a decision on merits and in accordance with law.

14. As we are convinced that the Tribunal did not undertake any exercise to examine the factual aspect, we are well justified in interfering with the order passed by the Tribunal and remanding the matter for fresh consideration. Having come to such a conclusion, there would be no necessity of answering the Substantial Questions framed for consideration.

15. In the result, the appeals are allowed; the order passed by the Tribunal is set aside and the matter is remanded for fresh consideration to examine all factual and legal issues and proceed in accordance with law and the Substantial Questions of Law framed for consideration are left open. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

mrm/svki
To

1.The Assistant Commissioner of
Income Tax, Corporate Circle III(1),
Chennai - 600 034.

2. The Income Tax Appellate Tribunal Madras 'B' Bench.

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3. The Commissioner of Income Tax (Appeals II) Chennai 34.

4. The Deputy Commissioner of Income Tax Company Circle III(2)

+1 CC to Mr.M.Swaminathan, Advocate sr 80263.
+3 Ccs to Mr.N.P.Vijayakumar, Advocate sr 80801.

PVS(CO)
SP(13/02/2019)

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