

ORDER

OD – 19

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/62/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
VERSUS
M/s. EIH LIMITED

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI

The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 20th December 2023.

Appearance:

Mr. Prithu Dudheria, Advocate
... for appellant.

Mr. Akhilesh Kr. Gupta, Advocate
Mr. Sohan Sen, Advocate
... for respondent.

1. Heard Sri Prithu Dudheria, learned counsel for the appellant / Income Tax Department and Sri Akhilesh Kumar Gupta, learned counsel for the respondent/assessee.
2. This appeal was admitted by order dated 08.06.2018, on the following substantial questions of law:-

“[i] Whether the decision of the Tribunal in confirming the order of the Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 and in setting aside revisional order of the Commissioner on the question of disallowability maintenance expenses and depreciation was contrary to law or not?

(ii) Whether the finding of the Tribunal in permitting deduction of lease rent for vehicle obtained on lease by the Assessee was perverse or not?”

3. Requirement of filing paper book was dispensed with by the aforesaid order.

4. We have heard learned counsel for the parties and carefully perused the record of the appeal.

5. The finding of the Income Tax Appellate Tribunal recorded in the impugned order dated 19.02.2016 in ITA No.529/Kol/2013(Assessment Year 2008-09) that the respondent/assessee is engaged in business of chartering flights and had derived chartering income to the tune of Rs.1,69,85,132/- which evidences the business nexus of use of aircrafts owned by the respondent/assessee. This being the finding of fact and not disputed by the revenue even before us, it can be safely concluded that the aircrafts were utilised for business purpose. Even if officers of the respondent/assessee i.e. directors have used the aircrafts for business meetings in different locations, it cannot be said to be a personal use. The respondent/assessee is a company and thus an artificial juristic person. Therefore, even if directors on some occasion have been allowed to use the aircrafts for their personal use, neither the expenses incurred in maintenance of the aircrafts nor the depreciation of the aircrafts can be disallowed, inasmuch as then, at the best, the value of use of the aircrafts on such occasion is perquisite in the hands of the user. On that account, neither depreciation nor maintenance can be disallowed, even partially. The Tribunal has found that the aircrafts have been used for chartering business. Substantial receipts from chartering business has been shown by the assessee. Therefore, the view taken by the Tribunal in the

impugned order, does not suffer from any error of law. Hence, the substantial question of law No.(i) is answered against the revenue and in favour of the assessee.

6. Apart from the above, learned counsel for the respondent/assessee has also placed before us a judgement and order dated 27.06.2018 in ITAT No.298 of 2016 (Principal Commissioner of Income Tax, Kol-3, Kolkata v. EIH Limited) relating to assessment year 2002-03, which is inter parties; by which the appeal of the revenue raising objection to the admissibility of depreciation and maintenance was dismissed by this Court. Similarly, in an appeal being ITAT No.34 of 2020 (Principal Commissioner of Income Tax, Kol-3, Kolkata v. M/s. EIH Limited) filed by the revenue against the present assessee relating to assessment year 2008-09, substantial question of law No.(i) was framed by a co-ordinate Bench of this Court as under:-

“Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in deleting the disallowance of Rs.1,99,56,281/- being 60% of the aggregate expenditure incurred on running and maintenance of aircrafts without considering that the aircrafts were also used for personal purposes of the directors?”

7. The afore-quoted question law was answered by the co-ordinate Bench of this Court by judgement and order dated 16.12.2021 in the aforesaid ITAT No.34 of 2020 as under:

“Substantial question of law no.1 was question no.4 therein and we find from the judgment dated 23rd July, 2018 passed in ITAT/53/2017 that the said question was not pressed by the

revenue and consequently rejected. Therefore, the substantial question of law no.1 raised before us stands rejected.”

8. Thus, since the revenue/appellant themselves have conceded on the question of admissibility of the maintenance expenses and depreciation of the aircrafts, in full, in the matter of the present assessee in other assessment years, therefore, the revenue cannot be allowed to take a contrary stand in the present appeal. Therefore, for this reason also, the afore-quoted substantial question of law is answered in the manner as afore-stated i.e. against the revenue and in favour of the assessee.

9. So far as the substantial question of law no.(ii) is concerned, we find that in the impugned order, the Tribunal has dealt with the question of lease rent in paragraphs 4.1 to 4.4.1, wherein it meticulously considered the facts and evidences and thereafter recorded a finding of fact that the respondent/assessee has taken certain vehicles on lease from Orix Auto Infrastructure Services Limited and paid total lease rent of Rs.393.52 lakh. Depreciation on vehicles was claimed by the lessor i.e. the owner namely M/s. Orix Auto Infrastructure Services Limited. The respondent/assessee has not claimed any depreciation as per provisions of the Act 1961 and instead had claimed the entire lease rental as revenue expenditure.

10. Relying upon the judgment of the Hon'ble Supreme Court in the case of *I.C.D.S. Ltd. & Anr. v. CIT* reported in (2013) 350 ITR 527 (SC) and a judgment of Rajasthan High Court (Jaipur Bench) in *Rajshree Roadways v. Union of India & Ors.* reported in (2003) 263 ITR 206 (Raj.), the Tribunal held that the issue of

lease rent is covered by the aforesaid judgment of the Hon'ble Supreme Court and hence the order passed by the Assessing Officer by taking one possible view, cannot be termed as 'erroneous' warranting initiation of revision proceedings under Section 263 of the ACt, 1961. The Tribunal also found that in own case of the respondent/assessee for the assessment year 2011-12, the issue was accepted by the revenue, pursuant to the directions of the DRP.

11. In view of the facts and legal position, as briefly noted above, the impugned order of the Tribunal on the point of lease rent cannot be said to suffer from any illegality. Hence, the substantial question of law no.(ii), on facts of the present case, is answered against the revenue and in favour of the assessee.

12. In the result, the appeal (ITA/62/2018) is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)