

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.376/Del./2014
Assessment Year 2009-2010

M/s. NIIT Ltd., 8, Balaji Estate, 1 st Floor, Guru Ravi Das Marg, Kalkaji, New Delhi – 019. PAN AAACN0085D	vs	The DCIT (LTU), Central Circle-16(1), New Delhi.
(Appellant)		(Respondent)

ITA.No.2801/Del./2017
Assessment Year 2009-2010

M/s. NIIT Ltd., 8, Balaji Estate, 1 st Floor, Guru Ravi Das Marg, Kalkaji, New Delhi – 019. PAN AAACN0085D	vs	The DCIT, Central Circle-20, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Jain, Advocate Shri Tejasvi Jain, C.A. & Ms. Somya Jain, C.A.
For Revenue :	Shri Sankar Naskar, Sr. D.R.

Date of Hearing :	30.10.2019
Date of Pronouncement :	01.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by Assessee are directed against different Orders of the Ld. CIT(A). Both the appeals are decided together.

2. We have heard the Learned Representatives of both the parties and perused the material on record. The appeals are decided as under.

ITA.No.376/Del./2014 – A.Y. 2009-2010 :

3. This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXXII, New Delhi, Dated 20.11.2013, for the A.Y. 2009-2010, challenging the disallowance of Rs.50,09,835/- recognised as principal payments made towards finance lease.

4. Briefly the facts of the case are that assessee is a Public Limited Company engaged in the business of Information Technology Education and Knowledge

Solutions. For the year under consideration, the assessee filed return of income on 29.09.2009 declaring Rs.25.81 crores, which was processed under section 143(1) of the I.T. Act, 1961. The issue in the present appeal is regarding disallowance of Rs.50,09,835/- towards finance lease. The A.O. noticed that assessee has claimed deduction of Rs.50,09,835/- in respect of payment of principal amount of finance lease. The A.O. asked the assessee to explain as to how this amount is allowable as revenue expenditure. After considering the reply filed by assessee, A.O. held that though the interest on such finance lease allowable as revenue expenditure, payment of principal amount cannot be allowed as revenue expenditure because it is capital expenditure in nature in respect of the value of leased assets. The A.O. following the Order of ITAT, Delhi Bench in the case of Rio Tinto India Pvt. Ltd., vs. ACIT in ITA.No.363/Del./2012 disallowed the deduction claimed by the assessee on account of principal amount of finance lease.

4.1. The addition was challenged before the Ld. CIT(A). The written submissions of assessee is reproduced in the appellate order in which the assessee has briefly explained that assessee had taken infrastructure/movable assets on lease which were located at the three places i.e., Malleswaram Centre, Bangalore, Mehdiapatnam Centre, Hyderabad, Mylapore Centre, Chennai. It was further submitted that in accordance with the mandatory prescription of Accounting Standard AS-19 on "Leases" issued by the Institute of Chartered Accountants of India ["ICAI"], the aforesaid leases were recognised as finance lease. Accordingly, the present value of future lease rents was recognised as capital assets in the books of account and correspondingly recognised as liability. Lease rents payable over the period of lease are divided into two parts i.e., (i) principal payment of its cost of asset, which is reduced from the liability recognised in the books and (ii) finance charges, which is recognised as expense and debited to the P & L A/c. Accordingly in the books of account, out of the total lease rent of Rs.56,73,765/- paid by the assessee

during the relevant previous year, an amount of Rs.50,09,835/- was adjusted against the principal repayments towards the cost of asset and the balance amount of Rs.6,63,930/- was recognised as interest and debited to P & L A/c, the details of which, are reproduced in the appellate order. It was submitted that since the entire lease rent was towards use of the infrastructure, therefore, allowable as deduction in its entirety the purposes of computing taxable income under the Act.

4.1. The A.O. however disallowed the impugned amount being the amount attributable towards capital cost of assets in the books of account. It was submitted that AS-19 on accounting for "Leases" issued by ICAI is only applicable for accounting of the lease transaction in the books of account. It is well settled Law that treatment in the books of account is not determinative of liability towards income tax for the purpose of the Act. The liability under the Act is governed by the provisions of the Act and is not dependent on the treatment followed for the same in the books of account. The assessee relied upon the decisions of

the Hon'ble Supreme Court in the case of Sutej Cotton Mills Ltd., vs. Commissioner of Income Tax 116 ITR 1 (SC) and Kedarnath Jute Mfg. Co., Ltd., vs. Commissioner of Income Tax 82 ITR 363 (SC). It was submitted that under the Income Tax Act depreciation is allowable under section 32 of the I.T. Act only to the 'Owner' of the asset. Lease charges paid for the use of the asset, without acquiring any ownership rights in the same, are allowable as revenue expenditure under section 37 of the I.T. Act. The assessee relied upon Circular No.2 of 2001 Dated 09.02.2001 issued by CBDT wherein it has been clarified that the aforesaid Accounting Standard issued by ICAI creating distinction between finance lease and operating lease will have no implications under the provisions of the Act. The assessee also relied upon FAQ No.82 CBDT's Circular No.8/2005 Dated 29.08.2005, which provides that rent paid or payable for financial lease of a motor car is in the nature of expenditure on running and maintenance of motor car and, therefore, such expenditure would be treated as expenditure, within the scope of clause (1) sub-clause (H) of

sub-section (2) of Section 115WB of the I.T. Act. The CBDT has, thus, clarified that treatment of finance lease for the purpose of accounts is not relevant for the purpose of computation of income for tax purpose under the Act. The assessee also relied upon Judgment of the Hon'ble Supreme Court in the case of ICDS Ltd., vs. Commissioner of Income Tax 350 ITR 527 (SC) wherein the Court held that *"lesser is the owner of the leased property in the case of finance lease and is, therefore, entitled to depreciation on the same."* The assessee also relied upon Judgment of the Hon'ble Rajasthan High Court in the case of Commissioner of Income Tax vs., Banswara Synthetic Ltd., 216 Taxman 113 (Raj.) in which it was held that *"lease rentals paid by the lessee in case of a finance lease was allowable as revenue expenditure under section 37(1) of the I.T. Act and not as interest by treating cost of lease assets as loan amount."* The assessee also relied upon decision of Hon'ble Karnataka High Court in the case of Banashankari Medical and Oncology Research Centre Ltd., [2009] 316 ITR 407 (Kar.). *"In that case, the assessee had taken certain equipments on*

lease, for which, it had paid certain sum as deposit which was to be adjusted against the lease rentals and besides that, the assessee was also paying finance/interest charges to the owner of the equipments. The entire amount of lease rentals paid during the year, was claimed by assessee as revenue expenditure under section 37(1) of the I.T. Act. The claim of assessee have been allowed". It was further submitted that in preceding A.Y. 2007-2008 similar claim of assessee have been allowed in the Order under section 143(3) of the I.T. Act. Therefore, rule of consistency do apply to the income tax proceedings. The assessee relied upon Judgment of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. Commissioner of Income Tax 193 ITR 321 (SC). It was, therefore, submitted that that these are revenue expenditure and the same should be allowed under section 37(1) of the I.T. Act. The Ld. CIT(A), however, dismissed the appeal of assessee following the Order of the Tribunal in the case of Rio Tinto India Pvt. Ltd., vs., ACIT (supra).

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to by lease agreement executed time to time between the parties and referred to the agreement Dated 01.09.2006 and 01.04.2008 between assessee and the lesser, copies of which, are filed at pages 73 to 86 of the PB. He has submitted that on similar agreement, similar claim of assessee have been allowed in the scrutiny orders under section 143(3) for A.Ys. 2007-2008 and 2008-2009. Rule of consistency do apply to the income tax proceedings. Therefore, claim of assessee should be allowed. He has referred to Annexure filed with the lease agreement to show that infrastructure and office furniture have been taken on lease for running the business of the assessee. Therefore, lease rental is revenue expenditure in nature. He has referred to PB-123 which is details of earlier year as well as assessment year under appeal. PB-124 is Circular No.2/2001 (supra). Learned Counsel for the Assessee is again referring FAQ No.82 of CBDT's Circular No.8/2005 Dated 29.08.2005 [PB-131]. He has also relied upon

Judgment of the Hon'ble Rajasthan High Court in the case of Rajshree Roadways vs., Union of India [2003] 263 ITR 206 (Raj.) in which it was held that "*lease rent paid by assessee should be allowed as revenue expenditure*". He has relied upon Order of ITAT, Delhi E-Bench in the case of same assessee for A.Ys. 2012-2013 and 2014-2015 in ITA.Nos.6778 & 6779/Del./2018 Dated 26.07.2019, in which, assessee was granted the benefit of finance lease expenses as revenue expenditure. He has also relied upon Judgment of ITAT, Ahmedabad Bench in the case of Axis Bank Ltd., vs. Addl. Commissioner of Income Tax, Range-1, Ahmedabad [2017] 79 taxmann.com 187 (Ahd.-Trib.) in which the Tribunal following the Order of the Coordinate Bench, allowed the claim of assessee for depreciation of wind energy generators acquired under operating lease agreement.

6. On the other hand, Ld. D.R. relied upon Orders of the authorities below and submitted that assessee made entries in the books of account as amount is capital in nature, therefore, appeal of assessee may be dismissed.

7. We have considered the rival submissions and perused the material available on record. It is not in dispute that in assessment year under appeal assessee is engaged in the business of Information Technology Education and Knowledge Solutions. The assessee claimed the amount in question as revenue expenditure because finance lease were paid for the purpose of business. It is not in dispute that assessee entered into lease agreements time to time with different parties and provisions have been made for infrastructure facilities. Copies of the lease agreements Dated 01.09.2006, 01.04.2008 and 01.06.2008 are filed in the paper book, in which, terms and conditions of lease have been mentioned. It is provided that after termination of the agreement, assessee would buy the infrastructure. Annexure-A is provided to the initial agreement, according to which, assessee have been provided infrastructure asset for Front Office, Centre Head Room, Cashier Room, OCRs-1, 2, 3, Server Room, Library, Facultys Room, SSA Room, Store Room, Class Room, Machine Room Passage and Security Table. The description of the items is also provided

which are mainly tables, chairs, ordinary tables, sofa, fan, iron file rack, cashier table, CPUs, Monitor, Projector EPSON and Black and White Monitor etc. These infrastructure are required for the purpose of business of the assessee. The assessee paid finance lease rentals to the lessor for the purpose of business. Thus, the assessee is not owner of these infrastructure facilities provided on rent. Similar claim of assessee on the basis of same agreements have been allowed in favour of the assessee in preceding Assessment Years 2007-2008 and 2008-2009 in the scrutiny assessments under section 143(3) of the I.T. Act, 1961. In Assessment Years 2012-2013 and 2014-2015 also, the Tribunal has allowed the claim of assessee of the similar nature vide Order dated 26.07.2019. The decisions relied upon by assessee before the authorities below are squarely apply to the facts and circumstances of the case.

7.1. It is well settled Law that rule of consistency do apply to the income tax proceedings. Therefore, the A.O. should not have taken out a different view in the assessment year under appeal, when similar claim of

assessee have been allowed as revenue expenditure in earlier years. Considering the totality of the facts and circumstances of the case and nature of infrastructure facilities provided to the assessee on lease rent, it is clear that the same have been provided through Agreement for business purpose of the assessee. Since assessee used these items wholly and exclusively for the purpose of business and was not the owner of the same, therefore, assessee rightly claimed the same as revenue expenditure and rightly claimed the deduction of the same. It is also well settled Law that the liability under the Act is governed by the provisions of the Act and is not depending on the treatment followed for the same in the books of account. It is also well settled that whether the assessee was entitled to a particular deduction or not, would depend upon the provisions of Law relating thereto, and not on the view, which the assessee might take of his right, nor could the existence or absence of entries in the books of account be decisive or conclusive in the matter. In view of the above discussion, we do not find any justification to sustain the addition. We, accordingly,

set aside the Orders of the authorities below and delete the entire addition.

8. In the result, ITA.No.376/Del./2014 of the Assessee allowed.

ITA.No.2801/Del./2017 – A.Y. 2009-2010 :

9. This appeal by assessee has been directed against the Order of the Ld. CIT(A)-27, New Delhi, Dated 27.02.2017 for the A.Y. 2009-2010, challenging the levy of penalty under section 271(1) (c) of the I.T. Act, 1961.

10. In this case assessment was completed under section 143(3) of the I.T. Act, 1961. The A.O. made addition of Rs.7.33 crores on account of disallowance of loss of 10B Unit, which claim of assessee have been allowed by the Ld. CIT(A) and addition have been deleted. The A.O. made further addition of Rs.50,09,835/- on account of finance lease and addition of Rs.40,73,987/- on account of long term capital gains. The Ld. CIT(A) has confirmed the addition of Rs.50,09,835/-. However, assessee has not raised any ground with regard to addition made of

Rs.40,73,987/- on account of long term capital gains. The A.O. on both these additions totalling to Rs.90,83,882/- [Rs.50,09,835 + Rs.40,73,987] levied the penalty under section 271(1)(c) of the I.T. Act, 1961, vide Order Dated 30.03.2015. The Ld. CIT(A) merely considering that both these additions have been confirmed by the Ld. CIT(A), dismissed the appeal of assessee for penalty.

11. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A). It is well settled Law that Ld. CIT(A) while deciding the appeal of assessee shall have to mention point for determination and reasons for decision in the appellate order. The Ld. CIT(A) confirmed the levy of penalty merely because Ld. CIT(A) confirmed both the additions on quantum appeal. It is well settled Law that quantum proceedings and penalty proceedings are independent and distinct in nature. The Ld. CIT(A) shall have to give reasons for decision while confirming the penalty or deleting the addition. In this view of the matter, we set aside the impugned order and restore the penalty appeal to the file of

Ld. CIT(A) with a direction to re-decide the appeal of assessee as per Law, giving reasons for decision in the appellate order. The Ld. CIT(A) shall have to give reasonable, sufficient opportunity of being heard to the assessee. Appeal of Assessee is allowed for statistical purposes.

12. In the result, ITA.No.2801/Del./2017 of the Assessee allowed for statistical purposes.

13. To sum-up, ITA.No.376/Del./2014 of Assessee allowed and ITA.No.2801/Del./2017 of the Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER
Delhi, Dated 01st November, 2019
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.