

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE
**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1343/Bang/2019
(Assessment Year: 2012-13)

M/s.NXP India Private Limited,
(Succor of NXP Semiconductors India Pvt. Ltd.)
Ground Floor, Manyata Tech Park,
Greenheart Phase III, Nagawara, Bangalore.Appellant
PAN AAACZ 1978P

Vs.

Principal Commissioner of Income Tax-6,
I.P.Estate, New Delhi-110 002Respondent.

Assessee By:	Shri Vikram Vijayraghavan, Advocate.
Revenue By:	Shri Pradeep Kumar, CIT (D.R)

Date of Hearing :	30.09.2020.
Date of Pronouncement :	09.10.2020.

ORDER

PER SHRI B.R. BASKARAN, A.M. :

The assessee has filed this appeal challenging the revision order dated 27-03-2019 passed by Ld Pr. CIT, New Delhi u/s 263 of the Act for the assessment year 2012-13. The contention of the assessee is that the initiation of revision proceeding is without authority of law and jurisdiction.

2. The facts relating to the case are stated in brief. The assessment in the hands of the assessee was completed by the assessing officer, being Assistant Commissioner of Income tax, Circle-5(1)(1), Bangalore on 30-01-2017 for assessment year 2012-13. The company was amalgamated with M/s NXP India (P) Ltd, New Delhi. Hence the Ld Pr. CIT-06, New Delhi called for assessment record and took the view that the assessment order is erroneous and prejudicial to the interests of revenue. Accordingly he initiated revision proceedings u/s 263 of the Act.

3. The facts, which led the Ld Pr. CIT to form such a view are stated in brief. The assessee had taken certain assets on lease for a specified number of years. In the books of account, the assessee has capitalised those assets. Accordingly, it has debited its profit and loss account with depreciation on those leased assets and also interest expenses. However, in the computation of total income for the purposes of income tax, the assessee has claimed deduction of a sum of Rs.1,09,85,585/- relating to repayment of principal component of lease rental payments. It was submitted by the assessee it has not claimed depreciation for income tax purposes.

4. The Ld Pr. CIT was of the view that the assessee has taken contradictory stand. The assessee has stated that it has taken all risks and rewards of ownership of the leased assets and therefore classified them as financial lease in the books as per AS-19. The Ld Pr. CIT noticed that, as per AS-19, in the case of Finance lease, the principal payment for acquisition of asset on lease is recognised as

capital in nature and hence depreciation & financial charge is charged to the Profit and Loss account in the place of lease rent payment. The Ld Pr. CIT took the view that the assessing officer has not properly examined this issue and accordingly took the view that the assessment order is erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act. In the show cause notice, the Ld Pr. CIT asked to show cause as to why an order under section 263 of the Act should not be passed in order to add back the principal amount of Rs.1,09,85,585/- by disallowing the same as capital expenditure as per the provision of sec.37, after allowing depreciation thereon.

5. Before Ld Pr. CIT, New Delhi, the assessee furnished a letter dated 21.3.2019, wherein the assessee primarily contended that the Ld Pr. CIT, New Delhi does not have jurisdiction over the assessee, since the registered office of the assessee company is in Bangalore and hence it falls under the jurisdiction of Ld Pr. CIT-5, Bangalore.

6. Ld Pr. CIT, New Delhi noticed that the assessee's name was earlier "Freescale Semiconductor India P Ltd with the same PAN number and later its name was changed and merged with M/s NXP India Ltd. The assessee has written a letter dated September 27, 2018 (the said letter has been extracted by Ld Pr. CIT at page 4 of his order), wherein it has claimed that its Principal Place of business lies in Delhi only, even though the registered office has been shifted to Bangalore. Accordingly, the Ld Pr. CIT observed that the assessee has preferred not to reply to his notice, even after

taking a stand before Income tax authorities on the jurisdiction. Accordingly, the Ld Pr. CIT took the view that the assessee company does not want to say anything on the matter.

7. Accordingly, the Ld Pr. CIT took the view that the assessee is not entitled to claim deduction of payment of principal amount of Rs.1,09,85,585/-. As stated in Show cause notice, the Ld Pr. CIT expressed the view that the above said amount should have been disallowed after allowing depreciation on the assets. Accordingly he took the view that the non-consideration of the above points have rendered assessment order erroneous and prejudicial to the interests of revenue. Accordingly he set aside the assessment order and restored the matters to the file of the AO in order to add back principal amount of Rs.1,09,85,585/- by disallowing capital expenditure as per provision of sec.37, after allowing depreciation thereon, after allowing opportunity of being heard to the assessee.

8. Aggrieved by the order so passed, the assessee has filed this appeal.

9. Before us, the ld A.R submitted that the assessee is not the owner of the asset and the lessor is entitled to claim depreciation under the Income tax Act, as per the decision rendered by Hon'ble Supreme Court in the case of ICDS Ltd vs. CIT, Mysore (2013)(29 taxmann.com 129)(SC). Hence, the assessee, being a lessee, is not entitled to claim depreciation on the assets taken on lease. He submitted that the assessee, being limited company, is required to mandatorily follow the Accounting Standards issued by the

Institute of Chartered Accountants of India. The assessee has followed Accounting Standard -19 for book purposes, as per which it is required to capitalise the value of leased assets and claim depreciation thereon along with the interest component.

10. The Ld A.R further submitted that the assessee, vide its letter dated 29-02-2016, has given following reply to the assessing officer during the course of assessment proceedings in response to the oral query raised by the AO:-

“5. Note on finance lease payments

We submit that NXP India has procured certain motor vehicles on finance lease. The company has taken over substantially all the risks and rewards of ownership of the leased motor vehicles and therefore, has classified the same as finance leases in the books as per Accounting Standard (AS) -19 prescribed by the Institute of Chartered Accountants of India.

Further, the accounting treatment followed by NXP India as per AS-19 in the books of accounts is as under:

- **Balance Sheet:-** *The leased assets amounting to Rs.1,04,96,515/- has been recognised (at the inception of the lease) as an asset and a liability at an amount equal to its fair value.*
- **Profit and Loss account:-** *The lease payments has been apportioned between the finance charge and the reduction of outstanding liability.*

Hence, the Company has debited the interest component of the finance lease payments to the profit and loss account and the repayment of the principal component amounting to Rs.1,09,85,585/- paid during the year has been adjusted against the outstanding liability in the balance sheet.

Accordingly, for tax purposes, the Company has separately claimed the deduction with respect to the repayment of the

principal component of the lease rental payments amounting to Rs.1,09,85,585/- since the same is not debited to the profit and loss account (working for the same is enclosed as Annexure 4). We also submit that the Company has not claimed tax depreciation on such leased assets since the Company is not the owner of the said assets.”

The Id A.R, accordingly, submitted that the AO has applied his mind and accepted the method followed by the assessee for book purposes and income tax purposes. Accordingly, he submitted that the view taken by the AO on this issue is one of the possible views and hence the impugned revision proceedings is liable to be quashed.

11. The Ld A.R invited our attention to the notice issued by Ld Pr. CIT u/s 263 of the Act and submitted that the Ld Pr. CIT has observed in paragraph 2 of the notice has observed as under:-

“.....While the assessee debited interest to the P & L account under the schedule finance cost, the principal amount was capitalised for the purpose of computation of depreciation as per income tax provisions...”

The Ld A.R submitted that the assessee has claimed depreciation only in the books and it did not claim depreciation while computing total income as per Income tax Act. He submitted that the above said observation would show that the Ld Pr CIT has proceeded on erroneous presumption that the assessee has claimed depreciation under the Income tax provisions also. Accordingly, he submitted

that the very foundation for initiation of revision proceedings is proved wrong. Accordingly, he pleaded that the impugned revision order should be quashed.

12. On the contrary, the Ld D.R submitted the AO has not discussed this issue in the assessment order. He submitted that the assessee has taken contradictory stand, i.e., for book purposes, it claims to be owner of the assets, but for income tax purposes, it claims that it is only lessee. Accordingly, it has claimed principal portion of the loan as deduction, which is not permitted u/s 37 of the Act. He submitted that the AO did not examine these issues. Even though the assessee has furnished some reply before the AO, there is nothing on record to show that the said reply was examined by the AO. Accordingly, he submitted that the impugned revision order should be sustained.

13. In the rejoinder, the Ld A.R submitted that the assessee has furnished depreciation schedule for both book purposes and income tax purposes. He submitted that these schedules would show that the assessee has not claimed depreciation on leased assets under Income tax purposes. On examination of both the depreciation schedules, the bench pointed out that the quantum of addition of assets (other than leased assets) is lesser in the depreciation schedule prepared for book purposes, while it is shown more in the depreciation schedule prepared for income tax purposes. The ld A.R submitted that he will furnish a detailed reconciliation statement. He reiterated that the AO has taken a

possible view and hence the impugned revision order should be quashed.

14. We heard rival contentions and perused the record. It is seen that the assessee has followed different treatment for leased assets for book purposes and for income tax purposes. It was submitted that it is required to do so in view of the decision rendered by Hon'ble Supreme Court in the case of ICDS Ltd (supra), wherein it was held that the lessor is entitled to claim depreciation under the income tax Act. Accordingly the assessee, being lessee, is not entitled to claim depreciation under the Income tax Act. However, as per Accounting Standard -19, the assessee was required to capitalise leased assets in its books of account. Accordingly, it was submitted that the assessee was required to follow different treatment for leased assets for book purposes and for income tax purposes. The Ld A.R also took us through the paper book, depreciation schedules prepared for book and income tax purposes.

15. Before us, the Ld A.R did not argue on the jurisdiction issue, meaning thereby, the assessee has accepted the jurisdiction of the Ld Pr. CIT-06, New Delhi. The Ld A.R contended that the Ld Pr. CIT has erroneously taken the view that the assessee has claimed depreciation under Income tax Act. However, a perusal of the entire show cause notice would show that the Ld Pr. CIT has proposed to disallow the claim of Principal portion of lease "after allowing depreciation". Hence, we are of the view that the Ld Pr. CIT was well aware of the fact that the assessee has not claimed

depreciation under the Income tax Act. Accordingly, we are of the view that the observations made in paragraph 2 appears to be a typographical mistake.

16. As per the decision rendered by Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd (243 ITR 83), revision proceedings shall lie, if the assessment order is erroneous and prejudicial to the interests of revenue. Explanation 2 to sec. 263 (1) of the Act inserted by Finance Act, 2015 w.e.f. 1.6.2015 deems an assessment order to be erroneous and prejudicial to the interests of revenue if, in the opinion of the Principal Commissioner or Commissioner, the order is passed without making inquiries or verification which should have been made or the order is passed allowing any relief without inquiring into the claim etc. In the instant case, the assessee has furnished a reply with regard to the claim of principal component of lease payment and the treatment given in the books of account for leased assets. However, as pointed out by Ld Pr. CIT, the AO did not further probe the matter, which should have been made. Before us also, the Ld A.R could not immediately show that the assessee has not claimed depreciation on leased assets. He has submitted that he will furnish the details and accordingly forwarded a reconciliation statement. The very fact that the contention of the assessee could be understood only after examining the reconciliation statement would show that the AO should have also examined the submission of the assessee. Accordingly, we are of the view that the assessment order is

rendered erroneous and prejudicial to the interests of revenue in terms of Explanation 2 to sec. 263 of the Act.

17. Accordingly, we uphold the revision order passed by Ld Pr. CIT.

18. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

(N.V. VASUDEVAN)
VICE PRESIDENT

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Dated: 09.10.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore