

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No.134/Hyd/2023		
Assessment Year: 2017-18		
M/s.Sai Life Sciences Ltd Hyderabad PAN:AAECS6143F (Appellant)	Vs.	Dy. C. I. T. Circle 3(1) Hyderabad (Respondent)
Assessee by:	Shri Ashik Shah, CA	
Revenue by:	Smt. Sheetal Sarin, CIT(DR)	
Date of hearing:	09/11/2023	
Date of pronouncement:	24/11/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 04.01.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The ground raised by the assessee is as under:

“1. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming the action of learned Assessing Officer in disallowing the principal portion of lease rentals amounting to Rs.2,74,16,323/- paid towards vehicles and computers while computing the business income and treating the same as capital expenditure.”

3. Facts of the case, in brief, relating to the above ground are that the assessee is a company engaged in the business of manufacturing of pharmaceuticals, medicinal, chemicals and botanical products. It filed its return of income on 28.11.2017 declaring total income of Rs.34,17,94,370/-

under the normal provisions of the Act. The case was selected for scrutiny under CASS and accordingly statutory notices u/s 143(2) and 142(1) were issued and served on the assessee to which the A.R of the assessee appeared before the Assessing Officer and filed the relevant details.

4. During the course of assesment proceedings, the Assessing Officer noted that the assessee has claimed an amount of Rs.3,43,44,661/- as revenue expenditure which is the principal amount of lease on vehicles and computers. On being asked by the Assessing Officer to justify the same, the assessee claimed that the leases are operating leases where the lessor is the owner of the assets till the end of the lease and the company does not claim depreciation on them.

5. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee. He noted that the registered ownership, insurance and usage of the assets leased in the instant case are with the assessee. He also noticed from the financials of financial year 2017-18 that the assessee has purchased and reclassified the computers and vehicles taken on lease to owned assets. Relying on various decisions and on analyzing various terms and conditions of the lease agreement, the Assessing Officer was of the opinion that the assessee is not entitled to deduction of payment of principal amount as revenue expenditure of Rs.3,43,44,661/- He accordingly made addition of the same.

6. In appeal, the learned CIT (A) NFAC upheld the contention of the Assessing Officer. However, he directed the Assessing Officer to allow the claim of interest component. He

also directed the Assessing Officer to allow depreciation on such assets after due verification.

7. The learned Counsel for the assessee submitted that the assessee has entered into lease agreements with the lessor 'Orix Auto Infrastructure Services Ltd' ("Orix") to take vehicles on lease; and with the lessor 'Hewlett Packard Financial Services (India) Private Ltd ("HP") in relation to taking laptops on lease.

7. 1 The learned Counsel for the assessee referring to the decision of the Hon'ble Supreme Court in the case of ICDS Ltd vs. CIT reported in 350 ITR 527, submitted that the Hon'ble Supreme Court in the said decision has held that the lessor is the real owner of the asset and not the lessee and thereby the lessor is eligible to claim depreciation on the leased assets. He submitted that since the assessee in the instant case is a lessee therefore, the right to claim the legal title of the vehicles and laptops is with the lessor and not with the assessee.

8. Referring to the copy of the lease agreement entered by the assessee with the lessor, copy of which is placed at pages 194 to 239 of the Paper Book, he submitted that the right to claim the legal title of the vehicles and the laptops is with the lessor and not with the assessee. Referring to the said decision, the learned Counsel for the assessee further submitted that the Hon'ble Supreme Court has held that any person (i.e. the lessee in the instant case) merely registered as an owner under the Motor Vehicles Act, 1988 shall not be treated as owner as per the provisions of the Act and section 2(3) of the Motor Vehicles Act, 1988 is a deeming provision that creates a legal fiction of ownership in favour of lessee only for the purpose of Motor Vehicles Act.

9. Referring to page 250 of the Paper Book, the learned Counsel for the assessee submitted that the lessor is Orix and the assessee is merely the registered owner of the vehicle.

10. Referring to the decision of the Coordinate Bench of the Tribunal in the case of RAK Ceramics India (P) Ltd (ITA No.2226/Hyd/2017) order dated 15.11.2019, the learned Counsel for the assessee submitted that the Tribunal, following the decision of the Hon'ble Supreme Court in the case of ICDS Ltd (Supra) allowed the lease rental paid as revenue expenditure in the hands of the lessee itself.

11. So far as the contention of the Revenue that the assessee itself has reclassified the leased assets as owned assets in the books of account is concerned, he submitted that in terms of Accounting Standard 19—"Leases" ("AS-19") issued by the Institute of Chartered Accountants of India (ICAI), the assets acquired under financial lease has to be capitalized in the books of account and consequent liability thereon was also created. Accordingly, the assessee has charged depreciation on such assets in the P&L Account which was subsequently disallowed u/s 32 of the Act by the assessee while computing the taxable income as per the Act.

12. Referring to the decision of the Hon'ble Supreme Court in the case of Sutlej Cotton Mills Ltd (116 ITR 1) and Kedarnath Jute Mfg. Co. Ltd (82 ITR 363), he submitted that the entries 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.

13. Referring to the CBDT Circular No.2/2001, dated 09.02.2001, the learned Counsel for the assessee drew the attention of the Bench to the relevant portion and submitted that the CBDT has opined that AS-19 issued by ICAI creating distinction between finance lease and operating lease will have no implications under the provisions of the Act.

14. He accordingly submitted that the CBDT's view on the treatment of finance lease is not aligned to the accountant's perspective of a finance lease. For accounting purposes, although the lessee shows the asset in his balance sheet, charges depreciation in accounts and even makes impairment provision, yet the lessee is not eligible to claim depreciation under the Act, which is allowed only to the legal owner of the asset i.e. the lessor.

15. He also relied on the following decisions:

S.No	Decision	Forum	Citation
1	ICDS Ltd	Hon'ble Supreme Court	350 ITR 527
2	Rajshree Roadways	Hon'ble Bombay High Court	129 Taxmann 663
3	Rak Ceramics India (P) Ltd	ITAT Hyderabad	ITA 2226/Hyd/2017
4	Minda Corporation Ltd	ITAT Delhi	42 ITR (T) 615
5	NIIT Ltd	ITAT Delhi	180 ITD 141
6	Texas Instruments (India) Pvt. Ltd	ITAT Bangalore	TS-578-ITAT 2022
7	Tesco Bengaluru Pvt. Ltd	ITAT Bangalore	2021(10) TMI 1322
8	Tristar Container Services (Asia) (P) Ltd	ITAT Chennai	143 Taxmann.com 324
9	Sundaram Infotech Solutions Ltd	ITAT Chennai	2022(9) TMI 57
10		ITAT Kolkata	

16. So far as the various decisions relied on by the Assessing Officer and the learned CIT (A) NFAC are concerned, he submitted that those decisions are distinguishable and not applicable to the facts of the present case.

17. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A) NFAC. During the course of argument, the learned DR drew our attention to Page No.24 of the Paper Book wherein it is mentioned as under:

“During the year, the company has exercised its option to purchase assets acquired under finance lease. Accordingly, Computers and Vehicles (leased assets) having Gross Block of Rs.13,823.604 (Accumulated Depreciation of Rs.13,823.64) has been reclassified from Leased Assets to Owned Assets”.

18. Further, the learned DR drew our attention to page 105 of the Paper Book and had also drawn our attention to page 203 with respect to the ownership of vehicles which states as under:

2.5 Ownership of the Vehicle:

The parties hereby confirm that their intent is that the Vehicle shall at all times remain the property of the Lessor. For the purposes of the Motor Vehicle Act, 1988 (the “Act”) and the provisions thereof, the Vehicle provided on Lease hereunder shall be registered in the name of the Lessee as Registered Owner, as required under the provisions of the Act, for the benefit of the Lessor and expressly subject to the absolute ownership rights of the Lessor thereon and the Lessee undertakes and hereby authorizes the Lessor to have the said registration transferred in the name of the Lessor or its nominee at the end of Lease Term or upon Premature Termination of Lease, as the case may be, whenever required to do so.

Subject to the compliance with the obligations under these presents the Lessee shall have the right to have exclusive peaceful possession, operation and use of the Vehicle during the Lease Term unless there is a Premature Termination of Lease”.

19. Lastly, she drew our attention to Page 208 with respect to Article-4 for margin money which states as under:

“ARTICLE-4 MARGIN MONEY

4.1 The lessee shall, on or before the commencement date of lease place the applicable margin money with the Lessor of an amount as specified in the Schedule.

4.2 On expiration of the Lease Term or Premature Termination of Lease, as the case may be, the Lessor shall refund the Margin Money paid for the Vehicle to the Lessee provided there is balance left, if any, with the Lessor after adjustments of the amounts due to the Lessor.

4.3 In the event of termination of the Lease and prior to the refund of the margin Money to the Lessee, the Lessor shall have right to adjust from the Margin Money, any amount payable by the Lessor. The Lessee hereby specifically authorize the Lessor to make such adjustments.”

20. On the basis of the above, it was submitted that after the expiry of the lease period, the assets will not go back to the owner/lessor and the assessee has the right to purchase the assets. However, the learned DR submitted that the lease is not an operational lease but is a financial lease as there is an option to purchase the leased property after the expiry of the lease period. She had again relied upon Page 24 of the paper Book to show that during the year under consideration, the assessee has exercised its right to purchase the assets acquired under the financial lease and on the margin money paid by the assessee. It was further submitted that the schedule to the lease agreement showing the payment of margin money has not been enclosed in the Paper Book page 213. It was accordingly submitted that the matter may be remanded back to the file of the Assessing Officer to verify whether the assessee had purchased the assets under the financial lease after the expiry of the term. On the basis of the above said facts, it was submitted that the judgment relied upon by the assessee are

distinguishable as in none of the matter, these facts were under consideration.

21. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case has paid lease rentals for certain assets i.e. vehicles and computers which were taken on lease amounting to Rs.3,43,44,661/- and claimed the same as a revenue expenditure while computing the income under the head profit and gains from business or profession. We find the Assessing Officer held that the registered ownership, insurance and usage of the leased assets are with the assessee. Further, the assessee itself has reclassified the computers and vehicles from leased assets to owned assets as per the audited financial statement. He therefore, disallowed the lease rent claimed by the assessee and treated the same as capital expenditure. We find in appeal, the learned CIT (A) NFAC held that the assessee is the owner of the leased vehicles and computers for the year under consideration. According to him, the registered ownership, insurance and usage of leased assets are with assessee. Therefore, the transaction was in nature of finance lease and not operating lease since the assessee has reclassified the leased assets to owned assets in its financial statement as well and is the real owner of the assets. The learned CIT (A) NFAC however, directed the Assessing Officer to allow interest portion of such lease rentals and allow depreciation on the leased assets after due verification.

22. It is the submission of the learned Counsel for the assessee that merely because the assessee is registered as

owner under the Motor Vehicles Act cannot be treated as the legal owner as per the provisions of u/s 2(30) of Motor Vehicle Act 1988 and the same is a deeming provision that creates a legal fiction of ownership in favour of lessee only for the purpose of Motor Vehicles Act. It is also his submission that a perusal of the lease agreement, copy of which is placed at page 250 of the Paper Book shows that the lessor is Orix and the assessee is merely the registered owner of the vehicle.

23. On the last date of hearing, we had directed the learned Counsel for the assessee to file the complete set of lease agreement along with the schedules there to so that the correct facts can be ascertained. Although the assessee has filed the lease agreements, however, the schedules are not enclosed. Since the assessee has not filed the schedules to the lease agreement despite the direction of the Bench and also has not filed the relevant documents pertaining to the purchase of leased assets in subsequent A.Ys, therefore, we are left with no option but to remand back the matter to the file of the Assessing Officer with a direction to the assessee to file all the lease agreements along with the schedules before the Assessing Officer. The Assessing Officer is directed to examine the lease agreements afresh and find out as to whether the leased assets are financial lease or operational lease. After ascertaining the above, the Assessing Officer is directed to apply the judgment of the Hon'ble Supreme Court as well as of the Coordinate Benches referred herein above and decide the issue as per fact and law after affording reasonable opportunity of being heard to the assessee. We hold and direct accordingly. The appeal filed by the assessee is accordingly allowed for statistical purposes.

24. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 24th November, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 24th November, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sai Life Sciences Ltd, Office L4-01 02 Sy. No.133, SLN Terminus, Gachibowli-Miyapur Road, Gachibowli, KV Ranga Reddy, Hyderabad 500032
2	Dy.CIT, Circle 3(1), I.T.Office, Signature Towers, Kondapur Hyderabad 50084
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order