



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28 .07..2005

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THE HON'BLE MR. MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

T.C.No.19 of 2003

M/s.Om Sindhoori Capital Investments Ltd.,
(now merged with M/s.Apollo Sindhoori Capital
Investments Limited),
22, Greams Road, Chennai - 6.Appellant.

Vs.

The Assistant Commissioner of Income-tax,
Company Circle IV(3),
Chennai - 34Respondent.

Appeal filed under Section 260-A of the Income-tax Act,
1961 against the order of the Income-tax Appellate Tribunal "A"
Bench dated 31.10.2002 passed in ITA No.239/Mds/98.

For Appellant :: Mr.P.P.S.Janarthanaraja

For Respondent :: Mrs.Pushyasitaraman,
Sr.Standing Counsel for I.T.

JUDGMENT

THE HON'BLE THE CHIEF JUSTICE

This is an appeal filed under Section 260A of the Income-tax Act in which the following questions of law are sought to be raised:-

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in rejecting the claim of depreciation on cinematograph negative film as per the Rules?

2. Whether on the facts and circumstances of the case the Tribunal was right in holding that it is not lease agreement and it is only mere sale and purchase?



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3. Whether on the facts and circumstances of the case the Tribunal was right in holding that lessor not entitled to depreciation as per the depreciation Rules?

4. Whether on the facts and circumstances of the case the Tribunal was right in not considering that revenue had already granted depreciation on the same transaction for the subsequent assessment year 1994-95?"

2. The assessee is a Limited Liability Company and the relevant assessment year is 1993-94. The assessee is engaged in financing, leasing, higher purchase, etc. It purchased Eastman Colour Negatives worth of Rs.13,25,030/- on 29.03.1993 from M/s.Gemini Pictures Circuit (P) Limited and leased out to M/s.A.R.S. Productions. As per the agreement between the parties, the appellant is said to have leased out the colour negatives to M/s.A.R.S.Productions for a period of three years at a half yearly rental value of Rs.3,55,000/-. The appellant/assessee claimed depreciation on the cinematograph negative films at the rate of 100% as per the rules, but this claim was rejected by the Assessing Officer on the ground that film negatives have a short life period, and once they are exposed, they get converted into other material. Hence, the film negatives cannot come back to the lessor after the lease period is over. Assessing Officer was of the view that the item which loses its identity during use cannot be said to have been leased out. The Assessing Officer was of the view that the whole transaction was a financial arrangement under the guise of a lease.

3. In appeal the CIT (Appeals) upheld the view of the Assessing Officer and held that an asset which changes form, shape, and identity during use, cannot be leased since the same cannot be returned to the lessor after the specified period as a fixed asset for use in future.

4. In further appeal the Tribunal upheld the view taken by the CIT (Appeals) and the Assessing Officer, and held that the arrangement between the assessee and lessee has to be treated as sale and purchase.

5. In our opinion, the Tribunal, the CIT (Appeals) and the Assessing Officer should have considered whether the transaction in question was a lease in the light of the various decisions of the Supreme Court and the High Courts in this country, and they should not have gone by their own personal notions of what is the meaning of the word "lease". When a Court or Judicial Authority adjudicates on a matter it is expected to consider the various precedents laid down by the Courts in the Country, and in the case of binding precedents they have to be followed. A perusal of the order of the authorities below show that that was not the approach adopted by them, and hence their orders are vitiated.



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6. Section 105 of the Transfer of Property Act defines the word "lease" of immovable property, whereas we are concerned with a lease of movable property. There is no absolute bar to a lease of movable property. For instance, in the Constitution Bench decision of the Supreme Court in 20th Century Finance Corporation Limited Vs. State of Maharashtra, (2000) 6 SCC 12, the Supreme Court was considering the case of companies which were carrying on the business of leasing diverse equipments/machinery.

7. In paragraph - 46 of the aforesaid decision the Supreme Court quoted the definition of the word "lease" under Section 2(23) of the Rajasthan Sales Tax Act, 1954 which stated:-

"Lease means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another whether or not for a specified period for cash, deferred payment or other valuable consideration without the transfer of ownership, and includes a sub-lease but does not include any transfer on hire-purchase or any system of payment by instalments".

8. No doubt, the Rajasthan Sales Tax Act does not in terms apply to the present case, but we can derive some benefit from it to understand what is the meaning of the word "lease" where it is of moveable property.

9. In State of Uttar Pradesh Vs. Lalji Tandon, AIR 2004 SC 32 the Supreme Court observed that a lease may be in perpetuity, and in India the law does not prohibit a perpetual lease. Obviously, a property leased out in perpetuity does not have to be returned to the lessor.

10. We are not expressing a final opinion on the matter as we are of the opinion that the Tribunal needs to reconsider the matter whether the transaction in question was a lease or not in the light of the legal precedents i.e., Supreme Court and High Court decisions which have explained the meaning of the word "lease" instead of going by their own personal notions of the meaning of the word "lease". In the circumstances, we set aside the judgment of the Tribunal and remand the matter to it, to give a fresh decision in the light of the observations made above. This tax case appeal is allowed. No costs.

Sd/

Asst. Registrar

/true copy/

Sub Asst. Registrar



Copy to:-

1. The Assistant Commissioner of Income-tax,
Company Circle IV(3), Chennai - 34.

2. The Income Tax Appellate Tribunal,
Bench 'A', Madras Bench, Chennai.

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