

In the High Court of Judicature at Madras

Dated: 13.09.2012

Coram

The Honourable Mrs.JUSTICE CHITRA
VENKATARAMAN

and

The Honourable Mr.JUSTICE
K.RAVICHANDRABAABU

Tax Case (Appeal) No.1146 of 2006
and TCMP.No. 1600 of 2006

The Deputy Commissioner of Income Tax
Central Circle I (5)
Chennai 600 034 ... Appellant

Vs.

M/s. First Leasing Company of India Limited
749, Anna Salai
Chennai 600 002 ... Respondent

Tax Case (Appeal) against the order of the Income Tax
Appellate Tribunal, Madras A Bench dated
30.12.2005 in ITA. 35/ Mds/ 2001 for assessment
year 1996-97.

For Appellant : Mr.V.S.Jayakumar

For Respondent: Mr.T.Ravikumar

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The Revenue is on appeal as against the order of the Tribunal. The assessment year under consideration before this court is 1996- 97. Following are the questions of law raised for consideration in the above Tax Case (Appeal):-

"1. Whether the Tribunal was right in disallowing depreciation on sale and lease back contracts and lease contracts with regard to five companies when the requirements of Section 32 (1) had been satisfied ?

2. Whether the Tribunal was justified in disallowing depreciation with regard to these contracts on grounds that the supplier of the material was not traceable or for other technical reasons ignoring the facts that clearly indicate that requirements of Section 32 had been satisfied ? and

3. Whether the Tribunal was right in holding that the valuation of assets is leased in the case of M/s. Sanghi Textiles Ltd. M/s. Enterprising Enterprises and M/s. Patheja Forgings & Auto Parts Mfg. Ltd. are not justifiable?"

2. The appeal arises out of the order of the Tribunal reversing the order of the Commissioner of Income Tax (Appeals) thereby allowing the Revenue's appeal. The issue before this Court are relating to sale and

lease back transactions and lease transactions, which are stated as follows:-

SALE AND LEASE BACK TRANSACTIONS

- (1) Asian Electronics Limited
- (2) BPL Systems and Products Limited
- (3) Enterprising Enterprises Limited
- (4) Indian Organic Chemicals Limited
- (5) Patheja Forgings & Auto Parts Manufacturing Limited
- (6) NEPC MICON Limited
- (7) Navbharat Industrial Linings & Equipment Limited
- (8) K.K.NAG Limited
- (9) Universal Starch Chemical Limited

DIRECT LEASE

- (1) IPCA Lab Limited
- (2) Galaxy Indo - Fab

3. In T.C. No. 1145 of 2006, considering the limited scope of interference available under Section 260-A of the Income Tax Act, the issues which are pure and simple factual do not call for any interference at the hands of this Court, unless there are serious error in

the Tribunal's order and finding were not based on any materials.

4. As far as the transactions considered which are now before this Court are concerned, we may immediately say that except for sale of lease back transactions in respect of Navbharat Industrial Linings & Equipment Limited, (Asian Electronics Limited, BPL Systems and Products Limited, and Universal Starch Chemical Limited), wherein too relief to the assessee has to be granted based on 231 ITR 308 *CIT v. SHAAN FINANCE LIMITED*, we do not find any justifiable ground to grant the relief to other transactions. Even though learned counsel for the assessee took a plea of constructive delivery, as had been held by us in T.C. No. 1145 of 2006 dated 13.9.2012, we do not find that there exists any ground to accept the case of the assessee for the reason that there are no materials to support the contention of the assessee as regards sale and lease back transactions. The instances considered by us involves sale and lease back transactions.

5. The first of the transaction to be considered by us is with regard to Asian Electronics Limited. It is seen from the narration of facts that the assessee is stated to have purchased and leased back MPP Shut Capacitors. The Asian Electronics Limited is engaged in manufacturing of capacitors, had sold the manufactured capacitors to the assessee for further lease. The capacitors were despatched to Maharashtra State Electricity Board, [herein after referred to as MSEB], as per the lease agreement between lessee and MSEB. In considering the claim of the assessee on sale and lease back transactions, the Assessing Officer pointed out that the assessee had not explained the discrepancy in the lease rentals

received and rejected the case of the assessee thereon. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who pointed out that the lessee had sold capacitors to the assessee, who had taken the same on lease and thereafterwards sub leased it. Going by the installation at MSEB, the Commissioner of Income Tax (Appeals) held that there were no materials to hold that the transactions were purely financial transaction. Consequently, the Commissioner of Income Tax (Appeals) accepted the case of the assessee and granted the relief. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal pointed out that to claim ownership of the assets, the assessee should produce the purchase invoice and mere furnishing of insurance certificate were not sufficient and there was no document to suggest the physical movement of the assets from the lessee to the premises of MSEB. The Tribunal pointed out that when the assessee had not produced purchase invoice, which was a pre requisite document to prove the ownership of the assets not being identified, there was a doubt regarding whether at all there was sale in favour of the assessee. Hence, the Tribunal reversed the order of the Commissioner of Income Tax (Appeals).

6. As far as this claim is concerned, the assessee placed before us the purchase orders, which was stated to have been furnished to the Assessing Officer also. Learned counsel for the assessee also placed before us the evidence regarding payment of monthly lease rental as per the lease rental schedule and contended that the asset in question was a movable asset and the Tribunal had arrived at a finding against the assessee solely on the ground that there was no movement of goods from the assessee or from

the manufacturer to the sub lessee. The Tribunal disbelieved the case of the assessee on the ground that the assets in question was not there at all on account of fact that purchase bills not being there. On the other hand, the assessee contended that the lessee himself was a manufacturer. The absence of purchase invoice, by itself, would not defeat the claim of the assessee. In the circumstances, learned counsel for the assessee submitted that the transactions could not be rejected as financial transactions.

7. As far as this claim is concerned, it is not denied by the Revenue that the lessee were the manufacturers and the sale of machineries in favour of the assessee were leased out to the manufacturer themselves, who in turn had sub lessee them to MSEB. The documents produced before this Court in the form of purchase invoice show installation and commission of capacitors in the lessees premises, which were given for use by MSEB. The Tribunal rejected the assessee's case on the ground that the assessee had not produced the purchase invoice, which is a prerequisite document to prove the ownership of the assets. When the invoice dated 1.8.95 was issued in favour of the assessee herein, given the description of goods sold to the assessee and that the name of MSEB is mentioned as a consignee and there is also invoice as regards installation therein, we do not find any justifiable ground to reject the case of the assessee on the ground that the purchase invoice were not filed before the authorities to substantiate the claim of the assessee as a owner. The assessee contends that these details were placed before the Officer and which were found at the time of assessment and they were not filed before this Court for the first time. This document was very much

available with the Tribunal. In the light of the specific averment made by the assessee that the documents filed before this Court were also available with the Officer, in fairness to the claim of the assessee, we feel that the consideration of sale and lease back transactions has to be restored to the file of the Assessing Officer so as to enable the assessee to produce the original purchase invoices for the purpose of satisfying the Assessing Authority as regards the ownership of the machinery by the assessee. The assessee is directed to produce the same before the Assessing Officer. On such production and on satisfaction, the Assessing Officer may pass such orders on the claim in accordance with law.

8. As far as the sale and lease transactions pertaining to BPL Systems and Products Limited is concerned, the Assessing Officer observed that there were discrepancy in the lease rentals paid by lessee and admitted by the assessee in its profits and loss account, which were not reconciled by the assessee. In the circumstances, the Assessing Officer disallowed the claim of depreciation. On appeal, the first Appellate Authority pointed out that the equipment manufactured by the lessee was sold to the assessee, which was the subject matter of lease by the assessee to the various third parties. The first Appellate Authority allowed the case of the assessee which was taken on appeal by the Revenue before the Tribunal. Here too, the Tribunal rejected the assessee's case and reversed the findings of the Commissioner of Income Tax (Appeal). As noted in the earlier transaction, the Revenue does not deny the fact of a sale in favour of the assessee and subsequent lease in favour of BPL Systems and Products Limited. The only ground on which the claim of the assessee

was rejected was on account of discrepancies in the payment of rental by the lessee and received by the assessee and the Revenue had not disputed the purchase by the assessee from BPL Systems and Products Limited. A mere discrepancy in the lease rental payment per se does not negate the claim of the assessee as owner of the machinery. In the circumstances, we reverse the order of the Tribunal, thereby allow the claim of the assessee and the Assessing Officer is directed to grant relief of depreciation.

9. As far as the third transaction, in respect of Enterprising Enterprises Limited is concerned, the assessee is stated to have purchased two numbers of Tata Crane 320 on 14.7.95 and the lease agreement was dated 13.7.95. The assessee filed valuation report dated 23.7.95. The Officer pointed out that there were no invoices for the purchase of the cranes by the assessee. The assessment records of the lessee show the deletion of assets other than the cranes which were sold to the assessee. Thus, the Officer came to the conclusion that the arrangement was only a paper arrangement to claim depreciation on non existing assets. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who allowed the claim of the assessee. He pointed out that the sale invoices in favour of the assessee was very much there and even though the market value of the two cranes was estimated by the valuation officer at Rs. 36,74,642/-, it was a fact that Rs. 60,00,000/- had been paid by the assessee. The Commissioner of Income Tax (Appeals) held that the assessee would be entitled to depreciation to the tune of Rs. 36,74,642/- and the amount advanced by the assessee as lease finance over and above this value would have to be considered as purely a financial

transaction. Thus, the depreciation was directed to be granted to the tune of Rs. 36,74,642/-. On appeal at the instance of the Revenue before the Tribunal, it was pointed out by the Tribunal that even though the assessee entered into transaction with Enterprising Enterprises Limited on 13.7.95, the purchase invoice showed the date of invoice as 14.7.95. Even after the sale, the lessee continued to own the assets. Further the said assets were mortgaged by M/s. Enterprising Enterprises to SIDBI. The Tribunal pointed out to the certificate issued by the Chartered Accountant dated 26.7.95 and stated that two cranes belonging to Enterprising Enterprises were free from encumbrance. Pointing out to the list of items mortgaged by the lessee to the SIDBI, the Tribunal pointed out that the lessee mortgaged the property as the owner of the property. Hence, the Tribunal rejected the case of the assessee as sale and lease back transactions and held that the transactions was purely one of financial transaction.

10. As far as this disallowance is concerned, the assessee pointed out that the lease agreement is a master agreement. The hypothecation assets was only by the assessee and not done by Enterprising Enterprises as had been wrongly understood by the Tribunal. When the assessee had produced invoices evidencing the sale, the Tribunal committed serious error in rejecting the case of the assessee. In this connection, the assessee placed reliance on the invoice copies, valuation certificate, encumbrance certificate and insurance copies evidencing purchase of the machinery.

11. As far as the document relied on by the assessee is concerned, the invoices placed before this Court show that the date of invoices as 13.3.91 and 20.3.91.

There are no explanation from the assessee as to how this document would be of relevance to the assessee's case, when the consignee name herein is given as "Kunnam Granites" and "Yak Granites India Private Limited". Further the documents placed by way of invoices in the name of lessee is dated 1.4.95. There is yet another invoice from Enterprising Enterprises in the name of First Leasing Company of India Limited dated 14.7.95. The Chartered Accountant certificate dated 26.7.95 states that Tata Model 320 Crane Sl.No. T 3684 and T 3694 belonging to Enterprising Enterprises are free from encumbrance. A reading of this document starting from the invoice in the name of First Leasing Company in the year 1991 to the Chartered Accountant certificate dated 26.7.95 referring to TATA Model Crane, we do not find any ground to accept the case of the assessee. The documents produced before the authorities concerned, this had not in any manner helped the assessee in establishing the fact that the assessee had purchased these cranes from Enterprising Enterprises and leased out the same to the lessee company. In the absence of the materials to substantiate the claim, that they had purchased these cranes for the purpose of leasing out, we have no hesitation in rejecting the claim of the assessee.

12. As far as the fourth transaction relates to Indian Organic Chemicals Limited is concerned, the lessee submitted that assets viz., 2 numbers of 1 AEC make 32T oil fired boiler, 1 number KT 1 make dowthermheater and 1 No. 1 AEC 1986 make 8T boiler, were sold for Rs. 2,46,60,000/- and they were removed from the block of assets and written down value of the entire block as on 31.3.96 is Rs. 49,91,99,056/-. The written down value of the assets just before sale i.e. on 1.4.95 was not given. The

machineries were insured for the period from 1.4.96 to 31.3.97 and a sum insured is Rs. 1,92,08,000/-. The invoices are dated 29.9.95 and the lease agreement is dated 14.9.95. The amount of lease is Rs. 3 crores.

13. The Assessing Officer pointed out that there was discrepancy in the lease rentals admitted by the assessee at different points of time and figures were not reconciled by the assessee. Hence, the claim was rejected. The assessee went on appeal before the Commissioner of Income Tax (Appeals). Here too, in considering the claim of the assessee, the Commissioner of Income Tax (Appeals) pointed out that there was no evidence available on record to come to the conclusion that the transaction was a financial transaction and not one of sale and lease back transactions. Thus, the Commissioner of Income Tax (Appeals) allowed the claim. On appeal by the Revenue, the Tribunal pointed out that the admitted value of the assets sold was Rs. 2,46,60,000/-. The assets were originally acquired by Indian Organs Chemicals Limited during the year 1983 to 1987. The assets involved in this case were an integral part of the whole manufacturing system and it could not be hive off without shutting down the plant for considerable period of time and this was embedded to the earth. Thus, mere production of the purchase invoices of the boiler could not be believed that it was sold to the assessee. There was no document to show the actual delivery of the boiler to the assessee nor there was document from the side of the lessee as regards the delivery. In the circumstances, the Assessing Officer rejected the claim rightly and this was confirmed by the Tribunal.

14. As far as this contention is concerned, the assessee has not questioned the findings of the Tribunal that the assets in question were more than 10 years of age and they were part of integral part of the whole manufacturing system and they could not hive off without shutting down the plant for some time. Considering the nature of the machinery which was the subject matter of the sale of lease back transaction, doubting the bona fide of the transaction, the Tribunal confirmed the findings of the Officer. Even though learned counsel for the assessee submitted that the assets were movable asset, hence, constructive delivery concept could not be negated, in the absence of any specific ground taken on the findings of the Tribunal that the machines in question were available as independent machinery and not part of the larger manufacturing process, we do not find any justification to accept the plea of the assessee on the aspect of constructive delivery. There is no explanation from the assessee as to how the assets in question were singled out from the larger constitution of manufacturing system to contend that there was a sale of machinery for lease back transaction. In the absence of any specific explanation in this regard, we have no hesitation in confirming the order of the Tribunal. Consequently, the assessee is not entitled to claim on depreciation.

15. The fourth instance of sale and lease back transaction is one with Patheja Forgings & Auto parts Manufacturing Limited. The assessee had purchased the machines from the said lessee for leasing it to the same company. It is seen from the documents placed before this Court that Patheja Forgings & Auto Parts Manufacturing Limited was before the BIFR. As of today, there are no particulars as regards the winding up of the said company. The Assessing Officer

rejected the claim of the assessee on the ground that the lessee had not furnished the information regarding the details of the transaction. The Officer pointed out that some machines which were subject matter of the lease were 20 years and some machines were 10 years and few others were 5 years and some machines were not in working condition. In the absence of the original invoice in support of the purchase price as had been noted in the valuer's report, the Officer pointed out that there was no indication as to how present value of the machinery was arrived. The claim of the assessee on this ground was rejected. In paragraph 9 of the order of the Tribunal, it pointed out that the assessee had not produced original invoice as regards the purchase of the machinery. There was no distinct description of the machinery. The value of the machinery was put at random without giving full details like year of manufacture, model, capacity, written down value, expected life of machinery etc. There was no details given by the assessee regarding the value of the assets sold. Referring to the valuation certificate given herein in support of the claim of the assessee, the Tribunal pointed out that in the absence of the original invoice and the report itself made on best judgment basis and market value arrived tentatively and considering the fact that some of the machineries were not even in working condition and was just scrap, the amount passed on between the parties could not be considered as purchase price of the machinery. Thus, doubting the reasoning of the purchase as one of sale and lease back transaction, the Tribunal came to the conclusion that it was only a finance transaction and actually the assessee lent the money to M/s.Patheja Forgings & Auto Parts Manufacturing Limited and the assessee was not entitled for depreciation on the same transaction. In

the case of sale and lease back transaction, the assessee contended that the lessee was manufacturer of the assets. Since the matters were pending before BIFR, the assessee could not produce original invoice. On a query raised by this Court as to the stage of BIFR proceedings, it was informed that a reference was made to the Court as early as 2002, but nothing was heard about pendency of the proceedings. The assessee had not taken any steps in this regard to find out how its interest are secured. Whatever be the reasons for that, the fact remains that even the valuation report could not rest on the value indicated in the original invoices and just on the basis of the valuation report, we do not find that the assessee could be said to have discharged its burden. In the circumstances, we confirm the order of the Tribunal.

16. NEPC MICON Limited is yet another instances for sale and lease back transactions. The Assessing Officer pointed out that there was as many as 10 windmills located at Nallupuram Village, Palladam Taluk, Coimbatore District and no windmills were installed in the name of the First Leasing Company of India Limited during the period 1.4.95 to 31.3.96. The assessee contended that as far as the sale of assets of the wind mills were concerned, NEPC had applied before the Electricity Board for NOC and erected the wind mills on the lands owned by it. The inspection report filed by the assessee and the certificate from the statutory auditors of the seller would show the sale of wind mills in favour of the assessee. The Officer however viewed that wind mills which were transferred to the assessee were not the ones for which invoices were raised. There was inordinate delay of two years for effecting name change in the registers of TNEB. The assessee could not prove ownership of the assets to grant the relief. On appeal,

the Commissioner of Income Tax (Appeals) allowed the assessee's case by holding that there are records to show that the assessee had purchased wind mills with serial numbers as stated in the agreement for sale and lease back. Hence, lease rentals had been accounted for by the assessee on accrual basis and depreciation had been claimed on windmills at 100%. The Commissioner of Income Tax (Appeals) further held that as there was a delay by TNEB in recognising its ownership on the assessee on the technical ground that the land on which the wind mill were erected would also have to be transferred before ownership was recognised by the Board, the claim of depreciation was allowed. On appeal, the Tribunal allowed the Revenue's appeal. The Tribunal pointed out that the Officer had categorically given his findings that the windmill alleged to be installed at Nallapuram Village, Palladam Taluk, Coimbatore District, was completely different from the windmill erected at Ketham Village, Coimbatore District. Further even during the financial year 1995-96, there was no windmill installed in the name of the assessee at Nallapuram Village, Palladam Taluk, Coimbatore District. Even the insurance policy was obtained on 19.4.1996, after end of the financial year. In the circumstances, the Tribunal rejected the plea of the assessee.

17. As far as the claim of the assessee is concerned, learned counsel for the assessee placed reliance on the inspection report given by one K.V.Nagarajan, wherein it is stated that the wind mills in Nallurpalayam were in working condition. The inspection report is dated 16.8.95. The invoice raised by NEPC MICON Limited in favour of the assessee dated 14.8.95 shows the cost of one number of wind turbine generator located at Nallurpalayam Village,

Coimbatore. The series of documents in the form of invoice referred to similar such sale of wind mills located at Nallurpalayam Village. Whatever be the relevancy of these invoices, the inspection report dated 16.8.95 given by K.V.Nagarajan show that the information had been provided by their site people and verified the book maintained by them at their site. It was further observed in the report that "I have requested NEPC to place boards mentioning "Financed by First Leasing Company", Madras and for that they have accepted and it will be kept within 15 days." The assessee could not explain as to why the valuer had requested NEPC to place the name Board mentioning the details "Financed by First Leasing Company". Whatever be the correctness of the claim of the assessee, the document herein show that the transaction, even though the invoices filed by the assessee indicated that there was a sale, yet, in view of the observation made in the inspection report that boards mentioning "Financed by First Leasing Company", Madras be kept, we have no hesitation in confirming the order of the Tribunal holding that the assessee had not discharged the burden of prove.

18. The next instances is relating to Navbharat Industrial Linings & Equipment Limited. Here too the assessee had purchased the machinery, windmills from lessee to whom, subsequently the assessee has leased out the windmill. The Assessing Officer restricted the depreciation allowance to 50% to one of the two wind mills holding that the second windmill commenced operation only from the second half of the accounting year relevant to the assessment year. The first Appellate Authority held that the actual use by the lessee was immaterial and the assessee used the assets in its business of leasing. Hence, the

assessee was entitled to full relief. The Tribunal rejected the assessee's plea, hence, the appeal.

19. As far as this contention is concerned, as rightly pointed out by the assessee, placing reliance on the decision of the 231 ITR 308 CIT v. *SHAAN FINANCE LIMITED*, to which the assessee is also a party, considering the nature of business of the assessee in leasing out machinery, what is required is that the asset is put to use in the business of the assessee for the purpose of granting 100% depreciation. Applying the law declared by this Court in the decision reported in 231 ITR 308 CIT v. *SHAAN FINANCE LIMITED*, we have no hesitation in setting aside the order of the Tribunal, thereby directing the Assessing Officer to grant the relief of depreciation.

20. The next item is relating to K.K.NAG Limited. The Assessing Officer pointed out that there was no materials to substantiate the assessee's contention that there was sale and lease back transactions and they were pure and simple finance transaction. The assets covered by alleged lease continued to be at the location of the assessee both prior to and after the date of alleged sale. Apparently, the lessee was in need of funds only for its working capital requirements and not for acquiring any new assets and the transactions have been given colour of sale and lease back transaction. The Commissioner of Income Tax (Appeals) accepted the case of the assessee based on the sale agreement dated 21.7.1995 and lease agreement dated 24.7.1995 and granted the relief. The Tribunal reversed the findings of the Commissioner of Income Tax (Appeals) by holding that there was no evidence of transfer of plant and machinery from lessor to the lessee nor there was any evidence regarding the sale. The assessee is on

appeal before this Court. Placing reliance on the concept of constructive delivery, learned counsel for the assessee pleaded for grant of relief.

21. Learned counsel for the assessee also placed reliance on the documents relating to sale of machineries. A reading of the document filed before this court show sale of electric motor, moulding machine type and dimineralisation plant. While some of the documents related to sale by lessee company to the assessee, there are also documents evidencing sale of machineries in favour of the lessee. There are no explanation from the assessee regarding this. In the circumstances, there are no materials to substantiate the real transaction evidencing sale of machineries by lessee in favour of the assessee herein and subsequent lease in favour of the lessee. When the assessee had proved its case, the Tribunal rejected the case of the assessee. There being no correlate, it is difficult to accept the case of the assessee to grant relief. In the circumstances, even to construe as a symbolic or constructive delivery, there being no materials to support the assessee's case, we have no hesitation in confirming the order of the Tribunal.

22. The next instances of sale and lease transaction pertains to Universal Starch Chemical Limited. The Assessing Officer considered the claim of the assessee and pointed out that the machineries in question were imported from USA and they were installed on 17.1.1995. There was no materials to state that the lessee had claimed depreciation for the financial year 1994-95 as against the cost of machinery at Rs. 86,55,699/-. The lessee had stated to have sold the same at the price of Rs.1 crore. Questioning this, the Officer rejected the claim of the assessee. The

Assessing Officer pointed out that the written down value in the context of books of account of the lessee is Rs. 75,73,737/-, which was taken as actual cost for the purpose of granting depreciation on the assets. As far as this aspect is concerned, learned counsel for the assessee pointed out that the Tribunal had wrongly applied Explanation 4A to Section 43(1) which was inserted by the Finance (N0.2) At, 1996 with effect from 1.10.96, to reject the claim of the assessee for depreciation. The assessee submitted that it had furnished the copies of invoices and that the Officer had omitted to take note of ad valorem customs duty paid and the same had not been taken note of as to fix the cost of the machineries. We had perused the documents placed before this Court, which was also placed before the authorities below. In the written submission placed before the Commissioner of Income Tax (Appeals), the assessee pointed out that the Assessing Officer had omitted to include the charges in original cost of the machineries at Rs. 86,55,699/-. Taking the actual cost at Rs. 75,73,737/-, the Assessing Officer allowed depreciation at 25%. The total cost claimed by the assessee as Rs.1 crore stands explained. In the circumstances, we allow the claim of the assessee in this regard. The order of the Tribunal stands set aside. Accordingly, the Assessing Officer is directed to take the assessment on file and grant the relief.

23. Apart from sale and lease transactions, there are instances of direct lease transaction. One such instances is IPCA Lab Limited. As far as IPCA Lab Limited is concerned, the Assessing Officer pointed out that letter of inquiry was sent to the supplier at the address indicated in the invoice to furnish copies of invoice, delivery challan issued to the lessee/lessor, exact present location of the equipment/

machinery, evidence for transportation of the plant and machinery to the site, proof including installation report if any for installation of machinery at the lessee's premises, date of installation of the machinery, copy of the accounts of assessee company in the book of accounts for the period 1.4.95 to 31.3.96 and PAN and jurisdiction / Designation of Assessing Officer under the Income Tax Act. Rupa Construction was supplier of the assets. In spite of the letter issued, no evidence was forthcoming from the supplier to substantiate the claim of the assessee.

24. The claim of the assessee with reference to Galaxy Indo Fab Limited, also met with the same fate. The supplier herein viz., Krishna Technomach Engineers was asked to furnish the details as stated in the earlier case. The letter sent to the supplier returned unserved, with the result, the claim of the assessee was rejected.

25. On appeal by the assessee in respect of above two instances viz., IPCA Lab Limited and Galaxy Indo Fab Limited, before the Commissioner of Income Tax (Appeals), the claim of the assessee was allowed. On further appeal before the Tribunal at the instance of the Revenue, the assessment was restored, thereby, the findings of the Commissioner of Income Tax (Appeals) set aside. The Tribunal pointed out that when the assessee had failed to produce the copy of the bills and details called for before the Assessing Officer, the exact asset was not identified, rightly, the Assessing Officer rejected the claim of the assessee.

26. As far as the contention of the assessee herein is concerned, the Tribunal should have considered the claim of the assessee since the genuineness of the assets and transactions were not doubted by the

Assessing Officer and there was accounting of the lease rentals. Here too, we do not find that the claim of the assessee herein could be accepted considering the fact that the sale invoices given by supplier contains no evidence and even their existence through registration number quoted in the invoice before Sales Tax Authorities was not substantiated, particularly, in the case of direct lease in respect of Galaxy Indo Fab Limited.

27. As far as the certificate regarding Rupa Construction, supplier of IPCA Lab is concerned, when the assessee had not placed necessary materials as regards purchase from the supplier, only course open to the officer was to reject the claim of the assessee to hold the direct lease as finance transaction. In the absence of any material forthcoming from the assessee to support its contention that it was a lease transaction, rightly, the Tribunal restored the order of the Assessing Officer. Being a pure factual finding and as there are no materials to substantiate the claim of the assessee, we have no hesitation in confirming the order of the Tribunal.

28. As already pointed out in preceding paragraph, except for instances viz., Electronics Limited, BPL Systems and Products Limited, Navbharat Industrial Linings & Equipment Limited and Universal Starch Chemical Limited, we do not find any justification to grant the relief in respect of the claim made on instances relating to Enterprising Enterprises Limited, Indian Organic Chemicals Limited, Patheja Forgings & Auto Parts Manufacturing Limited, NEPC MICON Limited, K.K.NAG Limited and IPCA Lab Limited and Galaxy Indo Fab Limited.

29. In the circumstances, we allow the above Tax Case (Appeal) partly. No costs. Consequently, connected TCMP is closed.

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To

1. The Deputy Commissioner of Income Tax
Central Circle T I (5), Chennai 600 034
2. The Income Tax Appellate Tribunal,
Madras A Bench