

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./ITA No.937/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2007-08)

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आयकर अपीलसं./ITA No.938/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2008-09)

&

आयकर अपीलसं./ITA No.939/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

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आयकर अपीलसं./ITA No.940/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2010-11)

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आयकर अपीलसं./ITA No.941/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

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आयकर अपीलसं./ITA No.942/Chny/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

&

आयकर अपीलसं./ITA Nos.292/Chny/2019
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s. Tristar Container Services (Asia) Private Limited No. 18, Swamy Sivananda Salai, Chepauk, Chennai 600 005.	बनाम/ Vs.	ACIT Company Circle III (1), Chennai – 600 034.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAACT-4043-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri S. Palani Kumar (CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	06-05-2022
घोषणाकीतारीख / Date of Pronouncement	:	15-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2007-08 to 2012-13 were dismissed by the Tribunal vide order dated 29.03.2017 on the ground that alternative relief as sought by the assessee was already allowed by lower authorities. However, the assessee preferred further appeal against the same before Hon'ble High Court of Madras. The Hon'ble Court vide TCA Nos.3 to 8 of 2018 order dated 26.11.2018 remitted the appeals to Tribunal for fresh consideration on merits with following observations: -

8. The assessee's case is that, they being a company registered under the Companies Act are bound to maintain its books of accounts for compliance with Accounting Standards and as per Accounting Standard 19, the assessee treats the containers taken on finance lease as assets in its books of account and depreciates these assets over a period of time in its books of account even though it is not the legal owner of the containers.

9. It is the further case of the assessee that Accounting Standard 19 was introduced in the year 2001 and requirement of capitalising the assets taken under Finance lease was brought in from the said year. Till then even for accounting purpose all the lease rentals were charged as revenue expenditure and the question of capitalising the assets does not arise. It was further contended that for income tax purposes, the assessee has claimed the whole lease rentals as revenue expenditure.

10. The learned counsel on the either side referred to the relevant conditions in the agreement. The learned counsel for the assessee referred to the business conditions dated 15.08.2001, more particularly, Clause 3(b), which deals with the lessee's liability to the lessor for all damage to or loss or destruction of the containers. Reference was made to Clause 6(b), which deals with default remedies and Clause 10, which deals with subleasing and assignment. These clauses were referred to by the learned Senior Counsel to emphasize as regards the ownership rights.

11. Ms.V.Pushpa, the learned Counsel for the Revenue referred to the rate schedule and in particular Clause B, which states that the term of the agreement shall be 5 years commencing on the day of pick-up by the lessee and expires on 14.08.2006. The learned counsel also referred to the other conditions contained in paragraph IV(C) which deals with casualty and paragraph E, which deals with Security Interest. Thus, the interpretation given by the assessee and the revenue wholly revolves around the interpretation of terms and conditions of lease agreement. Parallely, what is to be borne in mind is the stand taken by the assessee that they are bound under the provisions of the Companies Act to follow Accounting Standard 19.

12. The other issue would be whether the alternate claim of depreciation can be made by the assessee can be the sole reason for rejecting the other grounds. Bearing in mind the above grounds raised by the parties, if we peruse the order passed by the Tribunal, we find that the Tribunal has not examined the factual position which it was bound to do as the last fact-finding body. The Tribunal having rendered a finding that it is not clear from the agreement, whether it is finance lease or operating lease, could not have rendered the finding in the next line with regard to how the assessee treated the containers while claiming depreciation. We find that the claim for depreciation was an alternate plea and it is settled legal position that the assessee under the Provisions of Income Tax Act can raise alternate plea despite the fact, the alternative pleas may be in conflict with each other.

13. We may refer to Accounting Standard 19 issued in the year 2001 and in particular, the Chapter relating to classification of leases and in Clause 8 of the said Chapter, it has been stated that whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than its form. Illustrations have been given pointing out the examples of situation which would normally lead to a lease being classified as finance lease. However, the Tribunal did not make any endeavour to appreciate the documents examining the effect of Accounting Standard 19 as projected by the assessee. Therefore, we are of the considered view that the matter has to be decided afresh by the Tribunal by examining the documents, effect of Accounting Standard 19 as pointed out by the assessee and then take a decision on merits and in accordance with law.

14. As we are convinced that the Tribunal did not undertake any exercise to examine the factual aspect, we are well justified in interfering with the order passed by the Tribunal and remanding the matter for fresh consideration. Having come to such a conclusion, there would be no necessity of answering the Substantial Questions framed for consideration.

15. In the results, the appeals are allowed, the order passed by the Tribunal is set aside and the matter is remitted for fresh consideration to examine all factual and legal issues and proceed in accordance with law and the substantial questions of law framed for consideration are left open.”

It is evident that the order of the Tribunal has been set aside and matter has been remitted back for fresh consideration to examine all factual and legal issues and proceed in accordance with the law. Accordingly, the

appeals are placed before us for fresh consideration. The appeal for AY 2014-15 has similar issue and therefore, this appeal has also been consolidated with aforesaid bunch of appeals.

2. For the sake of adjudication, AY 2012-13 is taken as the lead year. This appeal arises out of the order of learned Commissioner of Income Tax (Appeals)-11 Chennai [CIT(A)] dated 22.02.2016 in the matter of assessment framed by learned Assessing Officer (AO) u/s 143(3) of the Act on 25.03.2015. The impugned order is common order for AYs 2009-10 and 2012-13. The grounds taken by the assessee read as under: -

1. The Appellant challenges the order of the Commissioner of Income Tax (Appeals) ("CIT(A)") on the following grounds amongst others each without prejudice to the other or others.
2. The order of the CIT(A) is biased, arbitrary, and contrary to law, considering the facts and circumstances of the case.
3. The CIT(A) erred in holding that the composite lease rental should be bifurcated as principal and interest and that the principal portion is capital in nature and has to be disallowed.
4. The CIT(A) failed to appreciate that the Income tax Act, 1961 does not differentiate leases as Finance and Operating and in all cases of lease, the lease rentals are considered as revenue both in the hands of Lessor and Lessee.
5. The CIT(A) failed to note that the resident lessors have offered the lease rentals as income for income tax purpose and have been accordingly assessed in their tax assessments.
6. The CIT(A) failed to note that the direction given by him in the impugned order would result in double taxation in respect lease rentals in question.
7. The Assessee craves leave to file additional ground at the time of hearing.

3. The Ld. AR advanced arguments supporting the accounting methodology of the assessee which has been controverted by Ld. CIT-DR. Reliance has been placed on various judicial pronouncements, the copies of which have been placed on record. The written submissions have also been filed by both the sides which have duly been considered while adjudicating the appeal. The clarifications sought by the bench have duly been responded. Having heard rival submissions and after

due consideration of material facts, our adjudication to the appeal would be as under.

Assessment Proceedings

4.1 The assessee being resident corporate assessee is stated to be engaged in leasing of marine containers. The assessee obtains the containers on lease from lessor and sub-leases the same to various customers. The lease rentals so earned by the assessee are considered as its income and the same is credited to Profit & Loss Account. The leased containers are treated as part of fixed assets in the Balance Sheet and the assessee charges depreciation on the same as per The Companies Act in the books of accounts. The lease rental payable by the assessee is shown as liabilities. The lease payments made by the assessee would have two components i.e., principal portion and finance portion. The finance portion is debited to the Profit & Loss Account which is allowed by Ld. AO and the same is not the subject matter of dispute before us. The dispute stem from the fact that in the computation of income, the assessee adds back the book depreciation and claim the gross lease rentals as deduction from the profits. The Ld. AO opined that finance lease is a lease that transfers substantially all the risks and rewards incident to the ownership of the assets. Therefore, the assessee would be entitled for depreciation as well as finance charges only. The portion which is attributable to principal repayment could not be allowed as deduction.

4.2 The assessee defended its stand, inter-alia, on the ground that there was no distinction in operating lease and finance lease under the Income Tax Act. The lessee is entitled for deduction of lease payment whereas lessor declares the lease rental as its income and pays tax on

it. The lessor would be entitled for depreciation on the leased assets. The assessee also submitted that this methodology was accepted by revenue up-to AY 2010-11 in regular assessment proceedings.

4.3 However, Ld. AO opined that lease rental would have two components i.e., principal and interest. The interest portion represents revenue expenditure whereas principal repayment is capital expenditure. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Association of Leasing and Finance Services Co. (29 STT 316)**. In the said case, it was held by Hon'ble Court that the amount received as principal was capital receipts in the hands of the lessor. Based on the same, Ld. AO held that principal repayment would be capital expenditure in the hands of the lessee as well. Finally the assessee was held to be not eligible to claim expenditure of Rs.609.67 Lacs. The alternative plea of the assessee to allow depreciation and finance charges and reversal of short term capital gains was accepted by Ld. AO.

4.4 The assessee claimed foreign exchange loss of Rs.328.90 Lacs in respect of outstanding balance of lease rental payable. The expenditure being the liability in respect of capital assets was disallowed but the same would be eligible for relief u/s 43A.

Appellate Proceedings

5.1 During appellate proceedings, the assessee reiterated that lessor as owner of container would be entitled for depreciation whereas the assessee as a lessee would be entitled for deduction of lease rentals under the Income Tax Act irrespective of nature of lease. This position was accepted by Ld. AO from AYs 1998-99 to 2010-11. The attention was also drawn to CBDT Circular No. 2/2001 which provide that

Accounting Standard (AS)-19 as issued by ICAI differentiating the lease into finance lease and operating lease would have no implication on the allowance of depreciation under Income Tax Act. Another pertinent fact brought to the notice was that the resident lessor had already offered entire lease rentals as its income for Income Tax purposes.

5.2 The Ld. CIT(A) taking note of revisionary order passed u/s 263 on 19.03.2014 for AY 2009-10, concurred with the observations of revisional authority in that order. It was also noted that the assessee's challenge to the revisional proceedings stood dismissed by Tribunal. In the revisional order for AY 2009-10, the case law of Hon'ble Rajasthan High Court in **Rajshree Roadways V/s Union of India (263 ITR 106)**, as relied upon by the assessee, was held to be adjudicated by the terms of lease agreement. However, in assessee's case, no such examination was made by Ld. AO and therefore, the regular assessment was subjected to revision. The Tribunal upheld the validity of the revisionary order. Relying upon the observations in revisional order, the stand of Ld. AO qua disallowance of container lease payment was confirmed.

5.3 The foreign exchange loss on lease rental was upheld with following observations:

I have carefully considered the AO's observation mentioned above under Para 7.1 and the appellant's submissions mentioned above under para 7.2 above.

7.3.1 The aforesaid issue has already been dealt with by my predecessor in AY 2009-10 by the order vide ITA No.12.12/2013-14 dated 30.12.2014, when the appellant went in appeal against the original order u/s 143(3) dated 23.12.2011. In the said order, in line with the revision order u/s 263 dated 19.03.2014 passed by the CIT-III, Chennai, in AY 2009-10, my predecessor had directed the AO to apply the provision of Sec.43A as amended w.e.f. 01.04.2003. Accordingly, the AO has already adjusted the forex loss on restatement of lease rental payable at the end of the year to the cost of the assets as per Sec.43A. Therefore, the AO's addition is upheld and no interference is called for. The appellant's ground is dismissed.

Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

6. Upon careful consideration of material facts, we find that the basic facts are not in dispute. The assessee as a lessee takes on lease marine containers and sub-leases the same to its customers. The income thus earned by the assessee is offered to tax. The leased containers are taken under operating lease as well as under finance lease. There is no dispute with respect to tax treatment of asset taken under operating lease. The dispute is only with respect to assets taken under finance lease. The same stem from the fact the assets under finance lease are capitalized in the Balance Sheet as Fixed Asset and depreciation is claimed on the same under the Companies Act. The lease rental payable by the assessee is shown as liabilities. The lease payment would have two components i.e., principal and finance charges. The finance charges have been debited to the Profit & Loss Account and the same has been allowed by Ld. AO. However, in the computation of income, the assessee reverses the depreciation and claim gross lease rental as deduction on the plea that Income Tax Act do not differentiate between finance lease as well as operating lease. We are of the considered opinion that whatever is the nature of lease, only the lessor is entitled for depreciation as per the decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (350 ITR 527)**. The decision of Delhi Tribunal in **Minda Corporation Ltd. V/s DCIT (69 Taxmann.com 317)** has also support the same view. The case of the revenue is that in case of finance lease, substantial risks and rewards of ownership are transferred to the lessee and therefore, the lessee would be entitled to claim depreciation and not the principal component of lease payment.

7. We find that as per Accounting Standard-19 as introduced by The Institute of Chartered Accountants of India (ICAI) in the year 2001, the lease transactions are bifurcated into two types of lease i.e., finance lease and operating lease. As noted by Coordinate bench of Delhi Tribunal in **Minda Corporation Ltd. V/s DCIT (69 Taxmann.com 317)**, as per AS-19, finance lease is described as a lease that transfers substantially all the risks and rewards in respect of ownership of an asset and title may or may not be transferred under such lease. An operating lease, on the other hand, is described as a lease other than a finance lease. The aforesaid Accounting Standard provides that under the finance lease, the lessee should recognize the asset in its books and should charge depreciation on the same. In the case of operating lease, the Accounting Standard provides that the lessee should recognize the lease payments as an expense in the profit and loss account and the lessor should recognize the asset given on lease and charge depreciation in respect of the same. The aforesaid distinction between finance lease and operating lease is not recognized under the Act. Under the provisions of the Act, depreciation is admissible under section 32 of the 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 Act. Thus, what AS-19 provides is the accounting treatment to be given to the two types of leases. It is not determinative of the tax treatment of the lease which has to be computed in accordance with the provisions of the Act. It is trite law that book entries are not determinative of tax liability as per the ratio laid down in **Sulej Cotton Mills Ltd. v. CIT [1979] 116 ITR 1 (SC)** as well as in **Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR**

363 (SC). The said proposition has also been reiterated in CBDT Circular No.2 of 2001 dated 09.02.2001 which state that accounting standard issued by ICAI creating distinction between finance lease and operating lease will have no implications under the provisions of the Act. The relevant excerpt read as under: -

"Under the Income-tax Act, in all leasing transactions, the owner of the asset is entitled to the depreciation if the same is used in the business, under section 32 of the Income-tax. The ownership of the asset is determined by the terms of the contract between the lessor and the lessee.

It has come to the notice of the Board that the New Accounting Standard on 'Leases' issued by the Institute of Chartered Accountants of India require capitalization of the asset by the lessees in financial lease transaction. By itself, the accounting standard will have no implication on the allowance of depreciation on assets under the Act."

As observed by Delhi Tribunal, 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 assessee is not eligible to claim depreciation under the Act, which is to be allowed to the legal owner of the asset. Furthermore, not only the interest/ finance/ other charges component in the lease payments, but the entire lease payments are treated as a deductible expense and no deduction is allowed for the impairment provision. In the hands of the lessor, the entire 'lease rentals' and not merely the finance charges component thereof is taxed as income. The lessor, who is the legal owner of the asset, is entitled to claim depreciation under the provisions of the Act.

8. The Hon'ble Supreme Court in the case of **ICDS Limited Vs CIT (350 ITR 527)**, held that as long as the assessee is entitled to retain the legal title of the asset against the rest of the world then it would be the owner of the asset in the eyes of law. In such a case, the assessee as

owner lessor would alone be entitled to claim depreciation notwithstanding the fact that vehicles were registered in the name of the lessee under The Motor Vehicles Act. In this decision, Hon'ble Court referred to its earlier decision in **CIT V/s Shann Finance Pvt. Ltd. (97 Taxman 435)**. The Hon'ble Court also took note of similar decision rendered in CIT v. A.M. Constructions [1999] 238 ITR 775 (AP); CIT v. Bansal Credits Ltd. [2003] 259 ITR 69/126 Taxman 149 (Delhi); CIT v. M.G.F. (India) Ltd. [2006] 285 ITR 142/[2007] 159 Taxman 335 (Delhi); CIT v. Annamalai Finance Ltd. [2005] 275 ITR 451/146 Taxman 627 (Mad.) and agreed with the ratio contained therein. In each of these cases, the leasing company was held to be the owner of the asset and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out.

9. Similar is the decision of Hon'ble Rajasthan High Court in the case of **Rajshree Roadways v. Union of India [2003] 263 ITR 206/129 Taxman 663** wherein Hon'ble Court upheld the assessee's claim of allowability of lease rentals paid as lessee of the vehicles as a revenue expenditure u/s 37(1) of the Act, even though the lease was categorized as finance lease.

10. In the present case, rule of consistency also favors the case of the assessee. It is undisputed position that the aforesaid accounting / tax treatment has been accepted by the revenue in regular assessment proceedings right from AYs 1998-99 to 2010-11. Therefore, facts being pari-materia the same, the revenue is debarred from changing its stand after having accepted this position for so many years.

11. So far as the terms of lease agreement is concerned, upon perusal of sample lease agreement as placed on page nos. 55 to 64 of paper-

book of this year, we find that the lease is in the nature of lease purchase. The assessee is required to pay lease rate on per day basis @USD .82 per day which includes reimbursement of domestication costs paid by the lessor. The term of lease is 5 years. On the last day of term, the assessee is required to pay further final payment of USD 1 also. The lessee, at its own expenses, is required to obtain insurance coverage and all responsibility in this regard shall rest with the lessee. The Lessee shall not be entitled for any abatement of rent or reduction thereof. The rents shall continue to be payable in all event unless expressly agreed. If any container is lost, damaged, stolen, destroyed etc., lessee's obligations to pay rental for that container would terminate and the lessor receives an amount equal to the balance of the rent owed for the remainder of the term.

12. As per business conditions, the lessee was required to return all the containers to lessor's depot at the designated locations. The lessee was liable to lessor for all damages to or loss or destruction of the container subsequent to delivery and prior to return to lessor except that what is caused by normal wear and deterioration. It was the responsibility of the lessee to maintain the containers in good repair and safe operating conditions. Further, the lessee would not have the right to assign this Agreement to any other party without the prior written consent of the Lessor. However, lessee shall have the right to sublet or rent the container on lease under this Agreement, except that any such subletting or rental shall not relieve Lessee of its obligation under the agreement.

13. Upon perusal of terms and conditions of lease agreement, it could be concluded that the ownership of the containers has never been

parted with by the lessor and lessee merely pays lease rental to the lessor. In such a case, it would only be the lessor which is entitled to claim depreciation as per the cited decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (supra)**.

14. The Ld. CIT-DR, in the written submissions and by drawing attention to assessee's financial statements, have emphasized the fact that the aforesaid lease transactions are finance lease transactions and therefore, the action of Ld. AO was to be held. We find that there is no quarrel on the proposition since the only dispute under the appeal is tax treatment under finance lease. The operating lease transactions have not been disturbed by Ld. AO and the only dispute is qua deduction of principal component under finance lease transactions. This fact is nowhere in dispute.

15. In further support, Ld. CIT-DR has emphasized the fact that it was the lessee who was responsible to obtain insurance coverage at its own expense and therefore, the assessee was to be considered as owner of the asset. However, we find that this conclusion run contrary to the terms of the agreement as noted by us in preceding paragraphs. It has also been emphasized that in case of casualty to containers while on lease, the lease obligation terminate and the lessor would receive an equal amount to the balance of rent owed for the remainder term which would establish that the assessee was the owner of the assets. Similar plea has been raised to submit the lessee was obligated to pay customs duty, as well as bear cost of maintenance / repairs of the containers. However, there are merely the terms of the agreement and do not culminate into transfer of ownership from lessor to lessee. The terms clearly provide

that the assessee was obligated to return the containers to the lessor at the end of lease term.

16. The Ld. CIT-DR has referred to various judicial decisions in support of revenue's case. The decision of Mumbai Tribunal (SB) in **Indusind Bank Ltd. V/s ADIT (19 Taxmann.com 173; 14.03.2012)** is a decision which has been rendered prior to the decision of Hon'ble Supreme Court in **ICDS Limited Vs CIT (supra)** which has been rendered on 14.01.2013. Undisputedly, the decision of Hon'ble Supreme Court would have precedence over the decision of Special Bench of Tribunal.

The decision in **Asea Brown Boveri Ltd. V/s IFCI (154 Taxman 512)** is not relevant to the facts of the present case.

Similarly, the case law in **Association of Leasing & Financial Services Company Vs. UOI (29 STT 316)** is in the context of Service Tax and has no application to the facts of the present case.

17. Finally, considering the facts and circumstances of the case, the assessee as a lessee would be entitled for deduction of gross lease rental payments. The assessee's methodology is to be accepted. The lease payments made by the assessee would be revenue expenditure for the assessee. We order so. The alternative claims as allowed by Ld. AO shall stand reversed. The claim of foreign exchange loss on these transactions shall be re-considered / re-adjudicated by Ld. AO in the light of our above adjudication. The appeal stand partly allowed in terms of our above order.

18. In AY 2007-08, the assessee has been reassessed u/s 143(3) r.w.s. 147 of the Act on 25.03.2015. The lease rental charges have been disallowed and depreciation & finance charges have been allowed by Ld. AO. The CIT(A), relying on revisional order u/s 263 for AY 2009-10,

confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us. Though the assessee has raised legal grounds assailing the validity of reassessment proceeding, however, the same has not been pressed before us during hearing. Therefore, these grounds stand dismissed as not pressed. Since that fact as well as issue, on merits, are pari-materia the same as in AY 2012-13, our adjudication as above shall *mutatis mutandis* apply to this appeal also. In the result, the appeal stands partly allowed.

19. In AY 2008-09, the assessee has been reassessed u/s 143(3) r.w.s. 147 of the Act on 25.03.2015. The lease rental charges have been disallowed and depreciation & finance charges have been allowed by Ld. AO. The CIT(A), relying on revisional order u/s 263 for AY 2009-10, confirmed the stand of Ld. AO. The AO was directed to allow depreciation on the financial lease rentals capitalized as per IT Rules in view of Sec.43(6)(b) of the Act. Aggrieved, the assessee is in further appeal before us. Though the assessee has raised legal grounds assailing the validity of reassessment proceeding, however, the same has not been pressed before us during hearing. Therefore, these grounds stand dismissed as not pressed. Since that facts as well as issue, on merits, are pari-materia the same in AY 2012-13, our adjudication as above shall *mutatis mutandis* apply to this appeal also. The relief granted by Ld. CIT(A) in the impugned order stand reversed. In the result, the appeal stands partly allowed.

20. In AY 2009-10, the assessee has been assessed u/s 143(3) r.w.s. 263 of the Act on 25.03.2015. The lease rental charges as well as foreign exchange loss has been disallowed and depreciation & finance charges have been allowed by Ld. AO. The CIT(A), relying on

observations in the revisional order u/s 263 for AY 2009-10, confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us. Facts being *pari-materia* the same as in AY 2012-13, our adjudication as contained therein shall *mutatis mutandis* apply to this appeal also. The issue of foreign exchange loss shall be reconsidered / re-adjudicated by Ld. AO. In the result, the appeal stands partly allowed.

21. In AY 2010-11, the assessee has been assessed u/s 143(3) on 28.03.2013. The assessee was saddled with disallowance u/s 40(a)(i) for want of TDS on lease rental payments. The Ld. CIT(A) held the principal component of lease rental would be capital expenditure and the same is not allowable u/s 37. Therefore, the issue of disallowance u/s 40(a)(i) was held to be academic in nature. Facts being *pari-materia* the same as in AY 2012-13, our adjudication as contained therein shall *mutatis mutandis* apply to this year also. The directions of Ld. CIT(A), with respect to foreign exchange loss, stand reversed. Having said so, the issue of disallowance u/s 40(a)(i) shall be restored back to the file of Ld. AO for fresh adjudication since the expenditure has been held by us to be revenue in nature. The assessee is directed to substantiate its case in terms of the provisions of Sec.40(a)(i). The appeal stands partly allowed.

22. In AY 2011-12, the assessee has been assessed u/s 143(3) on 30.03.2014. The assessee was saddled with disallowance u/s 40(a)(i) for want of TDS on lease rental payments. The principal component of finance lease transactions was added back to the income of the assessee. The Ld. CIT(A) held the principal component of lease rental would be capital expenditure and the same is not allowable u/s 37. Therefore, the issue of disallowance u/s 40(a)(i) was held to be academic in nature. Facts being *pari-materia* the same as in AY 2012-

13, our adjudication as contained therein shall *mutatis mutandis* apply to this year also. The directions of Ld. CIT(A), with respect to foreign exchange loss, stand reversed. Having said so, the issue of disallowance u/s 40(a)(i) shall be restored back to the file of Ld. AO for fresh adjudication since the expenditure has been held by us to be revenue in nature. The assessee is directed to substantiate its case in terms of the provisions of Sec.40(a)(i). The appeal stands partly allowed.

23. In AY 2014-15, the assessee has been assessed u/s 143(3) on 20.12.2016. The assessee was saddled with disallowance of forex losses, lease rentals. The depreciation on capitalized principal portion was allowed. The profit on sale of container was reduced. The assessee claimed cost of club services for Rs.1.43 Lacs as paid to Madras Cricket Club which was disallowed, being not related to the business of the assessee. The appeal was dismissed by Ld. CIT(A) since there was no representation from the assessee. Aggrieved, the assessee is in further appeal before us.

24. Facts being *pari-materia* the same as in other years, the principal component of lease rental shall be allowed as revenue expenditure. The depreciation on capitalized principal portion shall stand reversed. The issue of forex loss shall stand remitted back to the file of Ld. AO for re-adjudication. The profit on sale of containers would be brought to tax. No interference is required on club expenses. The appeal stands partly allowed.

Conclusion

25. All the appeals stand partly allowed to the extent indicated in the order.

Order pronounced on 15th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 15-06-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF