



\* **HIGH COURT OF DELHI : NEW DELHI**

**ITA No.552 of 2007**

% Judgment reserved on: 6th July, 2007

Judgment delivered on: 13<sup>th</sup> July, 2007

THE COMMISSIONER OF INCOME TAX-V  
CENTRAL REVENUE BUILDING  
NEW DELHI ..... Appellant

Through: Ms. Rashmi Chopra, Adv.

Vs.

RAGHUPATI LEASING & FINANCE LTD.  
23, ISHWAR NAGAR,  
MATHURA ROAD,  
NEW DELHI ..... Respondent

Through: Mr. M.K. Giri, Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**V.B. GUPTA, J.**

The present appeal has been filed by the Revenue against the impugned order dated 31st August, 2006



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passed by Income Tax Appellate Tribunal (for short as 'Tribunal') Delhi Bench (F) in ITA No.4250/Del/2002 for the Assessment Year 1995-96 vide which the appeal of Revenue has been dismissed by upholding the order of Commissioner of Income Tax (Appeal) in allowing 100% depreciation to the Assessee and further allowing the lease rental income to be treated as business income rather than income from other sources.

2. As per the facts of this case, Assessee-company furnished its return of income declaring loss of Rs.83,11,409/-. The original assessment was completed under Section 143(3) of the Income Tax Act, 1961(for short as 'Act') on 26th March, 1998 at a total income of Rs.66,56,469/-.

3. The Assessee had claimed purchase of shuttering materials and bottles from various parties which were neither confirmed nor did the parties appear in response to summons under Section 131 of the Act. The assets worth Rs.1,49,67,100/- were given on lease without adequate security and the Assessee had claimed depreciation at 100%. The Assessing Officer was of the view that the



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purchases were bogus and hence, disallowed the depreciation as also assessed the rental income of Rs.8,80,000/- as income from other sources instead of business income as claimed by the Assessee.

4. Vide order dated 31st March, 1999, the Commissioner of Income Tax (Appeal) set aside both the issues for fresh consideration.

5. The Assessing Officer issued summons to various banks through whom the payments were effected. Though, the banks did furnish their replies but the Assessing Officer was of the view that their replies were not adequate and were inconclusive. The Assessing Officer relied on the report of inspector who had conducted enquiries at the time of original assessment proceedings to conclude that the concerned parties in question did not exist and as such the assessment was repeated at the same amount as in the original assessment proceedings.

6. In the second round of litigation, the Commissioner of Income Tax (Appeal) again felt that proper enquiries were not conducted by the Assessing Officer and directed him to make specific enquiries with regard to the transactions. A



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final report dated 12th July, 2002 was received by the Commissioner of Income Tax (Appeal) wherein it was mentioned that the detailed enquiry at this stage was not feasible. It was also stated that the enquiries made from the bank do not disclose anything adverse and show that the cheques were issued by the Assessee favouring the parties named by it. It was observed by the Commissioner of Income Tax (Appeal) that the enquiries made from the bank go to show that the transactions were with the parties named by the Assessee and the existence of independent bank accounts of the parties concerned indicate that the parties would have been in existence and the banks would have verified their particulars at the time of opening of such accounts.

7. Accordingly, Commissioner of Income Tax (Appeal) held that the lease rental income should be assessed as business income and depreciation as claimed should be allowed.

8. On appeal filed by the Revenue, the Tribunal concurred with the findings of the Commissioner of Income Tax (Appeal).



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9. It has been contended by learned counsel for the Revenue that Assessee did not produce the relevant parties to whom the assets were leased and neither he could provide any explanation to the whereabouts of the assets. In the absence of any assets and the non-existence of parties concerned, the Assessee is not entitled to the relief of 100% depreciation on the assets and the lease income on the alleged assets could not be treated as business income.

10. Before the Tribunal, the department representative strongly relied on the order of the Assessing Officer and submitted that he had nothing more to add than what was stated by the Assessing Officer.

11. As per record, the enquiries made from the banks go to show that the transactions made in the present case were through account payee cheques/ drafts. The existence of independent bank accounts of the parties concerned indicate that the parties had been in existence. Further, the total lease rental received by the Assessee and declared in the income returns for the Assessment Years 1995-96, 1996-97 and 1997-98 is more than the claim of the depreciation on the leased assets in these years and this



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fact goes on to show that the doubt that the transactions were arranged just to claim depreciation on leased assets is not justified. Further, from both the Assessment orders, it is clear that though the department had ample opportunity to conduct detailed enquiries about the genuineness of the transactions, but no such enquiry was conducted. When a third opportunity was given by the Commissioner of Income Tax (Appeal) by asking for a fresh remand report, the department raised its hand by saying that detailed enquiry at this stage was not feasible.

12. As per decision of the Tribunal, the Assessing Officer has admitted in the fresh remand report that the enquiries from the bank do not indicate anything adverse against the Assessee and there is no allegation that these bank accounts are either bogus or benami. The Tribunal further held that;

“It is also a fact that though the transactions have been held to be bogus by the assessing authority, it has taxed the rental income arising therefrom. In our opinion, the Revenue cannot adopt that part which is favourable to it and leave aside which is not favourable to it from the same set of transaction. Thus, considering the overall facts and circumstances of the case, we are of the view



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that the Commissioner of Income Tax (Appeal) was justified in treating the lease rental income as the business income of the Assessee and also in allowing depreciation to the Assessee."

13. In view of the findings of the Appellate authorities below, we find no legal infirmity in the order passed by the Tribunal.

14. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

15. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

  
(V. B. GUPTA)  
JUDGE

  
(MADAN B. LOKUR)  
JUDGE

July 13, 2007  
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