



**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.10.2008

+ **ITA 458/2007**

**COMMISSIONER OF INCOME TAX  
DELHI- VI**

... Appellant

- versus -

**TULIP FINANCE LTD**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr R. D. Jolly

For the Respondent : Mr V. P. Gupta with Mr Basant Kumar

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. The present appeal under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act') has been preferred by the revenue against the order dated 31.08.2006 passed by the Income Tax Appellate Tribunal in ITA 5810/Del/1998 pertaining to the assessment year 1994-1995.

2. The learned counsel for the revenue challenged the said



to the deletion of the addition of Rs 33 lacs, which had been made by the Assessing Officer on account of unexplained share capital under Section 68 of the said Act. The second issue pertains to the deletion made by the Tribunal of the addition of Rs 35,06,292/- by the Assessing Officer on account of alleged unexplained security deposits under Section 68 of the said Act. The third issue relates to the disallowance of depreciation by the Assessing Officer amounting to Rs 15 lacs in respect of cast iron moulds. The disallowance has been set aside and the Tribunal has allowed the said depreciation. The fourth issue also pertains to disallowance of depreciation of Rs 6,11,145/-, which had been claimed by the assessee in respect of rolls which were machinery items less than Rs 5,000/- each on which, at the relevant point, 100% depreciation was allowable.

3. We have heard the learned counsel for the parties and have also examined the orders passed by the Assessing Officer, the Commissioner of Income Tax (Appeals) and the impugned order passed by the Tribunal. Insofar the first issue is concerned, we find that the Commissioner of Income Tax (Appeals) had considered the issue in detail and had found that one of the parties, namely, Sh. S. P. Garg and Mrs Raj Garg, who had introduced a sum of Rs 2 lacs by way of share capital, had appeared before the Assessing Officer and had



bank statements evidencing issuance of cheques to the assessee company towards share capital. Even the proof and details of dividend paid and tax deducted at source had been filed by the assessee. With regard to the other party, namely, Magadh Leasing and Finance Ltd, and the associate parties, Mr D. N. Sahai, Ms Sushila Sahai and Daya Engineering Works Ltd, who had collectively introduced share capital to the extent of Rs 16 lacs, it had been noticed that the assessee had furnished their permanent account numbers, places of their assessment and confirmations from them, before the Assessing Officer. The said information was also filed before the Commissioner of Income Tax (Appeals). The amounts received from these shareholders were through cheques, which had been duly credited in the bank account of the assessee and these shareholders were also income tax assesseees, who had also received dividends in respect of the shares. It was also noted that the assessee company had also filed tax deducted at source certificates along with bank statements to show the evidence of remittance of dividend. As regards the remaining shareholder, that is, Dr. S. P. Srivastava, it was noted that he was an NRI and the share capital of Rs 15 lacs received from him was through his NRE account maintained in ANZ Grindlaya Bank. The remittances were through three separate cheques, of which details were available. The assessee had also filed bank certificates submitted to the Reserve Bank of India



presumably for the purpose of remittance of dividend to the said Dr Srivastava.

4. In the light of such evidence, the Commissioner of Income Tax (Appeals) as also the Tribunal had come to a conclusion of fact that the assessee had discharged the burden which lay upon it for establishing the identity of the shareholders as well as the genuineness of the transactions. As such, the Tribunal confirmed the findings of the Commissioner of Income Tax (Appeals) and deleted the addition of Rs 33 lacs which had been made by the Assessing Officer. It is obvious that the findings returned by the Commissioner of Income Tax (Appeals) as well as the Tribunal are pure findings of fact and no question of law arises on this issue.

5. As regards the second issue of alleged unexplained security deposits of Rs 35,06,292/-, we find that the Tribunal, after examining the material on record as also the order passed by the Commissioner of Income Tax (Appeals), which was in favour of the assessee, came to the conclusion that the advances received from the customers by way of security deposits were duly accounted for in the lease rentals and were adjusted against the final sale price. Consequently, the security deposits could not be regarded as unexplained cash credits. It may be



wished to purchase or take on hire, finance or lease any vehicle or plant or machinery from the assessee. The security deposits were either eventually refunded or adjusted against sale of the assets to the customers upon termination of the lease. The agreements which were entered into between the assessee and its customers, contained the period of lease, security deposit received, rate of interest, descriptions of the assets etc. The Commissioner of Income Tax (Appeals) noted that the assessee company had more than 1500 such customers from whom security deposits had been received and to whom assets had been leased as on 31.03.1994. Taking of security deposits from the customers was regarded as mandatory for the business as it provides a safety net and thus minimizes the risk of any possible default in payment of lease rentals by the customers. On termination of the lease the said security deposits are adjusted against the sale of the leased asset to the customers. The Commissioner of Income Tax (Appeals) also noted that for the subsequent assessment year 1995-1996 the Assessing Officer had thoroughly examined the issue of receipt of security deposits and was convinced about the genuineness and, therefore, did not make any addition on this account. For all these reasons, we find that the Tribunal's conclusion confirming the findings of the Commissioner of Income Tax (Appeals) cannot be faulted. In any event, these are pure findings of fact and no question of law, much



6. As regards the third issue with regard to disallowance of depreciation of Rs 15 lacs on cast iron moulds, we find that the Assessing Officer had proceeded on an entirely incorrect premise. The Assessing Officer had disallowed the depreciation claimed by the assessee on the ground that the lease agreement which had been signed on 29.03.1994 was to take effect from 29.04.1994 and, therefore, depreciation could not be allowed for the year in question which ended on 31.03.1994. The Commissioner Income Tax (Appeals), after going through the lease agreement dated 29.03.1994, categorically observed that the commencement date of the said lease agreement was 29.03.1994. However, the lease money was payable in monthly instalments with effect from 29.04.1994. Both the Commissioner Income Tax (Appeals) as well as the Tribunal have concluded that the fact that the lease payments were to commence on 29.04.1994 did not make any difference to the fact that the lease, in fact, had commenced on 29.03.1994. Moreover, bills in respect of the cast iron moulds were dated 29.03.1994. The delivery challans were also prior to 31.03.1994. The Tribunal concluded that on the basis of these documents as also on the basis of the certificate given by the lessee (Shiva Glass Works Ltd), it was established that the cast iron moulds were put to use in the month of March, 1994 and, therefore, the depreciation was allowable in the year in question. This is also a finding of fact and the Tribunal has



the date of commencement of the payment was 29.03.1994 and not 29.04.1994. We may note in passing that in paragraph 19 of the impugned order there appears to be typographical error in the mentioning of the date in the following phrase:-

“.....the date of commencement was 29.04.1994.”

Reading the context in which the said phrase appears, the date would be 29.03.1994 as has been held by the Commissioner of Income Tax (Appeals), which is noted in paragraph 16 of the impugned order itself.

7. The fourth issue with regard to disallowance of depreciation of Rs 6,11,145/- has also been rightly set aside by the Commissioner of Income Tax (Appeals) as also the Tribunal. These are also findings of fact. The Tribunal has confirmed the following observations of the Commissioner of Income Tax (Appeals):-

“7.1 It is also noticed that the appellant-company has filed complete details regarding depreciation claim, including purchase vouchers, which categorically show that the said assets were purchased in financial year 1993-1994 and the rate per item is less than Rs 5,000/-. Also the copy of the Lease Agreement entered into between the appellant company and M/s Accurate Tubes Pvt. Ltd has also been filed, apart from tripartite agreement between the Allahabad Bank, the lessor and the lessee dated 18.03.1994. Keeping in view the facts and circumstances of the case I have no hesitation in holding that the Assessing Officer has acted in an arbitrary



The said claim of 100% is clearly admissible under the first proviso to Section 32 (1).”

We see no reason to interfere with these findings.

8. No substantial question of law arises for our consideration.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**October 15, 2008**  
**SR**