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

RESERVED ON: 30.07.2012
PRONOUNCED ON: 12.09.2012

\+ **ITA Nos.551/2010 & 738/2010**

COMMISSIONER OF INCOME TAX DELHI ..... Appellant
Through: Mr. Sanjeev Rajpal,
Sr. Standing Counsel.

versus

TELECOM FINANCE (INDIA) LTD. ..... Respondent
Through: Mr. Surinder Goel, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT

% The questions of law framed in these appeals by the revenue, impugning the order of the Income Tax Appellate Tribunal (ITAT) dated 22.8.2008 in ITA No. 4505/Del/2003, are as follows:

a. *"Whether the Appellate Tribunal fell into error in allowing deduction to the extent of Rs.26,21,049/- claimed by the assessee towards renovation of the property and treating as revenue expenditure in the facts and circumstances of this case?*

b. *Whether the Tribunal was correct in permitting depreciation at 100% on Rs.11,98,600/- capitalized by the assessee as part of renovation claimed in these cases?"*

2. The facts necessary for determining these questions are that the assessee is engaged in the business of leasing, hire-purchase and

finance. In the return of income for the Assessment Year 1997-98, the assessee declared a total income of ₹ 42,79,660/- on 26.11.1997. During the assessment proceedings, the AO noticed that the assessee had entered into a lease agreement dated 05.04.1996 with M/s Price Water House Associates Ltd. (hereinafter PWHA) for leasing on rent first floor of the building P-1, Aditya Vihar, M.B. Road, New Delhi for a period of five years at a quarterly rent of ₹ 1,05,000/-. The AO further noticed that immediately after two months or so, i.e. on 28.05.1996, the assessee entered into another lease agreement with M/s Price Water House (hereinafter PWH) for giving the same premises on sublease for 5 years from 1st July, 1996 for a quarterly rent of ₹ 4,61,500/-. The AO also noticed that both the agreements were signed by the same person though in the sublease agreement there was no mention of the lease agreement with PWHA.

3. In the return of income, the assessee had declared sub-lease rental of ₹ 13,84,500/- for nine months as income and had claimed lease rental of ₹ 3,85,000/- for 11 months as deduction. The assessee had also declared ₹ 41,09,585/- as expenditure on renovation of the said premises, out of which, ₹ 11,98,600/- was capitalized; it claimed depreciation @ 100% thereon. The remaining amount of ₹ 29,10,985/- was treated as deferred revenue expenditure and had been amortized over the five years in the books of accounts. However, in return of income, the assessee claimed entire amount of ₹ 29,10985/- as revenue expenses and thus, in effect, the entire amount of ₹ 41,09,585/- was claimed as deduction.

4. Upon considering the facts on record, the (first) AO observed that the arrangement of lease/sublease with PWHA and PWH respectively were not *bona fide* and genuine transactions, and made additions to the tax liability of the assessee. Against this order, the assessee filed an appeal before the CIT (A) which set aside the assessment order and directed the AO to conduct proceedings again after giving an opportunity to the assessee to cross-examine witnesses, and the assessee to confront statements of witnesses.

5. In pursuance of the said directions, the AO initiated *de novo* proceedings upon which he, by order dated 19.02.2003, observed that the lease and sublease agreements with PWHA and PWH respectively were bogus transactions, and were in fact, finance/loan arrangements. He, thus, disallowed deduction of depreciation @ 100% on ₹ 11,98,600/- capitalized by the assessee; disallowed deduction of renovation expenses of ₹ 29,10,985/- claimed by the assessee as revenue expenditure; and also disallowed lease rental of ₹ 3,85,000/- payable to PWHA. He also worked out interest payable at ₹ 3,21,000/- for five years and made addition of ₹ 4,54,140/- to the income of the assessee attributable to the present year. The AO further observed that the depreciation, even if held to be allowable, was available only at 10%.

6. The Assessing Officer's reasoning and conclusions are given in para 4.1 to 4.3 of his order. Before him, the assessee argued that its Japanese collaborator had not approved of the location of the premises on the ground of its distance from down town, and thus the assessee

was left with no alternative but to sub-lease the premises. The AO reasoned that it was incomprehensible why the original lease could not have been cancelled, when PWHA was agreeable to have the assessee sublease the premises to PWH (both PWH and PWHA having the same management). Furthermore, the sub-lease agreement was entered into even before the renovation had been completed. Moreover, in the sub-lease agreement between the assessee and PWH, neither was there any mention of the original lease agreement, nor any mention about the reason why the sub-lease rental payable by PWH was as high as ₹ 4,61,500/- per quarter when the original lease rental was just ₹ 1,05,000/-. The AO inferred that the two agreements were entered into just to reduce the tax liability of both the parties. The assessee's tax liability was intended to be reduced by claiming cost of renovation as deduction, and PWH's tax liability was intended to be reduced by claiming deduction of higher sub-lease rental paid to the assessee; such payment by PWH, in fact, resulted in advancement of the principal loan amount to the assessee.

7. On appeal by the assessee, the CIT (A) set aside the assessment order holding that the lease transaction was a genuine one, that there had been no reduction in tax liability of any party was way of the lease/sublease arrangements. He deleted all the additions except the amount of ₹41,09,585 claimed by the assessee as depreciation/revenue expenditure, and further held that out of ₹ 41,09,585/-, the amount of ₹ 14,88,536/- was to be treated as current repairs and regarding

balance amount of ₹ 26,21,049/- directed the AO to spread over the amount for the period of lease.

8. The CIT (A), while setting aside the assessment order, observed the AO did not rely on any material on the record to hold that the lease and sub-lease agreements were not genuine. He further held that none of the parties reduced their tax liabilities by entering into the lease transactions. He believed the version of the assessee's authorized representative and Sh. Dhadwal (Senior Manager, PWH) that at around the same time when assessee's Japanese collaborators had rejected the premises, one of the landlords of PWH's offices had also given notice for vacation. Thus PWH was in search for some premises, and the assessee, had already got renovation work (starting with demolition) started at the premises, was looking to sublease, subject to the lessor's (PWHA's) consent; that at this time, it was agreed between PWHA and the assessee that the latter would get the renovation work at its expense and sublease the premises to PWH. Furthermore, the CIT (A)'s reasoning in holding that there had been no difference in the tax effect borne by the assessee and PWH is reproduced as follows:

> *"In case of lease transaction the amount paid by appellant to the lessor at Rs. 21 lacs is taxable in the hands of lessor whereas the same is deductible in the hands of the appellant. The appellant had received Rs. 92.3 lacs as lease rentals as against the expenditure of claimed at Rs. 41,09,585/-. Thus, the appellant has admitted net income of Rs. 30.21 lacs (Rs. 92.39 lacs – Rs. 41.09 lacs – Rs. 21 lacs). In the case of Price Water House, the decusion of lease rental would have been claimed at RsS. 92.3 lacs over the period of 5 years. On the*

other hand, if the transaction is to be treated as finance or loan, the intt. of Rs. 30.21 lacs was chargeable to tax in the hands of the appellant. Price Water House would have claimed deduction of Rs. 41.09 lacs on account of repairs and intt. of Rs. 30.21 lacs and Rs. 21 lacs rentals payable to Price Water House Associates Pvt. Ltd. Totalling to Rs. 92.30 lacs. From this, it is clear that both being companies, there appears to be no difference in the incidence of taxation. Also in subsequent assessment years, the appellant had admitted income of sub-leasing of premises which has been accepted by the department."

9. This order was appealed against before Income Tax Appellate Tribunal (ITAT) by both the revenue and the assessee. While the assessee challenged the direction given by CIT (A) for amortization of ₹ 26,21,049/- over the period of lease, the revenue, on the other hand, assailed the finding that the transactions were genuine, along with challenging all the deletions of additions that had been made by the AO. Both appeals were clubbed by the ITAT by order dated 22.08.2008. The ITAT allowed deduction of ₹ 26,21,049/- claimed by the assessee as revenue expenditure. Moreover, ITAT deleted all the additions made by the AO holding that the lease transaction entered into by the assessee with PWH was a genuine one. The ITAT's reasoning on facts was as follows:

"The assessee has demonstrated that M/s. Price Water House was in need of premises because one of the landlords of its office premises has already given a notice for vacating the same. Simultaneously on the other hand, the premises taken by the assessee for its use was not approved by its collaborator, so it was seeking permission to sub-lease the premises. These circumstances do indicate that there was no ulterior motive in entering into the transaction. The Assessing

Officer has disbelieved the transaction on the ground that renovation work was not substantially carried out by the assessee before entering into the sub-lease agreement with M/s. Price Water House. In our opinion, learned Assessing Officer has misread and misconstrued the statement of Shri Dadwal for arriving at such a conclusion. Shri Dadwal has specifically disclosed that major renovation work was already undertaken by the assessee certain cabins were not of the specifications as required by the Senior Executives of the Price Water House. Therefore, he requested the assessee to change the size of certain cabins. The contractor has already been appointed. He was doing the work and, therefore, there was no occasion to change the contractor and put the assessee to face litigation etc. The learned CIT(Appeals) has considered all these aspects in detail and held that the lease transaction between the assessee and M/s. Price Water House is a genuine lease transaction. Thus, we do not find any merit in the appeal of revenue."

10. The main argument advanced by learned counsel for the revenue was that the lease agreements entered into by the assessee were bogus, and the entire arrangement instead was a loan/finance arrangement. It was contended that the Tribunal did not appreciate that the lease and sublease agreements was a paper arrangement to show the cost of renovation as expenditure and to thus to charge higher lease rental. Both the lease agreements were signed by the same person on behalf of PWHA and PWH. The whole purpose of entering into such an arrangement was to reduce the tax liability of both the parties. The assessee's tax liability would stand reduced by claiming cost of renovation as deduction, and PWH's tax liability would stand reduced by claiming deduction of higher sub-lease rental paid to the assessee, whereas through such payment PWH would, in fact, advance

the principal loan amount to the assessee. It was contended that the Tribunal's ruling on this issue, even though on fact, is unsustainable in law as it is perverse and not based on any material evidence.

11. Learned counsel for the assessee, on the other hand, contended that the question of genuineness of the lease transaction is a question of fact, and that the Tribunal's finding on that must be considered final. Therefore, it cannot be re-agitated in appeal before the High Court.

12. Furthermore, contended counsel for the assessee, that the expenditure on renovation was revenue in nature, and thus ought to have been allowed as a deduction in terms of Section 30(a) (i). Reliance was placed on the decisions of this Court in the case of *Commissioner of Income Tax v. Escorts Finance Ltd* [2006] 205 CTR (Del) 574, *Commissioner of Income Tax v. Hi Line Pens Pvt. Ltd* (2008) 306 ITR 182 and *Commissioner of Income Tax v. M/s Amway India Enterprises* 4th November 2011 in ITA Nos. 1344/2009 and 1363/2009. Alternatively, it was argued that the expenditure would fall under ambit of section 37(1) of the Act, and thus, would be deductible.

13. On the issue of whether this expenditure was revenue or capital in nature, counsel for the revenue contended, without prejudice to the challenge regarding the genuineness of the lease arrangements, that the amount of Rs. 26,21,049/- incurred on renovation of the leasehold premises was in the nature of capital expenditure. It was argued that Explanation 1 to section 32 was applicable, and reliance was placed

on the decision in *Ballimal Nawal Kishore and Anr. v. Commissioner of Income Tax* [1997] 224 ITR 414 (SC). It was contended that the expenditure incurred was not on repairs but was in fact, for a total renovation of the leased property, and therefore expenditure was to be capitalized.

14. On this issue, the CIT(A)'s finding and reasoning for treating the amount of ₹ 26,21,049/- as revenue expenditure, which was affirmed by the Tribunal, was as follows:

> *"The appellant took the premises for the purpose of its business but due to change in circumstances it sublet the premises. From the list of repairs carried out, it is seen that the expenditure incurred on renovation is to replace the existing floor, fittings etc. and also on construction of wooden partition walls.*
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> *Out of total expenditure of Rs. 41,09,585/- an amount of Rs. 24,17,600/- has been incurred on construction of wooden partition etc. and Rs. 13,46,150/- on replacement of existing fitting & fixtures floor tiles etc. The appellant has also incurred expenditure of Rs. 3,45,835 on designing & supervision charges. This expenditure is to be bifurcated proportionately. Therefore Rs. 2,03,449 [Rs. 3,45,835 x Rs. 24,17,600) divided by Rs. 41,09,585] will relate to construction of wooden partition etc. The total expenditure on wood work will be Rs. 26,21,049/- (Rs. 24,17,600 – Rs. 2,03,449). The amount incurred on wood work will therefore, provide benefit to the appellant over a period of five ears. The expenditure incurred at the Rs. 14,88,536/- (Rs. 13,46,150/- - Rs. 3,45,835/- – Rs. 2,03,449/-) is in the nature of current repairs.*

> *.... In case of CIT Vs. Kisenchand Chellaram (India) P. LTd. 130 ITR 385 (Mad) Hon'ble Court held that improvement carried out in leasehold premises by constructing partition walls. Wall panelling, show windows etc. was revenue expenditure. The expenditure incurred has resulted into receipt of higher amount of lease rentals. Following the decision of Hon'ble Madras High Court in the case Kishanchand Chellaram (India) Pvt. LTd. is held that the expenditure incurred on wood work at Rs. 26,21,049/- is in the nature of revenue expenditure. It is also a fact that the deduction in one year in respect of expenditure incurred on wood work providing long term benefit to the appellant will distort profitability in the year under appeal. Therefore the ration of the decision of the Hon'ble apex court the case of Madras Investment Corporation vs. CIT 225 ITR 802 is applicable. The appellant will be entitled to deduction of Rs. 26,21,049/- during the period of lease in the ration of lease rentals received."*

15. On the second question framed, learned counsel for the revenue argued that the Tribunal was incorrect in allowing depreciation @ 100% on ₹ 11,98,600/- to the assessee. It was instead urged that depreciation should have been charged at only 10% per annum. Counsel for the assessee, on the other hand, defended the Tribunal's decision of allowing depreciation at 100% p.a.

Analysis

16. This Court shall first deal with the question of whether the finding of the Tribunal about genuineness or otherwise of the lease transactions is unsustainable; and then, if need be, consider the treatment of the amount of ₹ 26,1049/- and the rate of depreciation applicable. Even though under section 260A of the Income Tax Act

only substantial questions of law are to be decided this case, there exist authorities for the proposition that where the findings of fact, by the Tribunal are perverse and contrary to materials on record and based on surmises and conjectures, the High Court under Section 260A would be competent to interfere [Ref. *Pyarelal Mittal v. Assistant Commissioner of Income-tax* [2007] 291 ITR 214 (Gauhati), *Gaurikanta Barkataky v. Commissioner of Income-tax* [2009] 313 ITR 34 (Gauhati)]

17. The basis of the AO's order for treating the transactions as bogus was that the lease and sublease transactions were, in fact, an arrangement to give the colour of a lease to a transaction which in substance is that of finance/loan. This, the AO reasoned, was done to reduce the tax liability of the assessee and PWH. He also noted that bills payable to contractor Ranjit Singh were of September 1996, and that payment of ₹ 40,00,000/- was made to him from 16.7.1996 to 24.9.1996, while the last payment of ₹ 1,09,000/- was made in the next financial year. Moreover, he noted that no evidence had been submitted to show that substantial renovation was complete before the sublease transaction was entered into. The CIT (A) found the AO's reasoning to be erroneous, and the ITAT upheld this view. Both these authorities held that the tax liability of the assessee (and PWH) remained same irrespective of whether the transactions are treated as genuine or bogus.

18. In the present case, it is clear from the record that the assessee is engaged in the business of leasing, hire-purchase and finance. The

premises in question over which the expenditures were made were leased to the assessee for a period of five years; the assessee further subleased the premises for the same period. Since the assessee itself was a lessee for a period of just five years, it is highly unlikely that a new asset was created by the work done on the premises. Moreover, it must be noted that the assessee, which is engaged in the business of leasing and hire-purchase, would be incurring such expenses (of the nature of work done on premises to be let/sublet) on a regular basis, thus, depriving it of the character of capital expenditure. What is noteworthy is that the expenditure was incurred, according to the assessee, in anticipation of its entering into joint venture agreement; the Japanese collaborator however did not go through the transaction, and did not approve the location of the premises. The assessee did not produce any materials, in the form of an MOU or letter of intent, or draft agreement, or even copies of its correspondence, or e-mails exchanged with the Japanese investor/collaborator, to show what the details of such transaction were. It appears facially improbable for a prudent businessman to undertake substantial and significant expenditure without any modicum of commitment by a potential joint venture partner. It is also significant, that the landlord (PWHC) let out the premises, for a monthly rental of approximately ₹ 35,000/-; the sub-lease was for ₹ 4,61,500/-. The assessee claimed that it incurred an expenditure of ₹ 41,09,585/- (Rs. 24,17,600/- towards construction of wooden partition etc. and ₹ 13,46,150/- on replacement of existing fitting & fixtures floor tiles etc. and expenditure of ₹ 3,45,835 on designing & supervision charges). There is no doubt that the

expenditure and the background in which it was incurred is mysterious. The original lease (between the assessee and PWHA) was entered into on 5.4.1996; the sub lease with PWH, was entered into on 28.5.1996.

19. The relevant findings of the AO, after remand by the CIT (A), and after examination and cross examination of the contractor who carried out the renovation, and after examining the books, and corresponding evidence of payment towards the renovation, are as follows:

> *"3.1 During the course of original assessment proceedings the AO held that the said arrangement of lease/sub lease with PWHA and PWH are not found to be bona fide genuine and that in fact shown arrangement to give a colour of lease arrangement to a transaction which is in substance that of finance/loan so the tax liability in the case of both the parties i.e. assessee would and PWH is reduced. In case of assessee tax liability is reduced by claiming cost of renovation i.e. the principal amount of ₹41, 09,585/- as deduction and in the case of PW- H tax liability is reduced by claiming deduction of lease rental which includes payment of principal amount also. This conclusion of the AO was based on the fact that renovation was not carried out in complete before entering into sublease agreement would dated 28-05-1996. Also bills of contractor Shri Ranjeet Singh in the name of assessee were of September 1996 and payment of ₹40, 00, 000/-in eight instalments of ₹5 lakhs each were made by the assessee to Shri Ranjeet Singh from 16-07-1996 to 24-09-1996 and thus the AO held that it is unbelievable that the renovation even if commenced before 28-05-1996 was complete before 28-05-1996. The AO relied on the statement of Shri BS Dhadwal senior manager of PWH who was well acquainted with the said transactions, recorded on 24-02-2000 wherein Shri Dhadwal confirmed that renovation was done as per requirements of PW- H, renovation was not*

complete before 28-05-1996 and he himself visited the premises in connection with the work carried out by Shri Ranjeet Singh. The AO held the transaction entered into by assessee with PWH/ PWHA as that of finance."

20. After narrating the above sequence of events the assessment order went on to recapitulate the directions of the Appellate Commissioner to give sufficient opportunity to the assessee to cross-examine the witness. This direction was complied with. The statements recorded under oath and cross examination conducted, were made available to the assessee; it was asked to respond to certain queries also, issued in the form of notice by the assessing officer. The order of the assessing officer, after noticing the sequence of events, reasoned as follows:

"The reply of the assessee company has been carefully considered. The Bills of the contractor Shri Ranjeet Singh in the name of the assessee were of September 1996 and payment of ₹ 40, 00, 000/-in eight instalments of ₹ five lakh each was made by the assessee to Shri Ranjeet Singh from 16-07-1996 to 24-09-1996 while the last payment of ₹ 109, 000/-was made in the next financial year. The AR of the assessee had not submitted any documentary evidence to show that most of the renovation was complete before the assessee entered into the sublease agreement.

4.1 The A R has submitted that the Japanese collaborator did not approve of the location of the premises being far away from downtown and as the assessee left with no alternative but to sublease the said premises. However it is not understandable as to why the original lease could not be cancelled when the original owner P HWA and sublessee i.e. PWH are under the same management And If the Management of PW- HA/PWH could agree to take its own premises on sublease there was no reason would cancel the original lease itself particularly when

the effect of even the sublease arrangement same i.e. premises gets back in occupation of PWHA/PWH and does it is only a paper arrangement to show the cost of renovation in the hands of the HSE and thus to charge higher lease rental.

4.2 Even Shri BS Dhadwal has stated in his statement taken on 24-02-2000 that the renovation was not complete before 28-05-1996 and that he himself visited the premises in connection with the work carried out by Shri Ranjeet Singh.

4.3 There is nothing mentioned in clear words in the said agreement as to why lease rental to be charged from PWH is as high as ₹ 461, 500/- per quarter as against ₹ 105, 000/-per quarter payable by assessee to PWHA, in fact in agreement dated 28-05-1996 even the basic facts would as to how assessee acquired the right to lease the premises to PW- H are not mentioned. In other words there is no reference of earlier agreement dated 05-04-1996 in agreement dated 28-05-1996 in spite of the fact that both agreements were signed by the same person. The tax liability in case of both the parties i.e. SSE and PW- H is reduced. On case of assessee tax liability is reduced by claiming cost of renovation i.e. principal amount of ₹ 41, 09, 585/-as deduction and in case of PWH tax liability is reduced by claiming deduction of lease rental which includes payment of principal amount also.

4.4 these facts leads to the conclusion that the said arrangement of lease and sublease of the assessee company with PWHA and PWH is not bona fide genuine and in fact an arrangement to give colour of lease to a transaction which in substance is that of finance and/loan. So the transaction entered into by the assessee with the PW- H/PWHA is taken that of a finance. Total rental received from PWH over five years shall be ₹ 92, 30, 000/-(would ₹ 461,500 x 20 quarters) and total lease rental payable to PWHA over five years is ₹ 21,00,000/-(105, 000 x 20 quarters) and thus assessee has would to receive a rent amount of ₹ 71, 30, 000/-against principal amount of ₹ 41, 09, 000/- paid to Shri Ranjeet Singh as finance for cost of renovation and d and ust from these transactions the assessee

earns ₹30, 21, 000/-over five years as interest on principal of ₹ 41, 09, 000/- to be recovered in quarterly instalments of principal/ interest of Rs. 3,56,500/- (₹461,500 – Rs. 1,05,000/-). The interest income of Rs. 30,21,000/- is equally distributed over 5 years i.e over 20 quarters and thus the interest income from 3 quarters covered by the relevant year shall be ₹ 453, 150/-(₹30, 21, 000 x 3/20)"

21. It is now settled that the nomenclature which the parties chose to call their transaction with is not determinative of its true character, especially in the documents which describe it, and spell out the terms and conditions. The revenue, like the court, has to look at the real nature of the transaction. Thus, it was held in *Sundaram Finance Limited v. State of Kerala,* AIR 1966 SC 1178, that

"*The true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances. In each case the Court has, unless prohibited by the statute, power to go beyond the document and to determine the nature of transaction, whatever may be the form of the document…*"

22. Similarly, in *Commissioner of Income-Tax, West Bengal II v. Durga Prasad More,* (1971) 82 ITR 540 the Supreme Court observed as under: -

"Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will b e very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals

made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

23. The approach of the CIT (A) was to brush aside the inferences drawn by the AO; in doing so, the order of the Commissioner merely stated that Mr. Dhadwal, in his statement had mentioned that some cabins were being put up, and their dimensions were changed to suit the specifications of PWH. No other reason was given why the AO's reasoning was faulty or unsound. The other reason was that the tax liability on both PWHA and the assessee remained the same, even if the transaction was not genuine. The CIT (A) however disallowed depreciation of the entire amount, and instead allowed it to be amortized over a period of five years.

24. This court is of opinion that the inferences drawn by the AO were not unfounded. They were based on certain facts:

(1) The extremely short duration between the lease and sub-lease agreement;

(2) Renovation being carried on even before the sub-lease agreement was entered into;

(3) Payment for the renovation being made in eight instalments the last of which was actually paid the next financial year;

(4) A valid inference that if PWHA wished to, it could have cancelled the lease, and made the premises to its related concern, or sister concern, PWH. Instead, the continuation of the lease, and creation of sub lease in favour of PWH by the assessee for an amount which was over 300% (as sub lease rental) in comparison with the lease rent paid by it, appeared far-fetched.

25. In addition, this Court notices that the assessee's claims that the Japanese collaborator was not satisfied by the location of the premises, seems *ex facie* contradictory. As stated earlier, it defies logic that a reasonable and prudent businessman would invest or commit to invest so heavily in such extensive renovations, without any corresponding assurance from his business partner. There is no evidence that in fact such a prior arrangement had been worked out, or even mooted by the Japanese collaborator; there is no evidence to show what impelled the collaborator to call off the idea, or how the assessee was compensated. The timing of PWHA's lease and the need of PWH for new premises is too close. In April, 1996, PWHA leased out the premises; the very next month, the same premises were sub-leased to PWH.

26. The CIT (A) and the Tribunal blandly, and perhaps uncritically accepted the argument that the tax implications either way were the same, for the assesse as well as PWHA. There is no discussion in this regard; no details about assessment of PWH, or PWHA, or its returns appear in either order. Therefore, the wholesale acceptance by the said authorities that the tax implications were the same cannot be sustained. Equally, these authorities did not furnish any reason why

the deductions and findings, based on an elaborate and painstaking examination of the materials on record, by the AO, were unjustified. The findings of the CIT (A) and the Tribunal, therefore, were contrary to the evidence; their reasoning cannot be sustained.

27. In the light of the above discussion, both the questions framed are answered against the assessee, and in favour of the revenue. The appeals are, accordingly allowed.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

SEPTEMBER 12, 2012