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

RESERVED ON: 16.08.2012
PRONOUNCED ON: 03.10.2012

\+ **ITA 437/2012, C.M. NO. 12972/2012**

M/S. S.E. INVESTMENTS LTD. ..... Petitioner
Through: Sh. Kaanan Kapur, Advocate.

versus

ACIT, CIRCLE 7(1) ..... Respondent
Through: Ms. Rashmi Chopra, Sr. Standing Counsel.

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

MR. JUSTICE S.RAVINDRA BHAT

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C.M. NO. 12972/2012 (for exemption)

Allowed, subject to just exceptions.

ITA 437/2012

1. In this appeal, the assessee impugns an order of the Income Tax Appellate Tribunal (ITAT) ITA No. 1/Del/2008. The questions of law urged and pleaded for consideration are:

(i) Did the Tribunal fall into error in upholding the order of the CIT (A) that the reopening of assessment was legal, and;

(ii) Whether the conclusion of the Tribunal and lower authorities that the real nature of the transaction was not hire-purchase, justified in the circumstances.

2. The assessee is a Non-Banking Finance Company (NBFC), licensed by the Reserve Bank of India (RBI) and regulated by the provisions of law. The appellant had filed its return for the assessment year 2000-01, declaring net interest chargeable to tax amounting to Rs.75,530/-. The Assessing Officer (AO) sought to initiate reassessment proceedings under Section 10 of the Interest Tax Act, stating that he had reason to believe that the assessee had not brought to tax amounts under the enactment. The assessee objected through representation and letter dated 10.03.2006. The AO confirmed the order, directing that the amount of Rs. 3,10,82,350/- was in fact interest and not hire-purchase and, therefore, taxable under Section 2(7) of the Interest Tax Act. The assessee's appeal was considered by the Commissioner, who took into account the assessment proceedings which culminated in the order of ITAT for the previous years, wherein it was held that the assessment for the present year, by bringing to tax amount of Rs.3,09,86,822/- was justified under the circumstances.

3. The appellate commissioner noticed that the AO had recorded the following reasons for issuance of notice under Section 10:

> *"In the appellant's case, the Hon'ble ITAT in Interest Tax appeal numbers 15, 16, 17, 18 and 19/Agra/2002 and Interest Tax Appeal No. 01/Agra/2002 for the A. Yrs. 1994-95, 1995-96, 1996-97, 1997-98 and 1999-2000 and 1998-99 has held that "the appellant company is engaged in financing business and only advancing loan on interest and by no stretch of imagination it can be considered a hire purchase company.*

Thus, we dismiss all the three grounds of appeal of the appellant company and uphold the order of CIT(A)-II, Agra for the A. Yrs. 1994-95, 1995-96, 1996-97, 1997-98 and 1999-2000."

"[F]urther in the light of Board's circular and the ratio laid down by the Hon'ble Supreme Court in the case of Sundram Finance Ltd. and in view of the various decisions discussed therein, it would be evident that the transactions of the appellant company were in the nature of loan and not hire purchase."

Similar nature of business transactions involve in subsequent year 2000-2001. The hire purchase charges are nothing but interest charged on money financed to hirers, therefore, the hire charges come in the definition of chargeable interest u/s 5 read with section 2(7)/2(5B) of the Interest Tax Act, 1974. As per this office record, no return has been filed by the appellant for the AY 2000-01.

Keeping in view the above, I have reason to believe that income chargeable under Interest Tax Act, 1974 has escaped assessment for the AY 2000-01. Accordingly notice u/s 10 of the Interest Tax Act, 1974 is issued for the AY 2000-01."

4. The appellate commissioner, on considering the records, held that the AO issued notice on 13.11.2003 under Section 10 and that despite its service upon the appellant, the latter did not file any return of income. The appellant, however, in a subsequent letter, took the position that it had already filed return on 30.09.2001. The appellate commissioner, therefore, concluded that the AO had issued notice under Section 10 on 13.11.2003, within four years of the end of assessment year 2000-01. The appellate commissioner also held that the information in possession of the AO was specific, direct and relevant that the interest chargeable to tax for the relevant assessment year 2000-01 had escaped assessment. The appellate

commissioner relied on the decisions of the Supreme Court in *ITO v. Saradbhai. M. Lakhani & Anr., (*2000) 243 ITR 1 and *Raymond Woollen Mills Ltd. v. ITO,* (1999) 236 ITR 34. On these grounds, the appellate commissioner held that there was no infirmity in the reassessment proceedings which were validly initiated.

5. So far as the other question as to whether the real nature of the transaction was one of hire-purchase or interest received on loan was concerned, the appellate commissioner extensively relied upon the previous decision of the Tribunal in the case of the appellant for the assessment year 1995-99-2000 in Appeal Nos. 115-19/Agra/2002 dated 14.08.2003. For these reasons, the appeal of the assessee was dismissed. The ITAT, in the impugned order, affirmed the CIT(A)'s decision.

6. During the appeal, learned counsel for the appellant argued that the appellate commissioner did not deal with the question of reassessment in its entire and proper perspective. It was urged that when all facts had been disclosed, and the Assessing Officer had opportunity to deal with the matter, no finding was returned, holding that in substance, the transactions yielded interest and were not in the nature of hire-purchase. It was urged that the appellant commissioner should have been more careful in considering the correctness of the reassessment proceedings as what was before him and what had been taken into account could not again have been revisited in the subsequent reassessment proceedings under Section 10.

7. It was urged that on the merits, the lower authorities and Tribunal fell into error in holding that the real nature of the transaction was not one of hire-purchase but a disguised loan. It was argued that all the elements of hire

existed in this case, such as a hire-purchase agreement, the requirement of monthly payment to the assessee by the hirer; the power to repossess the vehicle in the event of default in payment of the charges and eventual vesting of the title in the vehicle after all instalments were paid by the hirer.

8. In this regard, learned counsel also relied upon the decision of the Supreme Court reported as *K.L. Johar and Co. v. Deputy Commercial Tax Officer Coimbatore* AIR 1965 SC 1082.

9. Learned counsel for the Revenue, on the other hand, contended that the Tribunal's order cannot be found fault with because it followed its order in the previous assessment years. It was submitted that the challenge to the reassessment is baseless since the assessee did not respond to the notice issued by the AO at the relevant time and having regard to the overall circumstances, proceedings were initiated under Section 10. It was submitted that the reasoning of the CIT(A) and the Tribunal on the merits of the assessment are in conformity with the decision of the Supreme Court in *K.L. Johar (supra)*. The true nature of the transaction in the present case was a sale and not leasing or hire-purchase as contended by the assessee.

10. It would be relevant to recollect the decisions of the CIT(A) on the question of reassessment. Recording of reasons dated 13.11.2003 by the AO mentioned about the findings in the previous years and also stated that similar nature of business transactions were involved in the assessment year 2000-01. On the basis of these, the AO held that he had reasons to believe that the amount declared as hire-charges were, in fact, interest. CIT(A) relied upon *Saradbhai. M. Lakhani & Anr. (supra)* where the AO had initiated proceedings under Section 147(b) after becoming aware of a Court decision

in the case of the assessee. Similarly, in *Syal Leasing Limited v. ACIT & Anr.*, 2004 (266) ITR 639, the Punjab and Haryana High Court upheld notice of reassessment where in the subsequent order, a finding was recorded by the AO in the assessment order that the arrangement of lease was nothing but financing of vehicle. He had earlier allowed depreciation; for the subsequent assessment year, it was held that the lease vehicles were not available, as lease arrangement was, in fact, amounted to financing of vehicles and therefore, the assessee was disentitled to depreciation. The CIT(A) also relied upon *Raymond Woollen Mills Ltd. (supra)* in support of the reopening of the assessment.

11. Having considered all these, which is a matter of record, this Court finds no infirmity in the reasoning of the Tribunal as well as that of the lower authorities. The reassessment under Section 10 of the Interest Act was in order and resorted to in accordance with law. The first question is, therefore, answered against the assessee.

12. On the second question, i.e. nature of the transaction, the CIT(A) as well as the Tribunal relied upon the previous ruling of the Tribunal in the assessee's case which noted the following features:

> *"16. In view of the above background, we have to see the intention of the assessee company and so called hire purchaser with reference to the test laid down in circular no. 760 dated 13th Jan 1998 and we noted that-*
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> *(i) The sale invoices in all the cases have been issued by the dealers of the vehicles in the name of so-called hirers.*
>
> *(ii) The purchasers hirers of the vehicle were the owner of the vehicle as the vehicle were registered in their names.*

(iii) The hire purchase agreement and other papers/declarations entered in to between the assesses company and the hired are concerned on a careful and close examination of various clauses of declaration made by hirer, we find that the intention of the parties in executing the agreement is to advance or take loan and all the formalities – documents are made to insure the recovery of loans advances and to give the colour of hire purchase. It can be seen from clause-4 of the declaration made as under "English translation":-

"That the hire purchase agreement has been made on my request and as per agreement, ownership of the vehicle vest in M/S S.E. Investment Ltd. (assesses company) and I have only right to ply the vehicle on hire under motor vehicle act the registration made in my name does not prove my ownership in the vehicle but only to provide facility to ply the vehicle on fire. Under the hire purchase agreement my ownership on the vehicle will be only when I shall pay full instalment and on fulfilment of all other conditions."

From the above, it is seen that the vehicle has already been registered in the name of the so called hirer and even the sale invoice has been issued in the same of the hirer, however, in declaration form given in the so called hire purchase agreement is just to insure the recovery of the loan/advance along with interest thereon.

18. As per the hire purchase act, 1972, hire purchase agreement is defined as under:-

"Hire-purchase agreement" means and agreement under which goods are let on hire and under which the hirer has an option to purchase there in accordance with the terms of the agreement and include and agreement under which-

Possessions of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalment, and,

the property in the goods is to pass to such person on the payment of the last month of such instalments, and,

such person has a right to terminate the agreement at any time before the property so passes".

19. However, in the instant case there is no question of option because the vehicle has already been owned or registered under the motor vehicle act in the name of the so called hirer. The delivery of the possession of the vehicle is not given by the assessee company, but it has been delivered directly by the dealer of the vehicle to the so called hirers. The possession of the vehicles has already been passed by the so called hirer without payment of any instalment. Therefore, as per definition of hire purchase agreement, discussed above, it can only be said that is only an act of advancing money or loan and not a transaction of hire purchase. This issue also came for the consideration of the Hon'ble Supreme Court of India through in different context in the case of K.L. Johar & Co. v. Deputy Commissioner Tax Officer Coimbatore 1965 AIR SC 1082 in that case, the Hon'ble Supreme Court of India has made the following observations:-

"Hire-Purchase agreements are not conditional sales. A hire-purchase agreement has two elements (1) Element of bailment, and (2) element of sale, in the sense that it contemplates as eventual sale. The element of sale fructifies when an option is exercised by the intending purchaser after fulfilling the terms of the agreement. The taxable event under the act is to sale of goods and until that taxable event takes place there can be no liability to pay tax. Therefore, though eventually most cases of hire-purchase may result sales by the exercise of the option and the fulfilment of the agreement, tax is not eligible at the time when the hire purchase agreement is made, for at that time the taxable even has not been taken place, it can only be regular when the option has been exercised and all the terms of the agreement fulfilled and the sale actually takes places."

20. In the instant case, question of exercising of the option by the customer doesn't arise as the sale has directly been effected

through the dealer to the customer and the sale invoices is issued in his name and further the vehicle has already been registered in the name of the customer under the motor vehicle act and all the sales effected before repayment of any instalment to the assessee company. The situation of bailment doesn't arise because vehicle has already possessed by the customer and thus neither the assessee company is bailer nor the customer is bailee."

13. It is quite evident from the circumstances that the vehicle at inception itself was registered in the name of the ostensible borrower; most importantly, the findings also show that the condition of the transaction being one of hire, was shown to be at the request and as per agreement of the assessee.

14. Another interesting aspect and the most revealing feature which emerges from a reading of the agreement of hire-purchase, a copy of which was produced by the assessee in this case is that though the assessee is shown was the owner/hirer, there is no *terminus-quo* in respect of repayment. In other words, the total amount payable and the period of payment, as hire-charges is part of the agreement; the sample agreement produced – executed by the assessee with one Sh. Amit Singh, discloses that the hirer was to pay Rs.12,500/- per month, effective from 10.02.2001 and that the hirer could, at any time during the hire, become owner of the vehicle on making payment of hire fully for the whole period of agreement. Having provided so, the agreement is silent as to what constituted the period of its tenure. This coupled with the finding that, in fact, the vehicle was registered in the name of the hirer, led the Tribunal in its previous decision and in the present case also to hold that the real nature of the transaction was not hire-purchase but a sale. In *K.L. Johar (supra),* no doubt the Supreme Court

highlighted that hire-purchase concerns two elements – bailment and sale in the sense that it visualizes an eventual sale which fructifies when the option is exercisable by the purchaser after fulfilling the terms of the agreement. In the present case, however, the tenure of the agreement itself is unknown; the hirer, in fact, is the registered owner of vehicle. Having regard to these features and the other discussed elaborately by the Tribunal and the CIT(A), this Court is of the opinion that findings impugned in this case do not call for any interference on the merits. This question too is answered against the assessee.

15. In view of the above findings, the Court is of the opinion that the appeal is meritless; it is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

OCTOBER 3, 2012