

IN THE HIGH COURT OF MADRAS

Tax Case (A) No. 95 of 2008

COMMISSIONER OF INCOME TAX

Vs

M/s SOFTLAB PVT LTD

Elipe Dharma Rao and M Venugopal, JJ

Dated: April 27, 2011

JUDGEMENT

Per: Elipe Dharma Rao:

This Appeal is filed by the Revenue in respect of the assessment year 1998-99 against the order dated 20.7.2007 passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai, and was admitted on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in sustaining the action of the Commissioner of Income-tax (Appeals) and deleting the disallowance of lease rentals on the computers and accessories to M/s Kaymo Finance Private Limited, even though there was constructive sale / paper transaction only and there was no physical movements of goods from the premises of the assessee company?"

2. The assessee, who is a Private Limited Company carrying on the business of providing computer education in educational institutions, filed return of income for the Assessment Year 1998-99 on 31.3.1999 admitting total income at Rs. 10,13,500/-. The assessee claimed an amount of Rs. 46,49,736/- as lease rental payable to M/s Kaymo Finance Pvt. Ltd. After issuance of notice under Section 143(2) of the Income Tax Act, 1961 (in short "the Act") and after going through the details and explanations, the Assessing Officer came to the conclusion that the lease transaction is nothing but a device to reduce the tax liability and that the assessee company is the owner of the assets. Accordingly, the Assessing Officer disallowed the lease rental paid and added back to total income and arrived at a sum of Rs. 47,92,411/- as taxable total income. However, the Assessing Officer allowed the depreciation on said asset @ 25%. As against that order, the matter was carried on appeal to the Commissioner of Income-tax, who, in paragraphs 1.9 and 1.10 held as follows: -

"1.9. On a careful consideration of the other contentions of the appellant, I agree with its contention that it is in the realm of the business decision of the appellant to take a decision as to whether it has to go for purchase of assets or leasing of assets. Regarding the observation made by the Assessing Officer that the appellant has paid 138% of cost of the asset in a span of 13 months, the appellant's submission that it enjoyed benefits of liquidity in the process cannot be ignored. Assessing Officer has also not highlighted any facts or arguments to show that there is any connection

amongst the parties involved in the transaction which would make the transaction suspect or there was padding up of costs.

1.10. On a perusal of the assessment order, it is seen that the Assessing Officer has merely relied upon two factors to hold that the lease transaction is not genuine;

(i) that there was no physical movement of goods;

(ii) how KFPL has leased out the asset till 31.3.2002 to the appellant company for a total sum of Rs. 64.49 lakhs when they themselves are paying M/s IFCL a sum of Rs. 1.04 Crores."

Accordingly, the Commissioner allowed the appeal thereby deleting the disallowance of lease rental made by the Assessing Officer. That order was carried on appeal at the instance of the Revenue to the Income Tax Appellate Tribunal.

3. The Appellate Tribunal in paragraph 8 of the order held that the Commissioner of Income Tax (Appeals) has dealt with the issue in the proper perspective and that the lessor confirmed the lease and has shown the impugned assets as its own and claimed depreciation as well and dismissed the appeal thereby confirming the order of the Commissioner of Income Tax. The correctness of the same is now put in issue in this appeal at the instance of the Revenue.

4. Heard the learned Standing Counsel for the Revenue and the learned counsel for the assessee and perused the records.

5. Learned Standing Counsel for the Revenue submitted that the lease agreement entered into by the assessee company is nothing but an arrangement to show the purchase of computers and accessories as lease and, by doing so, the assessee is claiming deduction of the entire cost of the asset on the other hand, it was eligible for depreciation at 25% on the said assets. He further submitted that in all the transactions there was constructive sale/paper transaction only and there was no physical movement of goods from the premises of the assessee company i.e., the assets were even shown as sold though they were in possession of the assessee company only. Therefore, according to the learned Standing Counsel, the aforesaid method adopted by the assessee is nothing but a colourable device to hoodwink the Revenue.

6. From the materials produced, it is seen that the assessee company had purchased computers and accessories worth Rs.59,85,037/- from M/s. Hitech Informatics, M/s. Colt Computers and M/s. Alacrity Electronics and the invoices were raised in the name of the assessee company and entire payments were also made by it. It is also seen that after purchase, the assessee company subsequently on 12.3.1997, i.e., on the same assessment year, sold the said computers and accessories to M/s. Integrated Finance Company Ltd., for the same purchase money of Rs.59,85,037/-. In other words, the assessee purchased the computers and sold the same for the same purchase money in the same year without any profit. In this connection, it has to be seen that the sale was a constructive sale i.e., paper sale and there was no physical movement of the goods from the assessee to M/s. Integrated Finance Company Ltd. After effecting sale on 12.3.1997, the assessee entered into a lease agreement after two days i.e., on 14.3.1997 with one M/s. Kaymo Finance Pvt. Ltd., and claimed an amount of Rs.46,49,736/- as lease rental payable to the aforesaid

company. From the aforesaid transactions, it is apparent that the assessee which has purchased the computers for the purchase money of Rs.59,85,037/- sold the same to another company for the very same purchase money and entered into a lease agreement after two days of sale of those computers with another company and claims lease rental, which is more than 75% of the purchase amount of the accessories. These transactions entered into by the assessee would clearly establish, as rightly pointed out by the learned Standing Counsel for the Revenue, that only with a view to avoid the taxability, the assessee had entered into a lease agreement and claimed the lease rental, by which the assessee claims deduction of the entire cost of the assets.

7. More over, it is also to be seen that when the assessee company has the capacity to purchase the assets of its own, why it has chosen to sell the same to another company without any profit i.e., for the purchase money and chose to enter lease agreement. Learned counsel appearing for the assessee though states that he is eligible for deduction of entire cost of the assets as per the provisions of the Act, he is not able to point out or give reason for entering into the lease agreement and why the assessee has chosen to sell the assets for the purchase money. Since no satisfactory explanation was forthcoming from the assessee, we are not in a position to accept the conclusion arrived at by the appellate authority as well as the Tribunal.

8. This aspect of the case can also be viewed from another angle. As per Section 54 of the Transfer of Property Act, "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

9. Admittedly, in the present case, the ingredients spelled out in the aforesaid Section are not found. Nowhere it is brought to our notice that the computers were transferred from the assessee to the purchaser, but, on the other hand, the assessee brought the computers to his premises by virtue of the lease entered into between the assessee and the purchaser. The computers are intact in the premises of the assessee, who is a seller. Therefore, the sale is not complete as defined under Section 54 of the Transfer of Property Act.

Therefore, in addition to the reasons given by the Assessing Officer, for the above stated reason, which we have stated in the earlier paragraph, the order of the Commissioner of Income Tax, confirmed by the Tribunal, is set aside and the order of the Assessing Officer is confirmed. Accordingly, the substantial question of law is answered in favour of the Revenue. No costs.