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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 118 OF 1998

Commissioner of Income-tax,
Bombay City III, Mumbai ...Applicant
Versus
M/s.Industrial Credit & Investment Corpn.
Of India Ltd. ..Respondent

Ms.A. Vissanji with Mr.S.J. Mehta for Applicant.
Mr.Suresh Kumar with Ms.Samiksha Kanani for Respondent.

CORAM : M. S. SANKLECHA &
S.C. GUPTE, JJ.

DATE : 9 JANUARY 2017

JUDGMENT (Per Gupte S.C. J.):

By this reference under Section 256(1) of the Income Tax Act, 1961 ("Act"), the Income Tax Appellate Tribunal ("Tribunal") has referred the following questions to this Court at the instance of the Revenue :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) allowing the assessee's claim of investment allowance u/s.32A on the value of the plant and machinery leased out by the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) directing the AO to recompute the disallowance under Rule 6D of the I.T. Rules by taking into account all the tours made by the employees and not on the basis of individual tours ?

3. Whether, on the facts and in the circumstances of the case, the

Tribunal was right in law in upholding the order of the CIT(A) directing to allow additional depreciation on the assets leased out by the assessee ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) directing to allow the extra allowance on the assets leased out by the assessee ?

2 The reference relates to Assessment Year 1986-87.

3 The Respondent Assessee ("Assessee") is a financial institution engaged in the business *inter alia* of leasing of machinery. By his assessment order, the Assessing Officer denied investment allowance under Section 32A of the Act as also additional depreciation under Section 32(1)(iia) of the Act and extra shift allowance claimed by the Assessee in respect of the plant and machinery leased out by it. In appeal, the Commissioner of Income Tax (Appeals) allowed the Assessee's claim for investment allowance relying on his predecessor's orders in the Assessee's own case for A.Y. 1984-85 and 1985-86. The CIT(A) also allowed the claims of additional depreciation and extra shift depreciation. In the Revenue's appeal before the Tribunal, both parties agreed that the issue relating to investment allowance was covered in favour of the Assessee. Accordingly, the Revenue's appeal on the issue was dismissed by the Tribunal. Insofar as the additional depreciation on the assets leased out by the Assessee was concerned, the Tribunal upheld that order of the CIT(A) relying on its decision in the case of **ITO vs. First Leasing Co. of India Ltd. (13 ITD 234).** As for the extra shift allowance, the Tribunal also held the relief to be allowable.

Re Question 1 :

4 The Assessing Officer denied investment allowance to the Assessee on the ground that the assets leased were not actually used by the Assessee. The same question in the case of the Assessee, for another Assessment Year, was referred to this Court and by its judgment dated 28 February 2005 (in ITR No.390 of 1995 – **CIT vs. Industrial Credit & Investment Corporation of India Ltd.)** answered in the affirmative, relying on the Supreme Court decision in the case of **CIT vs. Shaan Finance (P.) Ltd. (231 ITR 308).** The Supreme Court had held in that case that where the business of the Assessee consists of hiring out machinery, or where the income derived by the assessee from the hiring of any machinery is business income, the assessee must be considered as having used the machinery for the purpose of its business. So when a leasing or finance company, which owns the machinery, leases it to the third parties who use the same for manufacture in accordance with Section 32A(2)(b)(iii), the former is entitled to investment allowance in respect of such machinery under Section 32A. These decisions squarely cover the Assessee's case here. The question is, accordingly, answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

Re Question 2 :

5 Even this question was answered by this Court in the Assessee's own case referred to above in the affirmative, i.e. in favour of the assessee and against the Revenue. It is answered accordingly.

Re Question 3 :

6 As in the case of Question No.1, even on this question the Assessing Officer had decided against the Assessee on the ground that the leased plant and machinery was not installed by the Assessee. This question arises under Section 32(1)(iia) of the Act. The language of Section 32(1)(iia) being in *pari materia* with Section 32A(1), in respect of investment allowance, there is no requirement for claiming additional depreciation under Section 32(1)(iia) that the plant and machinery must be installed and used by the Assessee for manufacture of articles or things, as in the case of investment allowance under Section 32A. The Tribunal in the order passed in appeal, dismissed the Revenue's appeal on this issue by following its decision in **First Leasing Co. of India** (supra). This view of the Tribunal was upheld by the Madras High Court in **CIT vs. First Leasing Co. of India Ltd. (216 ITR 455).** The Revenue had challenged the same before the Apex Court. In the Revenue's appeal from the order of the Madras High Court, its view was affirmed while hearing it along with **Shaan Finance (P) Ltd.** (supra). Therefore, the decision of **Shaan Finance (P.) Ltd.** (supra) is squarely applicable to the claim of additional deprecation. The question is, accordingly, answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

Re Question 4 :

7 Here, again, the Assessing Officer denied the Assessee's claim on the ground that the assessee company itself had not worked in extra

shifts. The Supreme Court, in the case of **CIT vs. Maharashtra Apex Corporation Ltd. (254 ITR 98),** following the ratio of **Shaan Finance (P.) Ltd.** (supra), has held that the assessee was entitled to extra shift allowance of depreciation, even though it was the lessee, and not the assessee, who had used the machinery in double shift. The decision squarely covers the Assessee's case herein. There is no dispute that the respective lessees of the Assessee had worked in extra shift. In his order, the CIT(A) has clearly recorded that "the lessees had worked extra shift and relevant certificates were produced before the Assessing Officer." The Question is, accordingly, answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

8. The Reference is disposed of accordingly.

(S.C. GUPTE, J.) **(M. S. SANKLECHA, J.)**