IN THE HIGH COURT OF JHARKHAND AT RANCHI
T.A. No. 3 of 2000(R)
With
T.A. No. 4 of 2000(R)
With
T.A. No. 5 of 2000(R)
With
T.A. No. 6 of 2000(R)
With
T.A. No. 7 of 2000(R)
With
T.A. No. 8 of 2000(R)
With
T.A. No. 9 of 2001

Commissioner of Income Tax, Ranchi ...Appellant (in all cases)
Versus
M/s. Tata Robins Fraser Limited ...Respondent(in all cases)

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Appellant : Mr. Deepak Roshan, Advocate
Mr. Amit Kumar, Advocate
Miss Rupa Kumari, Advocate
For the Respondent : Mr. Biren Poddar, Sr. Advocate
M/s. Sachin Kumar, Mahendra Kumar Choudhary, Piyush Poddar,
Miss Darshana Poddar &
Miss Amrita Sinha, Advocates

Order No. 12 **Dated 12th September, 2012**

Heard learned counsel for the parties.

2. Following questions have been framed while admitting the appeals :-

A. Whether the ITAT on the facts and in the circumstances of the case, was justified in allowing the claim of expenses on lease-rent as revenue expenditure when lease agreement seen in proper perspective pointed to an agreement of hire-purchase rather than an agreement of

lease which necessiated the expenditure to be treated as capital expenditure?

B. Whether on the facts and in the circumstances of the case the lease agreement was not hire purchase deal in disguise made by the Assessee for the purpose of avoidance of tax?

3. Learned counsel for the appellant submitted that the lease agreement is a camouflage and in fact it is a hire-purchase agreement. The Assessing Officer has given cogent reason for holding the agreement to be hire-purchase agreement and, therefore, was justified in rejecting the claim of the assessee as an expenditure. It is also submitted that from the earlier agreement and subsequently entered agreement it is clear that there are material changes in the terms and conditions of the agreement and the assessee has been given right to purchase the Air Conditioner on payment of nominal price of Rs. 1/- only, therefore, the Tribunal has committed serious error of law in holding that it was a lease agreement and not the hire-purchase agreement. Learned counsel for the appellant also submitted that the petitioner claimed benefit because of the subsidy given to the school in question under the provisions of Section 40A(9) of the Income Tax Act, 1961.

4. Learned senior counsel for the respondent-assessee Shri Biren Poddar submitted that in fact both the questions

are not the questions of law but both are questions of fact. It is submitted that once, after appreciation and consideration of the entire fact including the terms and conditions of the agreement in question the Tribunal held that it is a lease agreement, then it involves no question of law and in alternative, the agreement clearly contains one stipulation that the party, providing Air Conditioner shall maintain the Air Conditioner during the period of lease. Therefore, in view of this condition as well as in view of the fact that option has been given to the assessee to purchase the Air Conditioner, which the assessee had not exercised during the relevant assessment year, then the transaction of sale is not completed. It is also submitted that sale is not certain and it cannot be presumed that the assessee shall buy the Air Conditioner upon expiry of the term of lease and it will choose to buy in future then sale will complete in any future year and not in current year..

5. Learned counsel for the respondent-assessee for education subsidy relied upon the judgement of the Bombay High Court delivered in the case of ***Mahindra & Mahindra Ltd. Vs. Commissioner of Income Tax*** reported in ***(2003) 128 ITR TAXMAN 394 (BOM.)*** wherein the same issue was involved and the Bombay High Court has held that in a case where the assessee company has paid certain amount to a educational society which runs the school in which children of the employees of the

company study, then in that situation the amount should be allowed as business expenditure because it was incurred predominantly for civil welfare. It is submitted that in this case the said subsidy was paid by the assessee in pursuance of the agreement entered into between the assessee company and the Labour Union, therefore, predominant purpose is for the welfare of the workmen.

6. We considered the submissions of the learned counsel for the parties and perused the reasons given by the Assessing Officer, C.I.T.(Appeals) and the Tribunal. So far as interpretation of the document is concerned, that may involve question of law and in this case the Tribunal has considered the relevant terms and conditions mentioned in the agreement and held that in view of the terms and conditions of the agreement, the Air Conditioners have been leased out with option to the assessee to purchase the Air Conditioners, though it may be on nominal price, but at the same time, it is clear that the assessee, in the relevant year, corresponding to assessment year, did not exercise that option so as to complete the transaction into a transaction of sale. It was liable to be continued as a lease agreement till the option is exercised after the expiry of the stipulated period in the agreement, therefore, in the relevant year it was not the sale. The Assessing Officer was of the view that it is a hire-purchase agreement. As given in the Law of Contracts by P.C.Markanda, published

by Wadhwa & Company Nagpur, India, there is reference of Halsbury's Laws of England which is quoted hereunder :-

> *"The test is whether there is or there is not, a binding obligation on the part of the hirer, to buy. If the agreement does not amount to a binding obligation on the hirer to complete the transaction as a purchase but is merely an agreement to hire with an option on the part of the hirer to purchase, it is not an agreement to buy within the Factors Act, 1889, or the Sale of Goods Act, 1893 and a purchaser or pledgee from the hirer can in such case obtain no better title than the hirer had, except in the case of a sale in market overt."*
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> *"If there is reserved to the hirer power to return the goods, either during the hiring thereby determining the bailment, or after the conclusion of the hiring and before the payment of such further sum as is required to complete the purchase, the agreement to hire with an option to buy, and even if the hirer in such a case by parting with the goods puts it out of his power to return them, he does not thereby become bound to buy."*
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> *"But an agreement whereby a person agrees to hire goods by paying the owner of them by stating instalments a fixed sum, which is to be the purchase price of the goods, is, in the absence of a provision enabling that person to determine the hiring, an agreement to buy the goods with the provisions of the Factors Act, 1889, and the Sale of Goods Act, 1893."*

7. In the same commentary, there is reference of case of

Helby V. Mathews (1895) AC 471 which is as under :-

> *"The owner of a piano agreed to let it on hire, the hirer to pay a rent monthly instalments, on the terms that the owner might terminate by hiring by delivering up the piano to the owner, he remaining liable for all arrears of hire; also that if the hirer should punctually pay all the monthly instalments, the piano should become his sole and absolute property, and that until such payment the piano should continue to be the sole property of the owner. The HOUSE OF LORDS held that the hirer was under no legal obligation to buy, and that the hirer could either return the piano or exercise his option to purchase the piano. LORD HERSCHELL L.C. observed that he could not concur in the view of the Court of Appeal that upon the true construction of the agreement Brewster had "agreed to buy". It was held that there was no obligation on Brewster to buy it."*

8. The said passage and the commentary also indicate that there is a lot of difference between the purchase, hire-purchase and lease agreement. In this case, we are of the considered opinion that the terms indicate that the provider of the machines was required to maintain the machines and, therefore, he was entitled to take the rent also as per the terms of the agreement, and the petitioner, in the any relevant year could not have exercised his right to purchase the Air Conditioner, his right to purchase the Air Conditioner could have been exercised after expiry of certain period of time. Therefore, in that situation, we are

of the considered opinion that there was an agreement for lease only and the Tribunal was right in holding so.

9. Hence, question Nos. 1 and 2 are answered accordingly.

10. So far as question No. 3 is concerned, we are of the considered opinion that the Tribunal has given cogent reason for allowing payment of subsidy amount to the school as revenue expenditure in view of the fact that the subsidy was liability of the assessee in view of the agreement entered into between the Employees' Union and the assessee which is in consonance with the welfare scheme of the Industrial Disputes Act, 1947. Same view has been taken by the Bombay High Court in ***Mahindra & Mahindra Ltd. (supra)***.

11. In view of the above reasons, 3rd question is also answered against the revenue and Tax Appeal Nos. 3 of 2000, 4 of 2000, 5 of 2000, 6 of 2000 and 8 of 2000 are dismissed.

12. So far as issue relating to the lease of the articles are concerned, that has been answered in Tax Appeal Nos. 3 of 2000, 4 of 2000, 5 of 2000, 6 of 2000 and 8 of 2000. In Tax Appeal No. 7 of 2000, one more issue is involved and that is relating to the claim of the assessee of spending an expenditure to the tune of Rs. 3,16,490. It has been on the ground that the assessee though had one project in

contemplation, but that was not completed and the project was abandoned, therefore, it is an abortive expenditure. The expenditure incurred by the assessee is as under :-

1.	Architectural fee in respect of abandoned project	Rs. 2,57,335/-
2.	Old capital work in progress abandoned	Rs. 46,379/-
3.	Cost of damaged cabinets	Rs. 12,776/-

13. The company's contention was that the company had entrusted the study and design, detail working and drawings of a multi-storied (12 storied) building to a party names Acme Compartments Pvt. Ltd., Calcutta. After the preliminary work was undertaken, the project was to be abandoned due to adverse soil and other adverse conditions at the proposed site. The assessee company had to incur some expenditure on preliminary work. It was said that all designs, drawings etc. became useless and that was why the expenditure was written off. After narrating the detail facts in respect of the above expenditure, it has been claimed that it may be treated to be abortive expenditure. The Assessing Officer rejected the claim of the assessee as misconceived on the ground that it is a case of capital expenditure. The C.I.T.(Appeals) also upheld the said finding but the Tribunal has reversed the finding.

14. In the case of ***Indo Rama Synthetics (I) Ltd. Vs. Commissioner of Income Tax*** reported in ***(2009) 32***

DTR 322 (Del) it has been held that if expenditure has been incurred for setting up a new unit which was subsequently abandoned, then the aforesaid expenditure will be treated as revenue in nature as no new industrial asset came in existence.

15. The Tribunal has relied upon the judgement of the Calcutta High Court delivered in the case of ***C.I.T. Vs. Graphite India Ltd.*** reported in ***(1996) 121 ITR 420*** and decision of the Hon'ble Supreme Court in the case of ***Jonnshead and Sons (India) Ltd. Vs. C.I.T.*** reported in ***(1997) 224 ITR 342*** and ***Allembic Chemical Works Co. Ltd. Vs. C.I.T.*** reported in ***(1989) 177 ITR 377*** and held that in view of the ratio of above judgements, if the expenditure is incurred for acquisition of an asset which gives or renders enduring benefit to the assessee, naturally it is to be considered as capital expenditure otherwise revenue expenditure.

16. Substantially this is also a question of fact where an expenditure incurred by the assessee was of the revenue in nature or it was a capital expenditure. However, in view of the fact that question has been framed and we have narrated the facts of the case including the break-up of the expenditure which includes the fee of Rs. 2,57,335/- paid to the Architect and some expenses of Rs. 46,379/- incurred on old capital work in progress which was abandoned and cost of damaged cabinets and that too, amounting to Rs.

12,776/-, total expenditure including all three of the heads is Rs. 3,16,490/-. It is not in dispute that the project could not be accomplished because of the reason that the place where it was to be undertaken had a poor quality of soil and all the construction already damaged. The other articles bought by the assessee also got damaged and, therefore, in that fact situation, the Tribunal was fully justified in holding that such expenditure which may be pre-operational expenditure for a project can be treated to be a revenue expenditure actually and not a capital expenditure.

17. In view of the above fact, this question is also decided against the revenue and Tax Appeal No. 7 of 2000 is dismissed.

18. In Tax Appeal No. 9 of 2001, in addition to the above two questions with respect to the lease agreement, one more question is raised and that is relating to the allowing of the claim of expenditure on get together, picnic, coffee and tea of the employees and payment Club and expenses incurred for seminar as revenue as revenue expenses for the assessment year 1993-94 amount to Rs. 5,76,330/- which is, according to revenue, was not allowable as expenditure.

19. Learned counsel for the respondent submitted that same issue was raised in Tax Appeal No. 10 of 2001 in the case of Commissioner of Income Tax Vs. M/s. Tata Robin

Fraser Ltd. wherein the appeal has been dismissed holding that such is not even the question of law. In view of the above order dated 25.07.2001 passed in Tax Appeal No. 10 of 2001, this issue is also answered against the revenue and Tax Appeal No. 9 of 2001 is dismissed.

(Prakash Tatia, C.J.)

(Jaya Roy, J)

Birendra/