

## Syal Leasing Ltd. Vs Assistant Commissioner of Income Tax and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 18, 2003

**Acts Referred:** Constitution of India, 1950 " Article 226  
Income Tax Act, 1961 " Section 147, 148

**Citation:** (2003) 185 CTR 451 : (2004) 266 ITR 639 : (2004) 138 TAXMAN 4

**Hon'ble Judges:** V.M. Jain, J; N.K. Sodhi, J

**Bench:** Division Bench

**Advocate:** P.C. Jain and Pankaj Jain, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

### Judgement

N.K. Sodhi, J.

This order will dispose of two civil writ petitions 14765 and 14775 of 2003 in which common questions of fact arise. For the sake of convenience the facts are being taken from CWP 14765 of 2003.

2. The relevant assessment year is 1997-98. By order dt. 27th Feb., 1998, the assessment for the relevant year was completed and the rebate on

depreciation was allowed. However, for the subsequent asst. yr. 1998-99 the AO came to the conclusion that the depreciation claimed by the

assessee on the alleged leased vehicles was not available as the arrangement of lease was nothing but financing of the vehicles and, therefore, the

assessee was not entitled to depreciation. The AO, therefore, had reason to believe that the income in the hands of the assessee had escaped

assessment for the relevant assessment year. Consequently, a notice u/s 148 of the IT Act (for short the Act) was issued calling upon the petitioner

to show-cause why income for the relevant assessment year be not reopened and the depreciation amounting to Rs. 48,13,495 be not withdrawn.

The petitioner raised several objections objecting to the reopening of the assessment. Those objections have been considered and decided by the

AO by a detailed speaking order dt. 25th Aug., 2003. It is against these orders that the present petition has been filed under Article 226 of the

Constitution.

3. We have heard the learned counsel for the petitioner and perused the record. It is not in dispute that for the subsequent asst. yr. 1998-99 the

AO has already determined that the relevant agreements executed by the petitioner were with a view to finance the vehicles and that those were

not leasing agreements. That finding of the AO was affirmed by the CIT(A). Feeling aggrieved by the orders of the CIT(A), the petitioner has

preferred an appeal before the Tribunal which is pending. The question now arises is whether the AO had reason to believe that the income of the

assessee for the relevant asst. yr. 1997-98 had escaped assessment. In view of the findings recorded by the AO in the case of the assessee for the

asst. yr. 1998-99, we are clearly of the view that the AO had sufficient reason to believe to issue a notice u/s 148 of the Act. In any case, it will be

open to the petitioner to raise all the pleas before the assessing authority and in case it feels aggrieved, it will have a right of appeal. We are not

inclined to interfere with the notice u/s 148 of the Act at this stage and allow the petitioner to bypass the statutory remedies under the Act.

Consequently, the writ petitions are dismissed.