

**(2007) 06 MAD CK 0142****Madras High Court****Case No:** T.C. (A) No. 492 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Shiva Tex Yarn Ltd.

RESPONDENT

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**Date of Decision:** June 9, 2007**Citation:** (2008) 302 ITR 20**Hon'ble Judges:** P.P.S. Janarthana Raja, J; P.D. Dinakaran, J**Bench:** Division Bench**Advocate:** T. Ravikumar, for the Appellant;**Final Decision:** Dismissed

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### Judgement

P.D. Dinakaran, J.

The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal in I. T. A. No. 1538/Mds/2004 dated February 17, 2006.

2. The facts leading to the filing of the above appeal are as follows:

3. The issue relates to the assessment year 2000-01. The assessee is a company carrying on the business of leasing out commercial vehicles on hire purchase basis. The assessee claimed depreciation at 40 per cent. on all the leased out commercial vehicles, which was disallowed by the Assessing Officer, who restricted the claim of depreciation at 25 per cent on the ground that the assessee-company itself had not utilised the commercial vehicles on hire. Aggrieved by the said order of the assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who by order dated March 23, 2004, allowed the appeal holding the issue in favour of the assessee, which, on appeal at the instance of the Revenue, was confirmed by the Income Tax Appellate Tribunal.

4. Aggrieved by the same, the Revenue has preferred the above appeal raising the following substantial question of law:

Whether the assessee which only leased out the vehicle and did not subject it to usage of its own is entitled for higher depreciation?

Mr. T. Ravikumar, learned standing counsel appearing for the Revenue fairly submits that the issue raised in this appeal is squarely covered by the decision of this Court in [Commissioner of Income Tax Vs. Madan and Co.,](#) .

5. In [Commissioner of Income Tax Vs. Madan and Co.,](#) , this Court has held as follows (page 446):

The word "hire" used in this entry is only meant to denote that the use of the vehicle is not by the owner himself for his own purposes, but it is given to another for use for a limited period of that other for a consideration. For the purpose of this entry there is no qualitative difference between lease of the vehicle for a specified period for consideration and letting the vehicle on hire for short duration on payment of hire charges.

The Tribunal, in our view, has rightly held that when the owner-assessee leased out the motor lorries owned by the assessee, and received consideration therefore in the form of lease rentals, the assessee was using those vehicles in the business of running them on hire and was, therefore, entitled to the higher rate of depreciation.

6. In view of the above settled proposition, finding no substantial question of law that arises for consideration, the tax case appeal stands dismissed.