
S.B.I. Home Finance Ltd. Vs Commissioner of Income Tax

IT Appeal No. 185 of 2000

Court: Calcutta High Court

Date of Decision: Aug. 25, 2005

Acts Referred:

Income Tax Act, 1922 â€” Section 9#Income Tax Act, 1961 â€” Section 32, 32(1), 32A, 32A(2), 36(1)#Sales of Goods Act, 1930 â€” Section 14, 19, 2(11), 2(2), 2(4)#Transfer of Property Act, 1882 â€” Section 40, 53A

Citation: (2005) 199 CTR 623 : (2006) 280 ITR 6 : (2005) 148 TAXMAN 585

Hon'ble Judges: Maharaj Sinha, J; D.K. Seth, J

Bench: Division Bench

Advocate: R.N. Bajoria, D.K. Dhar and Ranjit Talukdar, for the Appellant;D.K. Shome and Ramesh Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

D.K. Seth, J.

This appeal was admitted on the following grounds :

(1) Whether the finding of the Tribunal that your petitioner was not the owner of the said plant is perverse having been arrived at by ignoring the

relevant materials and taking into consideration irrelevant and extraneous considerations and such finding is otherwise arbitrary ?

(2) Whether the Tribunal having found that the lease dt. 30th Dec., 1994 was not a colourable transaction and was legally valid could hold that

your petitioner was not the owner of the said plant ?

(3) Whether the Tribunal could hold that your petitioner was not the owner of the said plant and was not entitled to depreciation thereon when

neither WPIL nor SIL claimed any ownership of the said plant and claimed any depreciation thereon ?

(4) Whether the claim for depreciation on the said plant could be denied when the rental income therefrom was assessed ?

Section 32 : Own : Ownership : Meaning of:

2. The question is dependent on the interpretation of Section 32 of the IT Act, 1961 allowing depreciation to an assessee. The depreciation is

available on the items mentioned in Section 32 on satisfaction of the conditions that the plant was owned wholly or partly by the assessee and such

plant was used for the purpose of his business. The law is well-settled. The terms "own", "ownership" and "owned" are generic and relative terms

having a wide and also a narrow connotation. The " meaning would depend on the context in which the terms are used. The decision in

Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., is the trend-setter in the concept of ownership, for the purpose

of finding out the meaning of the term "owned" occurring in Section 32(1), assistance may be drawn from the ratio laid down therein. The term

owned"" occurring in Section 32(1) must be assigned a wider meaning. Anyone in possession of a property in his own title exercising such

dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy

its usufruct in his own right would be the owner though he may not have formal documents recognized as documents of title under the provisions of

the respective laws governing the subject. A person having acquired possession over a property in his own right uses the same for the purpose of

business though a legal title may not have been conveyed to him can be construed to be owned by the assessee. If it is proved that it is so owned

and is used for the purpose of business, the benefit of Section 32 cannot be denied. In this regard we may rely upon the ratio decided in M/s

Mysore Minerals Limited, M.G. Road, Bangalore Vs. The Commissioners of Income Tax, Karnataka, Bangalore, , cited by Mr. Bajoria in

support of his contention.

2.1 Following Podar Cement (P) Ltd."s case (supra), a Division Bench of Calcutta High Court in Ledo Tea Co. Ltd. Vs. Commissioner of Income

Tax, (cited by Mr. Bajoria) has observed that the meaning of the expression ""owned"" occurring in Section 32 is a vexed question and various High

Courts have held that a person put in possession of the property in part performance of the contract as envisaged u/s 53A of the Transfer of

Property Act is not an owner in relation to the property in question. See Parthas Trust Vs. Commissioner of Income Tax, ; Commissioner of

Income Tax Vs. Draupadi Pvt. Ltd., ; Commissioner of Income Tax Vs. Sivanandha Mills Limited, ; Commissioner of Income Tax Vs. Hindustan

Cold Storage and Refrigeration P. Ltd., and Addl. Additional Commissioner of Income Tax Vs. Mercury General Corporation Pvt. Ltd., .

2.2 On the other hand, several High Courts have held that the expression ""owner"" should be given a wider meaning. [See Add]. Additional

Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation Ltd., ; Commissioner of Income Tax, Central-I Vs. Steelcrete (P.) Ltd.,

; Commissioner of Income Tax Vs. Shahney Steel and Press Works (P.) Ltd., and Commissioner of Income Tax Vs. Sahney Steel and Press

Works (P.) Ltd., .

2.3 A Division Bench of this Court in Commissioner of Income Tax Vs. General Marketing and Manufacturing Co. Ltd., , relying on the decisions

of the apex Court in R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala,

and CIT v. Sahney Steel & Press Works (P) Ltd. (supra) held that the Allahabad High Court in a decision in the case of Add], CIT v. U.P. State

Agio Industrial Corporation Ltd. (supra), dealing with the expression ""owned"" for claiming the benefit of Section 32 of the Act held that it was not

necessary that the assessee should be a complete owner. By the words "complete owner", .the Allahabad High Court meant, that title must have

passed to the person claiming the benefit in the manner the law requires it to be. If an assessee is using a property otherwise also it can get its

benefit. The Court held that an assessee is nothing but the owner for the purpose of Section 32 of the Act even if it is not the owner enjoying the

lawful title by obtaining a document.

2.4 The Calcutta High Court was called upon to consider a similar controversy in the case of Madgul Udyog Vs. Commissioner of Income Tax, .

The Calcutta High Court agreed with the decision of the Allahabad High Court and relied on the decision in R.B. Jodha Mal Kuthiala v. CIT

(supra). The view taken was that for all intents and purposes the person in possession of the property saved by Section 53A of the Transfer of

Property Act is entitled to get the benefit of Section 32. This " decision took into consideration Section 9 of the old IT Act, 1922, now Section 32

of the 1961 Act. Reliance was also placed on CIT v. Sahney Steel & Press Works (P) Ltd. (supra). The Andhra Pradesh High Court held that the

assessee may not have the legal title, still be the owner of the property for the purposes of Section 32.

2.5 In CIT v. Podar Cement (P) Ltd. (supra), the apex Court although was concerned With the scope for the word ""owner"" within the meaning of

Section 32 of the Act, referred to R.B. Jodha Mal Kuthiala v. CIT (supra) and other decisions including the Division Bench decision of this Court

in CIT v. General Marketing & Mfg. Co. Ltd. (supra) had held that :

It would thus be seen that where the possession of a property is acquired, with a right to exercise such necessary control over the property

acquired which it is capable of, it is the intention to exclude others which evinces an element of ownership.

The principle : The present case :

3. On the above principle in this case the learned Tribunal had held that the ownership of the assessee could not be established or accepted

because of the reason that there was a stipulation that a third party, other than the lessee to whom the plant was leased out by the assessee, had a

right to purchase. In order to appreciate the situation it would be necessary to briefly refer to the facts.

Facts :

4. A plant was being set up at the premises of M/s Maize Products, a division of Sayaji Industries Ltd. (SIL). M/s Western Plaques India Ltd.

(WPIL) approached the assessee for leasing finance for the aforesaid effluent treatment and bio-gas generation plant in the process of being set up

at the premises of M/s Maize Products of SIL. Pursuant to such approach the assessee itself acquired the said plant and leased out the same to

WPIL upon taking symbolic possession. Admittedly, this was a movable property for which delivery of possession was not material, as was rightly

held by the learned Tribunal. According to the terms of the agreement between SIL and WPIL, SIL had a right to purchase the plant, after expiry

of a stipulated period of time. The learned Tribunal had held that this right to purchase by SIL hits the ownership claimed by the assessee.

Whether the transaction between the assessee and WPIL was a lease or finance :

5. Admittedly, the assessee carried on business of leasing and finance. The question remains as to whether in this case it was a lease or not. In

Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance (P) Ltd., Bangalore, , cited by Mr. Bajoria, it was held that a

leasing or finance company, which owns machinery and leases it to third party, who uses the machinery for manufacture of articles or things (the

company) is entitled to investment allowance in respect of such machinery u/s 32A. Admittedly, identical ingredients of ownership and user for the

purpose of business, as are required for the purpose of Section 32 are required for obtaining the benefit u/s 32A. A machinery if given on hire by

the owner to the hirer on payment of hire charges, the income derived by the owner would be business income. In the language of the Court :

Therefore, a leasing or finance company, which owns machinery and leases it to third parties who use the machinery for manufacture of articles or

things as specified in Section 32A(2)(b)(iii), is entitled to investment allowance in respect of such machinery u/s 32A.

When machinery is given on hire by the owner to the hirer on payment of hire charges, the income derived by the owner is business income. The

hirer, on the other hand, who pays hire charges, is entitled to claim these as revenue expenditure. The hirer has not acquired any new asset. A

transaction of hire is, therefore, of bailment of the machinery. There is no extinguishment of any right of the owner in the machinery. There is merely

a licence given to the hirer to use, for a temporary period, the machinery so hired. In the absence of any element of sale, there is no reason for

treating such an agreement as "transfer" or disallowing the grant of investment allowance, when the assessee complies with the requirements of

Section 32A.

5.1 It was not in dispute that the assessee carried business of leasing and finance. The Tribunal held that the agreement for leasing was genuine.

The Department did not prefer any appeal nor had filed any cross-objection against such finding. Therefore, as found by the learned Tribunal, the

transaction was held to be a lease and not a finance. The income generated out of such lease at the hands of the assessee, therefore, was business

income. At the same time, we may note, that lease does not extinguish the right of ownership of the lessor; nor does the lessee acquire any right of

ownership thereon. If it were finance transaction then the ownership would have accrued to WPIL. WPIL does not claim ownership. It does not

claim any benefit u/s 36(1)(iii) for capital borrowed on the rent paid treating the same as interest on borrowed capital. Neither WPIL is taking the

liability of repayment of the alleged principal. On the other hand, WPIL claimed the rent paid as revenue expenditure, i.e., business expenditure.

Without the alleged right of SIL to purchase the plant after the alleged stipulated finance, as found in fact by the learned Tribunal, the assessee was

the owner of the property. In other words the learned Tribunal, on facts, found that the assessee was the owner of the plant but for the alleged right

of SIL to purchase the plant after the expiry of the alleged stipulated time.

Whether the assessee is the owner of the plant:

6. The question now relates only to the ownership. We may deal with the question having reference to the Sale of Goods Act under which the

transaction acquiring the ownership of the plant, a movable property, is governed. The provisions of Section 53A and Section 40 of the Transfer of

Property Act, 1882 (TP Act) have been compared and contrasted for the purpose of drawing comparison to illustrate the conferment of title or

ownership. Mr. Shome disputed the same on the ground that the plant being a movable property, reference to those provisions would be wholly

misplaced. Submission of Mr. Shome might have some substance so far as the applicability of the provisions of the TP Act is concerned since it

does not apply to movable property. But that does not preclude the Court from drawing inference or analogy or from comparing or contrasting the

said principles for the purpose of deciding the question of ownership. By reason of the provisions contained in the TP Act and the Registration Act,

an immovable property valued above Rs. 100 can be transferred only through a document registered under the Registration Act. Even in such

cases where a registered document is the basis of acquiring title TP Act makes provisions u/s 53A that a delivery of possession cannot be

questioned by the person who delivered the possession and if he acquires title then he would be bound by such transaction and the title of the

transferee would then become complete and perfect. Even without title, a right or obligation arising out of a contract and annexed to the ownership

of immovable property but not amounting to an interest therein or easement thereon may be enforced against a transferee with notice thereof or a

gratuitous transferee of the property affected thereby though not against the transferee for consideration and without notice. Thus, even a person

without interest can establish his right of ownership for use of a particular property in a particular manner in respect of immovable property. If such

principle can emanate from the TP Act, dealing with immovable property, the transfer of which can be made only through a registered document

then such principle cannot be said to be a case of misapplication in case of a transfer of a movable property effected simply by delivery. Delivery

of possession may be actual or symbolic even in respect of the immovable property. Whereas the delivery of movable property would not be very

material, as was rightly held by the learned Tribunal. 6.1 But when a person has acquired interest in a property with notice of the right of a third

party then he cannot be said to have acquired any interest or right of ownership on the property. On the other hand, he has acquired the interest

title or ownership on the property subject to the right of the third party of which he has notice and such right can be enforced only by such third

party. Until such right is enforced the transferee continues to be the owner of the property against the whole world. This is evident from a plain

reading of Sections 2(2), (4), (11) and Sections 14 19 20 21 22 23 24 25 27 and 28 of the Sale of Goods Act.

6.2 In *Raja Baldeodas Birla Santatikosh Vs. Commissioner of Income Tax*, this Court dealing with void and voidable transaction had held that

there is a distinction between the two and such distinction is a fundamental one, though it is often obscured by carelessness of language. Something

which is void from the beginning, is of no legal effect at all and such void transfers would not affect any person's right whether he was a party or a

stranger to the transaction. Whereas a voidable act on the contrary takes its full and proper legal effect unless and until it is disputed and set aside

at the instance of some person entitled to do so.

6.3 In the said decision of *Raja Baldeodas Birla Santatikosh* case (supra), it was held :

That the assessee-trust had no implied power to donate any of its assets. The shares received by the assessee had not been given for any specific

purpose and there was no trust within a trust. However, the donation of shares was not void but voidable. The transfer of the shares by the

assessee-trust to the donee trust was consented to by the major beneficiaries of the assessee. Although the consent on behalf of the minor

beneficiaries was not taken at the relevant time, all of them, on attaining majority, never disputed the donation and had acquiesced therein. The

donation was valid and the IT Department, being a stranger to the transaction, had no authority in law to treat the transaction as void. The donation

of the shares by the assessee-trust in March, 1964, being valid and binding on all parties, the income therefrom after the date of donation could not

be assessed in the hands of the assessee-trust. There is a basic difference between a void act or nullity and a voidable act. So far as a void act or

nullity is concerned, it has no existence in the eye of law since its very inception. Nullity or a void act cannot be cured by any subsequent

ratification or consent. On the other hand, a voidable act exists so long as the person entitled to avoid it does not do so. The voidable act becomes

valid when the person affected thereby ratifies or acquiesces in it. Where the act complained of affects the rights of private individuals, such act

would be voidable only at the option of the affected person.

There is a clear distinction between the case of a person having no inherent capacity to transfer a property and that of a person who has the

inherent capacity to transfer the property but who has to exercise his powers for the benefit of or with the consent or approval of another person.

In the first case, the transfer may be void but, in the second case, it is effective in law but may be voidable at the instance of the beneficiary or the

person affected...".

6.4 In the present case, SIL has not claimed any right; nor WPIL has claimed any right. Neither SIL nor WPIL in their return had claimed

depreciation for the plant. Neither WPIL claimed any benefit of payment of interest on capital borrowed. On the other hand, WPIL has treated the

rental paid to the assessee for the plant as revenue expenditure. There is another aspect of the matter if it is finance then the assessee would be

entitled to recover the principal. But in this case by reason of the agreement, the assessee would not be entitled to recover any principal. The entire

rental receipt is being sought to be assessed but if it is concluded that the instalment would liquidate the principal, this rental received by the

assessee would comprise of interest and principal. Then this principal Cannot be subjected to assessment as was sought to be done by the AO.

The interest part was required to be segregated. There being no agreement for payment of interest and/or the rate of interest, it is not possible to

calculate the rate of interest.

6.5 It has been brought to our notice by way of an additional paper book that on account of default on the part of WPIL to pay the rental the

assessee had filed a suit in the Bombay High Court in which a receiver has been appointed. The Court receiver has taken the possession of the

said plant and an undertaking has been given on behalf of SIL that SIL will preserve the possession of the receiver carefully and they will execute

an agency agreement with the receiver and that they will not part with possession nor mortgage nor alienate nor encumber nor create any third

party interest and has further undertaken to cover the said plant by insurance, etc. However, SIL had not claimed any title or possession over the

plant nor it had claimed depreciation in respect thereof neither it had exercised its option to purchase. Therefore, in respect of the period covered

by the financial year under assessment the ownership of the assessee in respect of the plant cannot be disputed for the purpose of Section 32 of the

Act.

6.6 The lessee cannot dispute the title of the lessor and the alleged third party interest does not affect the ownership of the lessor nor can it be

doubted or disputed. In this case lessee has never claimed ownership of the plant. Thus, the alleged right of SIL to purchase the plant would in no

way affect the ownership of the assessee. The ownership of the assessee was not only absolute and perfect but was apparent and real until SIL

established its rights.

Conclusion :

7. Therefore, in our opinion the assessee was the owner of the plant for the purpose of Section 32 and by leasing it cut to the WPIL, the assessee

had used the plant wholly for the purpose of its business namely, for the purpose of carrying on the business of leasing and as such the income

earned thereout by way of a rental of the plant was a business income. Thus, the ingredients of ownership and user of the plant in business, as

required u/s 32 of the Act, having been fulfilled, the assessee was entitled to depreciation available to it u/s 32 of the Act.

Order:

8. In the result the appeal succeeds. The finding of the learned Tribunal that the assessee was not the owner of the plant and the ultimate decision is

hereby set aside. The rest of the finding is affirmed. The order of the learned Tribunal under appeal stands modified as above.

8.1 We answer the questions as follows :

Question No. 1 is answered in the affirmative.

Question No. 2 is answered in the negative.

Question No. 3 is answered in the negative.

Question No. 4 is answered in the negative.

8.2 There will, however, be no order as to costs.

Maharaj Sinha, J.

I agree.