

Deep Hire Purchase P. Ltd. Vs. Commissioner of Interest-tax (Appeals)

Deep Hire Purchase P. Ltd. Vs. Commissioner of Interest-tax (Appeals)

SooperKanoon Citation : sooperkanoon.com/630637

Court : Punjab and Haryana

Decided On : Nov-17-2004

Reported in : (2005)195CTR(P& H)174; [2005]274ITR69(P& H)

Judge : N.K. Sud and; Hemant Gupta, JJ.

Acts : [Interest Tax Act, 1974](#) - Sections 2(7), 4(2) and 21; [Income Tax Act, 1961](#) - Sections 194A and 260A

Appeal No. : I.T.A. Nos. 194 and 195 of 2004

Appellant : Deep Hire Purchase P. Ltd.

Respondent : Commissioner of Interest-tax (Appeals)

Advocate for Pet/Ap. : P.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

N.K. Sud, J.

1. This order will dispose of two appeals, viz., I. T. A. Nos. 194 and 195 of 2004 filed by the assessee under Section 21 of the Interest-tax Act, 1974 (for short 'the Act'), read with Section 260A of the Income-tax Act, 1961, against the common order of the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar (for short 'the

Tribunal'), dated March 31, 2004, relating to the assessment years 1992-93 and 1993-94.

2. For the assessment year 1992-93, the assessee had filed its return under the Act on February 21, 1992, declaring chargeable interest as under :

Rs.(i) Hire-purchase charges earned 4,75,745(ii) Interest other than hire-purchase earned 2,282 _____ Total 4,78,027 _____

3. This return was subsequently revised on November 10, 1993, declaring chargeable interest at nil. The assessee claimed that the hire-purchase charges were not covered under the provisions of Section 4(2) of the Act as the same pertained to arrangements for use of finance. It was contended that the charges could not termed as interest as in such arrangements, no principal sum is advanced or lent by the hire-purchase company to the hirer of the vehicle whereas the definition of interest under the Act envisages giving of loan and advance. Reliance for this purpose was placed on the instructions of the Central Board of Direct Taxes contained in Circular No. 1425-K No. 275/9/80-IT(B) dated November 16, 1981.

4. For the assessment year 1993-94, the return was filed on December 23, 1993, declaring net chargeable interest at nil. In the statement of computation of chargeable interest the following note was given :

'The assessee derives income from hire-purchase charges, and the same is not covered within the definition of chargeable interest under the Interest-tax Act.'

5. In part III of the return, under the head 'Other sums not included in chargeable interest and claimed to be not taxable,' the following amounts had been mentioned :

Rs.(i) Hire-purchase charges 8,94,859(ii) Interest on deposits 2,267 _____ Total 8,97,126 _____

6. The assessment for the assessment year 1992-93 was completed on March 31, 1995. The Assessing Officer held that the hire charges receipts constituted interest

within the meaning of Section 2(7) of the Act. For this purpose, reliance was placed on the decision of the Supreme Court in Sundaram Finance Ltd. v. State of Kerala : [1966]2SCR828 . The Assessing Officer also held that the circular of the Board dated November 16, 1981, on which reliance had been placed by the assessee was only in respect of the requirement of tax deduction under Section 194A of the Income-tax Act, 1961, and had no application to the Interest-tax Act. He referred to the subsequent circular of the Board, viz., F. No. 133/9289/ 91-TPL dated March 6, 1992, in which it had clarified that hire-purchase financial companies entering into hire-purchase agreements with hirers would fall within the scope of Section 4(2) of the Act and would, therefore, be liable to tax. Accordingly, he completed the assessment and computed chargeable interest as under :

Rs.(i) Hire-purchase charges earned 4,75,745(ii) Interest other than hire-purchase earned 2,282_____ Total chargeable interest 4,78,027_____

7. Similarly, the assessment for the assessment year 1993-94 was completed on March 14, 1996, and the chargeable interest was computed as under :

Rs.(i) Hire-purchase charges 8,94,859(ii) Interest earned 2,267(iii) Interest on Kisan Vikas Patras 7,178_____ Total 9,04,304_____

8. The assessee preferred appeals before the Commissioner of Interest-tax (Appeals), Jalandhar. The appeal for the assessment year 1992-93 was dismissed vide order dated February 29, 1996 and the findings of the Assessing Officer that the hire charges fell within the scope of the definition of 'interest' under Section 2(7) of the Act and were liable to tax under Section 4(2) of the Act were upheld. The Commissioner of Interest-tax (Appeals) analysed the hire-purchase transactions in two cases, namely, Roor Singh and Pardeep Kumar, and held that the hire-purchase arrangement was basically an arrangement of advancing money by the assessee to the customers or on their behalf to the dealer and recovering the money so advanced through instalments after calculating interest chargeable on the principal amount. He further observed that the hire-purchase agreement and the endorsement in the registration book that the vehicle was financed by the assessee, are only to secure the recovery of the money advanced so that the customers do not transfer the vehicles without getting 'no dues clearance' from the

assessee-company. Thus, the Commissioner of Interest-tax (Appeals) held that the hire-purchase transactions, in substance, were arrangements for lending money and that the hire charges earned in such transactions were in the nature of interest within the meaning of Section 2(7) of the Act. Accordingly, he dismissed the appeal.

9. The appeal for the assessment year 1993-94 was disposed of vide order dated August 9, 1996. The Commissioner of Interest-tax (Appeals) on the basis of his findings recorded in the assessment year 1992-93 upheld the action of the Assessing Officer in assessing hire-purchase charges and interest earned amounting to Rs. 8,94,859 and Rs. 2,267, respectively, as chargeable interest. He, however, deleted the addition of Rs. 7,178 on account of interest on Kisan Vikas Patra included in the chargeable interest. The appeal was, accordingly, partly allowed to that extent.

10. Aggrieved by the aforesaid orders of the Commissioner of Interest-tax (Appeals), the assessee filed two appeals against the said orders before the Tribunal which have been disposed of vide the impugned order dated March 31, 2004. The Tribunal has held that although the hire-purchase finance companies fall within the meaning of 'credit institutions', yet such companies were not liable to pay tax on their entire income. The tax under the Act was leviable only on interest earned on loans and advances. It further held that hire-purchase financing was one of the recognised methods in the commercial world and hire charges earned by such companies were different and distinct from interest and, therefore, do not fall within the definition of interest under Section 2(7) of the Act. The Tribunal has also observed that even the Board in its Circular No. 760, dated January 13, 1998 (see [1998] 229 ITR 42), had clarified that in the case of transactions which are in substance in the nature of hire-purchase, the receipt of hire charges would not be in the nature of interest. The Tribunal, accordingly, disposed of the appeals in the following terms :

'Accordingly, instead of routinely treating all hire-purchase transactions as mere financing transactions, the Assessing Officer may be advised to examine each transaction in the above light and charge interest-tax in such of those transactions

which are not in the nature of hire-purchase.

A careful reading of the extracts of the above circular divulges that all the hire-purchase transactions cannot be construed as financing transactions and it is not open to the Department to levy tax on the hire charges resulting from genuine hire-purchase transactions. It is the duty of the Assessing Officer to separate the grain from the chaff by examining all the transactions separately with a view to draw a line between genuine hire-purchase transactions and other transactions which are merely in the nature of financing. We find that in the instant case, no such exercise was carried out by the Revenue official for separating the genuine hire-purchase transactions on the anvil of the legal position and the statutory provisions discussed in the foregoing paras.

The assessee had initially offered Rs. 4 lakhs and odd under Section 2(7) for tax including Rs. 2,282 on account of interest stated to be other than hire-charges. Subsequently, it turned away from its earlier disclosure by filing a revised return claiming the total amount as hire charges beyond the scope of the Act including a sum which was earlier stated to be other than hire charges. This claim of the assessee also appears to be violative of the provisions of the Act. Under these circumstances, we are satisfied that it would be in the interest of justice to set aside the impugned order and restore the matter to the file of the Assessing Officer. We order accordingly. The assessing authority is directed to scrutinise all cases, one by one to sort out genuine hire-purchase transactions and then put to charge the interest by whatever name called on the rest of the advances. Needless to say, he will afford a reasonable opportunity of being heard to the assessee while disposing of the case in accordance with law.'

11. Mr. P. C. Jain, learned counsel appearing on behalf of the assessee, contended that after accepting the contention of the assessee that hire-charges could not be treated as interest under the Act. The Tribunal should have deleted the additions of Rs. 4,75,745 and Rs. 8,94,859 for the assessment years 1992-93 and 1993-94, respectively, and should not have remanded the matter to the Assessing Officer to scrutinise all the transactions to sort out genuine hire-purchase transactions and then put to charge the interest on the rest of the

advances. According to learned counsel, the entire record was produced before the Assessing Officer as well as the Commissioner of Interest-tax (Appeals) and neither of them had recorded any finding against the genuineness of even a single hire-purchase transaction. Both these authorities have rejected the claim of the assessee merely on the ground that the hire-purchase transactions are in substance, arrangements for lending money and that the hire charges earned in such transactions were in fact in the nature of interest. This finding, according to learned counsel for the assessee, has been specifically reversed by the Tribunal which has clearly held that all the hire-purchase transactions cannot be construed as financial transactions and, therefore, the Department could not levy tax on the hire charges resulting from such transactions. It was, therefore, argued that by remanding the matter to sort out the genuine hire-purchase transactions, the Tribunal had travelled beyond its jurisdiction by enlarging the controversy. Counsel further pointed out that the Tribunal had remanded the matter on the basis of the Board's circular No. 760 dated January 13, 1998 (see [1998] 229 ITR 42), giving guidelines to the assessing authorities for assessment in the cases of hire-purchase companies. It was contended that the Tribunal should not have based its findings on the said circular as it was expected to decide the matter in accordance with law. Learned counsel further contended that, at any rate all the transactions had already been scrutinised by the Assessing Officer and the Commissioner of Interest-tax (Appeals) and, therefore, there was no occasion for directing the Assessing Officer to re-examine the matter. It was also contended that the Tribunal ought to have opined on the findings of the Commissioner of Interest-tax (Appeals) recorded in his order dated February 29, 1996, for the assessment year 1992-93 in respect of hire-purchase transactions of Roor Singh and Pardeep Kumar. Learned counsel argued that the Tribunal had remanded the matter without recording its findings in respect of these two specific transactions which had been specifically analysed by the Commissioner of Interest-tax (Appeals) and, therefore, the Assessing Officer was bound to base the fresh order on the basis of these findings of the Commissioner of Interest-tax (Appeals) against the assessee.

12. We have heard counsel for the appellant and have perused the records. It is clear that the Tribunal has accepted the claim of the assessee that the hire-purchase financing is one of the recognised modes in the commercial world and

the hire charges cannot be equated with interest. The matter has been remanded only to find out if there are any transactions of simple financing. The Tribunal has clearly observed that in the return originally filed, the assessee had included sums of Rs. 2,282 and Rs. 2,267 for the assessment years 1992-93 and 1993-94, respectively, on account of interest in addition to the hire-purchase charges. It is thus clear that in addition to hire-purchase transactions, there were transactions involving simple financing as well. The authorities below had not separated such transactions from the hire-purchase transactions because they were of the view that hire-purchase charges were assessable as chargeable interest under the Act. Since this finding of the Assessing Officer and the Commissioner of Interest-tax (Appeals) was reversed by the Tribunal, it became necessary to separate the hire-purchase transactions from the simple loan transactions. There were two courses open for the Tribunal. It could have undertaken the said exercise itself or directed the Assessing Officer to do the needful. By choosing to do the latter, we do not think that the Tribunal has, in any manner, enlarged the scope of the controversy before it. We are, therefore, of the view that the Tribunal was justified in remanding the matter to the Assessing Officer for verifying the factual position in respect of all the transactions. The orders of the Assessing Officer and the Commissioner of Interest-tax (Appeals) do not show that they had examined all the transactions. The Assessing Officer did not examine the hire-purchase transactions because according to him, hire-purchase charges were nothing but interest. The Commissioner of Interest-tax (Appeals) analysed only two transactions and that too to support the conclusion of the Assessing Officer that the hire-purchase transactions were, in substance, arrangements for advancing loans to various persons. This finding has clearly been reversed by the Tribunal. Therefore, in our view, there is no scope for the Assessing Officer to base the fresh order on remand on the basis of the findings of the Commissioner of Interest-tax (Appeals) in respect of those two transactions. The effective findings of the Tribunal, as reproduced earlier, clearly show that the scope of remand is merely to separate genuine hire-purchase transactions from transactions which are merely in the nature of financing. Otherwise, the Tribunal has accepted the assessee's claim that hire-purchase charges earned on hire-purchase transactions cannot be treated as interest under the Act.

13. We also do not find any merit in the contention of counsel for the assessee that the Tribunal has based its decision on Board's Circular No. 760 dated January 13, 1998 (see [1998] 229 ITR 42). The Tribunal has recorded a categorical finding in favour of the assessee that hire charges of genuine hire-purchase arrangements did not fall within the definition of interest under Section 2(7) of the Act. The reference to the said Board's circular is only to show that even the Board accepts this position.

14. We are, therefore, satisfied that these appeals have been filed merely on the basis of an apprehension that the Assessing Officer is bound to misconstrue the orders of the Commissioner of Interest-tax (Appeals) and levy tax on the hire-purchase charges on the basis of the findings recorded by him. As already discussed, we do not find any scope for the assessee to entertain such an apprehension.

15. Accordingly, we do not find any merit in these two appeals which are dismissed in limine.