

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “E”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.5986 & 5987/M/2006
Assessment Years: 1995-96 & 1996-97**

M/s. Star Chemicals (Bom) Pvt. Ltd., 55/56, Jolly Maker Chambers No.2, Nariman Point, Mumbai – 400 020 PAN: AAACS7485E	Vs.	Dy. CIT, Circle 3(3), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Shivaram, Sr. A.R. &
Shri Rahul Hakani, A.R.

Revenue by : Shri B.K. Bagchi, Sr. A.R.

Date of Hearing : 08 . 03 . 2022

Date of Pronouncement : 27 . 05 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeals bearing common question of law and facts are being disposed of by way of composite order.

2. The appellant, M/s. Star Chemicals (Bom) Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned order dated 04.09.2006 passed by Commissioner of Income Tax (Appeals)-XXXII,

Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years 1995-96 & 1996-97 on the grounds inter alia that :-

ITA No.5986/M/2006 for A.Y. 1995-96

“1. Learned Commissioner of Income tax (Appeals) has erred in not considering various submissions made in the course of appellate proceedings including various judicial decisions relied upon by the assessee, while deciding the appeal of the Assessee. The entire issue relating to allowance of depreciation assessment order having been set aside by the Income tax Appellate Tribunal, the Commissioner of Income tax (Appeals) ought to have considered the submissions made and subsequent judicial decisions on the subject cited by the Assessee and decided various grounds of appeal raised by the Appellant.

2. Learned Commissioner of Income tax (Appeals) has erred in not allowing depreciation of Rs.1,77,00,000/- on the assets leased by the assessee to the Rajasthan State Electricity Board (RSEB). On the fact and in the circumstances of the case, depreciation of Rs.1,77,00,000/- ought to have been allowed.

3. Without prejudice to above. Learned Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in taxing a sum of Rs.35,29,180/- being lease rental as income. In the event the depreciation is disallowed, Lease rental received ought not to be included in the total income.

4. The Learned Commissioner of Income tax (Appeals) has erred in confirming the disallowance of management fees of Rs. 35,40,000/- paid to ITC Classic finance Limited on the ground that it is capital expenditure. The aforesaid amount ought to be allowed as revenue expenses.

Without prejudice to the above, in the event the aforesaid expenditure of Rs.35,40,000/- is treated as capital expenditure, depreciation on the said amount treated as capital expenditure ought to be allowed.

5. The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of the hearing.”

ITA No.5987/M/2006 for A.Y. 1996-97

“1. Learned Commissioner of Income tax (Appeals) has erred in not considering various submissions made in the course of appellate proceedings including various judicial decisions relied upon by the assessee. while deciding the appeal' of the Assessee. The entire issue relating to allowance of depreciation assessment order having been set aside by the Income tax Appellate Tribunal, the Commissioner of Income tax (Appeals) ought to have considered the submissions made and subsequent judicial decisions on the subject cited by the Assessee and decided various grounds of appeal raised by the Appellant.

2. Learned Commissioner of Income tax (Appeals) has erred in confirming the action of the Assessing Officer in not allowing deprecation of Rs.1,77,00,000/- on the assets leased by the assessee to the Rajasthan State Electricity Board (RSEB. On the fact and in the circumstances of the case, depreciation of Rs. 1,77,00,000/-ought to have been allowed.

3. Learned Commissioner of Income tax (Appeals) has erred in confirming the disallowance of hire charges to the extent of Rs. 23,92,600/- on the ground that the transaction related to hire purchase is a mere paper transaction. On the facts and in the circumstances of the case, the disallowance made ought to be deleted,

4. The appellant craves leave to add, alter, amend and/or rescind any grounds of appeal during the course of the hearing.”

Additional Grounds for A.Y. 1995-96 & 1996-97 :

“Without prejudice to the Ground of Appeal 1 &. 2, the Ld. Commissioner of Income Tax (Appeals) XXXII erred in -

1. upholding the chargeability to tax the lease rentals received from Rajasthan State Electricity Board (RSEB) despite upholding the AO's contention that the transaction was a finance transaction, and

2. Ignoring that in the subsequent years the AO himself has allowed u/s 143(3) the deduction of the Hire Purchase charges paid to ITC Classic Finance Ltd. (ITCC), which formed an integral part of the overall transaction with RSEB.

RELIEFS SOUGHT

The appellant prays for the following reliefs.

1. That depreciation of Rs.177 Lacs each in the A.Y 1995-96 and 1996-97 be granted on the assets purchased from and leased back to RSEB consistent and in harmony with the Assessment Orders passed u/s 143(3) in subsequent years by A.O taxing the lease rental as income of the Appellant.

2. That the management fees paid of Rs. 35.40 Lacs to ITCC be allowed.

3. That the hire charges of Rs. 358366/- & Rs.4371760/- Lacs paid to ITCC Finance under the HP Agreement, for the A.Y 1995-96 & 1996-97 respectively be allowed, consistent and in harmony with the Assessment Orders passed u/s 143(3) in subsequent years by A.O

4. That, in the event the Appellate Order is upheld on the ground that the transaction was a Finance transaction, the entire lease rentals received from RSEB during the agreement period be not correspondingly be taxed.”

3. This is second round of litigation for both the appeals qua A.Y. 1995-96 & 1996-97 as the same were remanded back to the Assessing Officer (AO) to decide afresh in the light of the decision

rendered by Special Bench of Tribunal in case of Mid East Port Folio Management Ltd. Vs. DCIT (2003) 87 ITD 537 (Mum.) (SB) (Trib).

4. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee company claimed depreciation of Rs.1,89,98,891/- including depreciation of Rs.1,77,00,000/- on assets like economizers, recuperators and air heaters leased to Rajasthan State Electricity Board (RSEB). The assessee company claimed depreciation @ 50% of Rs.1,77,00,000/- each for A.Y. 1995-96 & 1996-97 on the ground that the assets in question were claimed to have been put to use for less than 180 days.

5. Assessee company claimed allowances to the tune of Rs.35.40 lakhs as revenue expenditure in A.Y. 1995-96 alleged to have been paid under the head “Management fee” to M/s. ITC Classic Finance Ltd. The assessee claimed to have purchased machinery from RSEB under the “Hire purchase agreement” valuing at Rs.354.00 lakhs on which the assessee company has claimed to have paid 10% management fee amounting to Rs.35.40 lakhs to the M/s. ITC Classic Finance Ltd. and sought to capitalize the same along with the cost of plant & machinery as the same has direct nexus with the acquisition of machinery with RSEB.

6. In A.Y. 1996-97 the AO made addition of Rs.23,92,600/- on the ground that the transaction of hire purchase has been held to be sham transaction and colourable device and as such claim of loss of Rs.23,92,600/- on this transaction of hire purchase was disallowed.

7. Declining the contentions raised by the assessee the AO proceeded to make the assessment at the total income of Rs.6,63,46,701/- & Rs.2,67,57,336/- under section 143(3) read with section 254 of the Act for A.Y. 1995-96 & 1996-97 respectively.

8. The assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has upheld the order passed by the AO by dismissing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing present appeals.

**Ground No.1 of ITA Nos.5986 & 5987/M/2016
for A.Y. 1995-96 & 1996-97**

9. Ground No.1 of ITA Nos.5986 & 5987/M/2016 for A.Y. 1995-96 & 1996-97 is general in nature and as such needs no specific findings.

**Ground No.2 of ITA Nos.5986 & 5987/M/2016
for A.Y. 1995-96 & 1996-97**

10. The Ld. CIT(A) has upheld the findings returned by AO disallowing the depreciation of Rs.1,77,00,000/- for A.Y. 1995-96 & 1996-97 claimed by the assessee on the assets leased to the RSEB by returning following findings:

“2.8 I have carefully considered the assessment orders for A.Y. 1995-96 and A.Y.1996-97 passed by the A.O., written submissions filed by the appellant during the course of appellate proceedings and other material available on record. I am unable to accept the various contentions raised by the appellant on this issue since the directions of the Hon'ble ITAT in the appellant's case for A.Y. 1995-96 and A.Y.1996-97 as reproduced in para 2.2 (supra), while restoring the said matter to the A.O. for re-deciding the same are categorical and binding upon the A.O.

2.9 With regard to the appellant's reliance on various case laws as discussed above, the same does not come to its aid in view of the Hon'ble ITATs categorical directions to the A.O. to re-decide the issue in the light of the decision of Special Bench of ITAT, Mumbai in 87 ITD 537 in the case of Mid East Portfolio Management Ltd. Vs. DCIT 87 ITD 537 (Mum.) (SB).

2.10 As may be seen from the Hon'ble ITAT's directions as reproduced above, the same are binding on the A.O. and the A.O. by respectfully following the Hon'ble ITAT's directions has decided the issue correctly. I am unable to accept the contentions as raised by the appellant on this issue since I find force in the A.O.'s arguments that taking a decision outside the directions of the Hon'ble ITAT is quite unwarranted in view of the clear-cut directions in this respect. Further, after detailed discussion in the assessment order, the A.O. has held that the decision in the case of Mid East Portfolio Management Ltd. Vs. DCIT 87 ITD 537 (Mum.) (SB) is in favour of the revenue hence, the disallowances in respect of depreciation made by the A.O. is correct and the lease rent liable to be assessed in the hands of the appellant. Since the A.O. has passed the respective assessment orders following the directions of Hon'ble ITAT, Mumbai, which were binding on him, hence, the stand of the A.O. in disallowance of depreciation in A.Y. 1995-96 and A.Y. 1996-97 is upheld and the appeal filed by the appellant on this ground is rejected.”

11. The Ld. A.R. for the assessee challenging the impugned disallowance made by the AO and confirmed by the Ld. CIT(A) contended that the Ld. CIT(A) has erred in deciding the issue of depreciation against the assessee by merely relying upon the case rendered by Special Bench of the Tribunal in case of Mid East Portfolio Management Ltd. vs. DCIT (2003) 87 ITD (Mumbai) (SB) by ignoring the subsequent decision of “including the decision by jurisdictional High Court”.

12. Bare perusal of the impugned order passed by the AO as well as the Ld. CIT(A) goes to prove that they have decided the issue strictly in accordance with the mandate of the Tribunal while remanding the case back to the AO by following the decision rendered by Mid East Portfolio Management Ltd. (supra). We are of the considered view that when the case has been remitted back to reconsider the same in the light of a particular decision rendered by Special Bench of the Tribunal, any subsequent decisions rendered by the Tribunal or Hon'ble High Court, if any need to be considered as there is no estoppel against law.

13. In other words the AO is required to re-decide the issue in accordance with law applicable to the facts and circumstances of the case at the time of his subsequent decision. Now we would examine with the assistance of the Ld. A.Rs for the parties to the appeal the issue in controversy in the light of the decision rendered by Hon'ble Orissa High Court in case of Industrial Development Corporation of Orissa Ltd. vs. CIT (2004) 268 ITR 130 (Orissa) (HC), order passed by the Hon'ble Rajasthan High Court in case of CIT vs. Rajasthan State Electricity Board (2007) 160 Taxman 19 (Raj.)(HC), order passed by the co-ordinate Bench of the Tribunal in case of The West Coast Paper Mills Ltd. vs. JCIT in ITA No.5403/B/99 dated 21.06.2005 (Mumbai-Trib.) and order passed by the Hon'ble Bombay High Court in case of CIT vs. Apollo Finvest (I) Ltd. (2016) 382 ITR 33 (Bom.)(HC) relied upon by the Assessee.

14. Undisputedly, the assessee company has sold three energy saving devices for Rs.88,50,000/- in A.Y. 2003-04 and in the

computation of income entire amount of Rs.88,50,000/- was offered as deemed capital gains under section 50 of the Act. Tribunal in A.Y. 2003-04 while overturning the findings returned by the AO and the Ld. CIT(A) held that the sale of three energy saving devices are rightly taxed as deemed capital gain under section 50 of the Act. It is also not in dispute that this is first year of claiming depreciation by the assessee. It is also not in dispute that as per Tripartite agreement dated 30.03.1995 between ITC Classic Finance Ltd. as owner, assessee as hirer and RSEB as lessee confirming the hire purchase agreement as well as agreement for lease of equipment assessee and RSEB, available at page 165 to 189 of the paper book, RSEB was in possession of the equipment and then hire purchase agreement between assessee and RSEB came into existence. It is also not in dispute that assessee has purchased the assets of RSEB in question under hire purchase agreement on 30.03.1995 and was leased back to RSEB. It is also admitted fact that after 10 years the ownership of these assets will be transferred to RSEB.

15. It is also not in dispute that vide Tripartite agreement dated 30.03.1995 between ITC Classic Finance Ltd. as owner, assessee as hirer and RSEB as lessee confirming the hire purchase agreement as well as agreement for lease of equipment, the assessee entered into an agreement with ITC Classic Finance Ltd. and thereby acquired on hire purchase basis certain equipment.

16. In the backdrop of the aforesaid undisputed facts the Ld. A.R. for the assessee contended that when the saving devices are held to be rightly taxed as deemed capital gain under section 50 of

the Act, consequent depreciation claimed by the assessee for the year under consideration are liable to be allowed and relied upon the decision rendered by Hon'ble Orissa High Court in case of Industrial Development Corporation Orissa Ltd. vs. CIT (supra) which was further followed by co-ordinate Bench of the Tribunal in case of The West Coast Paper Mills Ltd. (supra) by distinguishing the case of Mid East Portfolio Management Ltd. (supra) decided by the Special Bench.

17. The Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

18. We have perused the order passed by the co-ordinate Bench of the Tribunal in case of The West Coast Paper Mills Ltd. (supra) available at page 345 to 361 of the case law paper book, which is on identical facts as in the present case wherein the assessee had entered into sale and lease back transactions with various electricity boards and thereafter sought depreciation on assets purchased and leased back to various electricity boards as in the instant case. Co-ordinate Bench of the Tribunal by relying upon the decision rendered by Hon'ble Orissa High Court in case of Industrial Development Corporation Orissa Ltd. vs. CIT (supra) and decision rendered by Hon'ble Gauhati High Court in case of CIT vs. George Williamson (Assam) Ltd. 265 ITR 626 and decision rendered by Hon'ble Kolkata High Court in case of Smt Bani Roy Chowdhari 138 ITR 578 decided this issue in favour of the assessee by returning following findings:

“13. We heard both sides in detail and considered the issue. We have gone through the assessment order as well as the first appellate order wherein the various details of the issue

are discussed at length. The assessing officer in fact has mentioned a search action u/s 132 conducted in the case of Virtuous Finance Ltd. But a perusal of the events recorded by the assessing authority in the assessment order does not bring out any material against the assessee other than the materials already disclosed by the assessee before the assessing authority. In the light of the details collected in the course of search, it is stated by the assessing authority that various papers of the Haryana State Electricity Board were peruse by him. But we find that those papers of Haryana State Electricity Board perused by the assessing officer in the light f the search; were riot any fresh materials or evidence. All those papers were always with the Haryana State Electricity Board and accessible to the department and furnished by the assessee company. Therefore, we are of the considered view that the highlighting of the search action in the assessment order is somewhat misleading.

14. So also, the assessing authority has relied on a confessional statement as a prima facie evidence against the case of M/s Golden Finalease Pvt. Ltd. As pointed out by the learned Senior Counsel, the statement did not have any evidentiary due as the statement was abstracted at the back of the assessee company and the assessee company never had an opportunity to rebut it either by cross examination or by any other ode known to procedural law.

15. The assessing authority has stated that enquiries were made with Electricity Board regarding the transactions. All the Electricity Board have consistently stated before the revenue that the equipments and machineries as stated by the assessee were purchased by the assessee during the relevant previous year. None of the parties to the lease transactions has ever denied the factum of purchase. They have confirmed the receipt of consideration. They have confirmed the payment of security. They have confirmed the payment of regular lease rentals. All such confirmations are properly supported by documents, books of account and published reports. Therefore, we have to come to a conclusion that apart from the strong suspicion entertained by the assessing authority regarding the genuineness of the transaction, no

verifiable evidence or material has been brought on record to discredit the contention of the assessee that it had entered into lease transactions with those parties. The assertions and claims made by the assessee company are supported by books of account, lease agreements, invoices, bank details, return of income wherein lease rentals were disclosed as income, etc. etc. When all these documents support the case of the assessee company, how it is possible to reject its contention only on the basis of suspicion or presumption howsoever strong it might be?

16. It is in this context we have to refer to the decision of the Orissa High Court in the case of Industrial Development Corporation of Orissa Ltd. Vs. CIT & Others 268 TR 130. In the said case, the Court has observed as follows:

In the case of UOI vs Azadi Bachao Andolan 263 ITR 706, the Supreme Court has made it very clear than an act which is otherwise valid in law cannot be treated as non est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interest. In other words, if a transaction is otherwise valid in law and results in reduction of tax to an assessee, the same cannot be brushed aside on the ground that the underlying motive of entering into the transaction by the assessee was to reduce its tax liability to the state.

17. In the present case, the revenue has not-even established that the underlying motive of the assessee company in claiming depreciation at the rate of 100% has resulted in some economic detriment or prejudice to the revenue. Even though the assessee company is claiming depreciation at the rate of 100%. the assessee company is disclosing lease rentals as its taxable income for a period of more than 5 years, on a regular basis. The depreciation is claimed only by the assessee company. The lessees are not claiming depreciation. Therefore, if at all any detriment is alleged in this case, that is only relative / presumptive and not absolute.

18. In the present case, the revenue has not established that the transactions were sham transactions. The lease agreements executed by the assessee company had the transactions entered into thereupon are not prohibited by law. They are within the four corners of law. Therefore, in obedience of the decision of the Orissa High Court as stated above, we have to hold that the assessee is entitled to claim depreciation at the rate of 100% on the assets leased out by it to the four parties mentioned above.

19. It is the argument of the revenue that the impugned transactions involved in the present case did not answer the tests laid down by Special Bench in the case of Mid East Portfolio Management Ltd. The property in the equipments has been transferred from the respective lessees to the assessee in this case. This is clear from the invoice and payment details. There is no dispute that the equipments were identified with reasonable clarity. The purchases were made on the basis of purchase price worked out on the basis of valuation reports furnished by approved valuers. They have given detailed valuation reports. The terms of the lease agreements do not bring out any case that the transactions were of in nature other than lease transactions. The conduct of the parties supports the contention of the assessee. The existence of equipments / machineries is established; their user has been established and in such circumstances, there cannot be a case that the present case does not answer the call of the tests laid down by the Special Bench in Mid East Portfolio Management Ltd's case.

20. The view expressed by the Orissa High Court has been further fortified by the Gauhati High Court in the case of CIT vs George Williamson (Assam) Ltd 265 ITR 626. In the said judgement, the Court has held as follows:

"In UOI vs Azadi Bachao Andolan 263 ITR 706, the Supreme Court has approved the decision of the Madras High Court in M.V. Valliapan v. ITO 170 ITR 238, wherein the Madras High Court had held that the decision in McDowell & Co vs CTO 154 ITR 14E(SC) cannot be read as laying down that every attempt at tax planning is illegitimate and must be

ignored, or that every transaction or arrangement which is perfectly permissible under law, which has the effect of reducing the tax burden or the assessee must be looked upon with disfavour. IN view of the aforesaid legal principle laid down by the Supreme Court, it is clear that the principles laid down by the IRC vs Duke of Westminster 19 TC 490 are still applicable in this country and it is open to assessee to arrange their onus in such a manner that it would not attract tax liabilities, if it can be managed within the permissible limit of law."

21. The Calcutta High Court has held in Competent Authority vs Smt. Bani Roy Chowdhari 131 ITR 578 that where the transferor or transferee is government or statutory bodies, there cannot be any scope for collusion between parties. The court further held that when government or statutory body is party to a transaction, question of evasion of tax does not arise. In the present case three out of four lessees are State Government Undertakings. In the facts and circumstances, we find that there is no evidence to hold that the transactions were sham and therefore, the decisions of the Orissa High Court as well as the Gauhati High Court apply to the case and the claim of the assessee for depreciation at the rate of 100% need to be accepted as genuine. Therefore, we direct the assessing authority to grant the depreciation allowance as claimed by the assessee. This issue is decided in favour of the assessee."

19. Aforesaid order passed by the co-ordinate Bench of the Tribunal in case of The West Coast Paper Mills Ltd. (supra) has been confirmed by the Hon'ble Bombay High Court vide order dated 389 of 2008, order available at page 440 to 441 by returning following findings:

"1. Heard the learned Counsel appearing for both the sides. The case of the appellant before the Tribunal was that the transactions of buy back of lease equipments and granting lease of that equipments to various boards, were sham transactions entered into only for the purpose of

claiming benefit of 100% depreciation. The Tribunal has considered that aspect of the matter in the light of the material on record and has recorded the finding that it is not a sham and bogus transaction. One of the grounds considered for recording that finding is that when the other party is a statutory body the question of evasion of tax does not arise, and therefore, according to the Tribunal, inference of collusion cannot be drawn. Hence, no question of law arises.”

20. Facts and order passed by the Tribunal in The West Coast Paper Mills Ltd. (supra) and confirmed by the Hon'ble Bombay High Court is applicable to the facts of the case as it is undisputed fact that three energy saving devices were held to be rightly taxed as deemed capital gain under section 50 by the Tribunal and thereafter depreciation was claimed by the assessee. When the existence of assets is proved and assessee being hire purchaser as well as lesser is the owner of the assets its usage by the RSEB is not disputed. In these circumstances sale and lease back transactions with RSEB directly or through means of third party with whom lesser (assessee) has hire purchase agreement, are legally permitted transactions and no evidence has been brought on record by the Revenue Authority if this transaction was sham transaction.

21. Moreover, when the transaction is between assessee and public undertaking i.e. RSEB question of any tax evasion or sham transaction as alleged by the Lower Revenue Authorities does not arise. Even the entire transactions between the assessee and RSEB are duly supported with agreement and books of account and as such genuineness of the transactions has been questioned by the Revenue Authority merely on the basis of conjunctures and surmises.

22. In view of the matter, we are of the considered view that the assessee is entitled for depreciation claimed and AO/Ld. CIT(A) have erred in disallowing the depreciation by relying upon the order passed by the co-ordinate Bench of the Tribunal (SB) in case of Mid East Portfolio Management Ltd. (supra) as the same is not applicable in view of the decision rendered by Hon'ble Orissa High Court (supra). So ground No.2 of A.Y. 1995-96 & A.Y. 1996-97 is determined against the Revenue.

**Ground No.3 and Revised Additional Ground No.1 of
A.Y. 1995-96 &
Revised Additional Ground No.1 of A.Y. 1996-97**

23. These grounds have not been pressed by the assessee company, hence need no adjudication.

Ground No.4 of A.Y. 1995-96

24. The assessee company claimed to have paid an amount of Rs.35,40,000/- to ITC Classic Finance Ltd. in accordance with schedule B to the Tripartite agreement dated 30.03.1995 between ITC Classic Finance Ltd. as owner, assessee as hirer and RSEB as lessee confirming the hire purchase agreement as well as agreement for lease of equipment, towards management fees for rendering services by them qua the Act and mode of financing such as determining the creditworthiness of the assessee, preparing the necessary papers for finance granted etc. and claimed the same as deduction under section 37 of the Act.

25. The AO disallowed the same on the ground that the management fee paid to ITC Classic Finance Ltd. has direct nexus with acquisition of the machinery from RSEB the management fees paid should be capitalised along with cost of plant & machinery purchased under reference. The Ld. CIT(A) upheld the findings returned by the AO. However, the Ld. CIT(A) disallowed the claim of management fee as deduction made by the assessee on the ground that since transaction of lease is only for name sake and is a colourable devise and assessee having not acquired any capital assets the same is not allowable. We are of the considered view that when payment on account of management fee to the ITC Classic Finance Ltd. and rendering of service by them has not been disputed by the Revenue, no new assets have been created and moreover as per our findings on ground No.2 the sale and lease back transaction including hire purchase transaction is held to be a valid transaction and assessee has been found to be entitled to the depreciation, the Ld. CIT(A) has erred in disallowing the deduction. So we allow this ground and direct the AO to allow the deduction claimed by the assessee on account of management fee.

Revised additional ground No.2 of A.Y. 1995-96 &
Revised additional ground No.2 of A.Y. 1996-97

26. The assessee company claimed deduction of Rs.3,58,366/- and Rs.43,71,760/- in A.Y. 1995-96 and A.Y. 1996-97 respectively on account of hire charges paid to ITC Classic Finance Ltd. (ITCC). The AO as well as the Ld. CIT(A) disallowed the same.

27. We have perused the assessment order and impugned order passed by the Ld. CIT(A). There is no discussion on this issue rather Ld. CIT(A) proceeded to dismiss the appeal on the sole

ground that since sale and lease back transaction with RSEB was a sham and paper transaction they are not entitled for any depreciation and deduction of management fee and hire charges.

28. The Ld. A.R. for the assessee brought to the notice of the Bench that in the subsequent years AO himself has allowed the hire charges paid to ITC Classic Finance Ltd. under section 143(3) of the Act. In view of the matter, since this issue has already been decided by the AO as well as the Ld. CIT(A) the same is remitted back to the AO to decide afresh in the light of the findings returned by this Bench on ground No.2 and by following the “rule of consistency” as this issue has been decided in favour of the assessee in the subsequent years. So additional ground No.2 of A.Y. 1995-96 & 1996-97 is decided in favour of the assessee for statistical purposes.

29. In view of what has been discussed above, appeals filed by the assessee for A.Y. 1995-96 and A.Y. 1996-97 are allowed.

Order pronounced in the open court on 27.05.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 27.05.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.