

## **HC approves sale and lease back transaction in absence of any evidence to prove it as sham**

**Summary – The High Court of Calcutta in a recent case of Steel Products Ltd., (the Assessee) held that where assessee claimed that during the year it had purchased certain imported metallic cops from Kota factory of one 'J' and leased out same to Delhi factory of 'J', assessee was entitled to depreciation on metallic cops.**

### **Facts**

- In the return of income filed for the assessment year 1991-92, the assessee claimed depreciation on the value of metallic cops at the rate of 100 per cent. It stated that on 21-3-1991 it had purchased certain imported metallic cops from the Kota factory of J.K. Synthetics Ltd. [J] and leased out the same to the Delhi factory of 'J'. The Kota factory was in the face of closure on account of labour trouble and thus did not need to install the said metallic cops imported by it. On the other hand, the Delhi factory needed the metallic cops. Further the Kota factory was in need of Rs. 10 lakhs blocked in the purchase of the metallic cops. To avoid blockage of Rs. 10 lakhs invested on the metallic cops, the Kota factory entered into an agreement with it, whereby Kota factory sold the metallic cops on 21-3-1991. Thereafter it entered into a lease agreement dated 29-3-1991 with the Delhi factory of 'J', whereby it leased out the metallic cops to the Delhi factory at a rent of Rs. 46 per thousand cops per month. The metallic cops were directly transported from the Kota factory to Delhi factory upon payment of full sales tax and the same were installed at the Delhi factory. The delivery of metallic cops from Kota to Delhi was economical, as it saved time and cost of transportation and involved only State sales tax. The metallic cops constituted plant and machinery and the value of each of the metallic cops was Rs. 100, i.e., below Rs. 5,000.
- The Assessing Officer held that the entire transaction was a colourable device of tax evasion. He, accordingly, disallowed the claim for depreciation.
- On appeal, the Commissioner (Appeals) held that the Assessing Officer had not passed a speaking order but had proceeded on the suspicion that a colourable device of tax evasion had been adopted, without identifying that device. The Assessing Officer had not been able to establish that the lease agreement was bogus and the plant and machinery on which depreciation had been claimed was not owned by the assessee and put to use during the year. He, therefore, directed the Assessing Officer to allow the claim for depreciation in full.
- On second appeal, the Tribunal held that the entire transaction involving the assessee was not free from doubt. It was only a ploy to evade tax by setting up a sham claim to depreciation on imported metallic cops. The entire transaction was a colourable device to evade tax. It, therefore, rejected the assessee's claim for depreciation on metallic cops.
- On appeal to High Court:

### **Held**

- In the instant case, the Kota factory of 'J' was in the face of closure. It was in financial distress. The Delhi factory of 'J' needed metallic cops, but the Kota factory was not in the financial position to block Rs. 10 lakhs. Furthermore the assessee paid sales tax in respect of the metallic cops.
- As argued by the assessee there was no material at all on the basis of which the Tribunal could have arrived at the conclusion that the entire transaction relating to purchase and leasing of the metallic cops was a paper transaction.
- In the instant case, it is patently clear that the decision of the Tribunal is at least partly, if not, wholly, based on conjectures and surmises. Therefore, the order of the Tribunal was liable to be set aside.