M/S. I.C.D.S. Ltd vs Commissioner Of Income Tax & Anr on 14 January, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3037, 2013 (3) SCC 541, 2013 AIR SCW 4512, 2013 (1) SCALE 342, (2013) 122 ALLINDCAS 39 (SC), AIR 2013 SC (CIVIL) 2217, 2013 (96) ALL LR 60 SOC, (2013) 350 ITR 527, (2013) 1 SCALE 342

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Bench: D.K. Jain, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA			
CIVIL APPELLATE JURISDICTION			
CIVIL APPEAL NO.3282 OF 2008			
M/S I.C.D.S. LTD.	–	APPELLANT	
VERSUS			
COMMISSIONER OF INCOME TAX, MYSORE & ANR.	–	RESPONDENTS	

WITH

CIVIL APPEAL NO.3286 OF 2008,
CIVIL APPEAL NO.3287 OF 2008,
CIVIL APPEAL NO.3288 OF 2008,
CIVIL APPEAL NO.3289 OF 2008,
AND
CIVIL APPEAL NO.3290 OF 2008

J U D G M E N T

D.K. JAIN, J.

1. In all these appeals, by grant of special leave, by the Revenue, the common question of law relates to the claim of the assessee for depreciation under Section 32 of the Income Tax Act, 1961 (for short "the Act"). The assessment years involved are 1991-1992 to 1996-1997.

2. The assessee is a public limited company, classified by the Reserve Bank of India (RBI) as a non-banking finance company. It is engaged in the business of hire purchase, leasing and real estate etc. The vehicles, on which depreciation was claimed, are stated to have been purchased by the assessee against direct payment to the manufacturers. The assessee, as a part of its business, leased

out these vehicles to its customers and thereafter, had no physical affiliation with the vehicles. In fact, lessees were registered as the owners of the vehicles, in the certificate of registration issued under the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act").

3. In its return of income for the relevant assessment years, the assessee claimed, among other heads, depreciation in relation to certain assets, (additions made to the trucks) which, as explained above, had been financed by the assessee but registered in the name of third parties. The assessee also claimed depreciation at a higher rate on the ground that the vehicles were used in the business of running on hire.

4. The Assessing Officer disallowed claims, both of depreciation and higher rate, on the ground that the assessee's use of these vehicles was only by way of leasing out to others and not as actual user of the vehicles in the business of running them on hire. It had merely financed the purchase of these assets and was neither the owner nor user of these assets. Aggrieved, the assessee preferred appeals to the Commissioner of Income Tax. In so far as the question of depreciation at normal rate was concerned, the Commissioner (Appeals) agreed with the assessee. However, assessee's claim for depreciation at higher rate did not find favour with the Commissioner.

5. Being dissatisfied, both the assessee and the Revenue carried the matter further in appeal before the Income-tax Appellate Tribunal (for short "the Tribunal"). The Tribunal agreed with the assessee on both the counts. On the question of claim for depreciation on normal rate, the following observations by the Tribunal are very significant:

> "...In the present case the business of the assessee-appellant is leasing and hiring of vehicles and other machinery. It is definitely not a hire purchase, as seen from the lease agreements, copies of some of which are on record. Further, allowing only depreciation is not the matter of dispute in the instant case. The lower authorities have already allowed the depreciation, of course in the normal rates. Therefore, ownership of the vehicles and its use is not at all disputed at any stage before the Assessing Officer and the first appellate authority.
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> Nothing is brought on record, whether the lessees of the vehicles have claimed the depreciation which were used by them. From this the only inference that can be drawn is that the lessees have not claimed depreciation and it is the appellant alone who has claimed the depreciation being the actual owner of the vehicles." On the higher rate of depreciation, the Tribunal culled out the observations of the Commissioner of Income Tax (Appeals) as under:
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> "The CIT (Appeals) considered that the appellant has only financed to purchase the trucks. Therefore, according to him, leasing out the trucks or hiring them does not assume the character of doing business of hiring the trucks. According to the CIT (Appeals) the appellant must use the trucks for its own business of running them on hire to claim the higher rate of depreciation. But the main activity of the appellant is to lease out or give the trucks on hire to others.

> *** *** *** ... In the opinion of the CIT (Appeals), the language used in the rules clearly specified that enhanced depreciation allowance is available only when the trucks are used in the business of running them on hire also. The appellant has only a leasing business and it does not run a business of hiring trucks to the public. According to the department the distinction is very clear and there is no case for the appellant to claim the enhanced depreciation on the business of hiring the trucks."

6. Relying on the decision of this Court in Commissioner of Income Tax, Karnataka, Bangalore Vs. Shaan Finance (P) Ltd., Bangalore[1], the Tribunal held that the assessee, having used the trucks for the purpose of business, was entitled to a higher rate of depreciation at 50% on the trucks leased out by it.

7. Being aggrieved, the revenue preferred an appeal to the High Court under Section 260A of the Act. The High Court framed the following substantial questions of law for its adjudication:-

> "Whether the Appellant (assessee) is the owner of the vehicles which are leased out by it to its customers and Whether the Appellant (assessee) is entitled to the higher rate of depreciation on the said vehicles, on the ground that they were hired out to the Appellant's customers."

8. Answering both the questions in favour of the revenue, the High Court held that in view of the fact that the vehicles were not registered in the name of the assessee, and that the assessee had only financed the transaction, it could not be held to be the owner of the vehicles, and thus, was not entitled to claim depreciation in respect of these vehicles. Hence, these appeals by the assessee.

9. Section 32 of the Act on depreciation, pertinent for the controversy at hand, reads as follows:

> "32.(1) In respect of depreciation of—
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> (i) buildings, machinery, plant or furniture, being tangible assets;
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> (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed-
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> i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed ;]
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> ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed Provided that no deduction shall be allowed under this clause in respect of—

(a) any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 but before the 1st day of April, 2001, unless it is used—

i) in a business of running it on hire for tourists ; or

ii) outside India in his business or profession in another country ; and

(b) any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42 Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia) as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-

section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) [or clause (iia)], as the case may be." (Emphasis supplied)

10. Depreciation is the monetary equivalent of the wear and tear suffered by a capital asset that is set aside to facilitate its replacement when the asset becomes dysfunctional. In P.K. Badiani Vs. Commissioner of Income Tax, Bombay[2], this Court has observed that allowance for depreciation is to replace the value of an asset to the extent it has depreciated during the period of accounting relevant to the assessment year and as the value has, to that extent, been lost, the corresponding allowance for depreciation takes place.

11. Black's Law Dictionary (5th Edn.) defines 'depreciation' to mean, inter alia:

"A fall in value; reduction of worth. The deterioration or the loss or lessening in value, arising from age, use, and improvements, due to better methods. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property.... Consistent gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings..." The 6th Edition defines it, inter alia, in the following ways:

"In accounting, spreading out the cost of a capital asset over its estimated useful life.

A decline in the value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property."

12. Parks in Principles & Practice of Valuation (Fifth Edn., at page 323) states: As for building, depreciation is the measurement of wearing out through consumption, or use, or effluxion of time.

Paton has in his Account's Handbook (3rd Edn.) observed that depreciation is an out-of- pocket cost as any other costs. He has further observed-the depreciation charge is merely the periodic operating aspect of fixed asset costs.

13. The provision on depreciation in the Act reads that the asset must be "owned, wholly or partly, by the assessee and used for the purposes of the business". Therefore, it imposes a twin requirement of 'ownership' and 'usage for business' for a successful claim under Section 32 of the Act.

14. The Revenue attacked both legs of this portion of the section by contending: (i) that the assessee is not the owner of the vehicles in question and (ii) that the assessee did not use these trucks in the course of its business. It was argued that depreciation can be claimed by an assessee only in a case where the assessee is both, the owner and user of the asset.

15. We would like to dispose of the second contention before considering the first. Revenue argued that since the lessees were actually using the vehicles, they were the ones entitled to claim depreciation, and not the assessee. We are not persuaded to agree with the argument. The Section requires that the assessee must use the asset for the "purposes of business". It does not mandate usage of the asset by the assessee itself. As long as the asset is utilized for the purpose of business of the assessee, the requirement of Section 32 will stand satisfied, notwithstanding non-usage of the asset itself by the assessee. In the present case before us, the assessee is a leasing company which leases out trucks that it purchases. Therefore, on a combined reading of Section 2(13) and Section 2(24) of the Act, the income derived from leasing of the trucks would be business income, or income derived in the course of business, and has been so assessed. Hence, it fulfills the aforesaid second requirement of Section 32 of the Act viz. that the asset must be used in the course of business.

16. In the case of Shaan Finance (P) Ltd. (supra), this Court while interpreting the words "used for the purposes of business" in case of analogous provisions of Section 32A(2) and Section 33 of the Act, dealing with Investment Allowance and Development Rebate respectively, held thus:

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> "9. Sub-section (2) of Section 32-A, however, requires to be examined to see whether there is any provision in that sub-section which requires that the assessee should not merely use the machinery for the purposes of his business, but should himself use the machinery for the purpose of manufacture or for whatever other purpose the machinery is designed. Sub-section (2) covers all items in respect of which investment allowance can be granted. These items are, ship, aircraft or machinery or plant of certain kinds specified in that sub-section. In respect of a new ship or a new aircraft, Section 32-A(2)(a) expressly prescribes that the new ship or the new aircraft should be acquired by an assessee which is itself engaged in the business of operation of ships or aircraft. Under sub-section (2)(b), however, any such express requirement that the assessee must himself use the plant or machinery is absent. Section 32-A(2)(b) merely describes the new plant or machinery which is covered by Section 32-A. The plant or machinery is described with reference to its purpose. For example,

sub- section (2)(b)(i) prescribes "the purposes of business of generation or distribution of electricity or any other form of power". Sub- section (2)(b)(ii) refers to small-scale industrial undertakings which may use the machinery for the business or manufacture or production of any article, and sub-section (2)(b)(iii) refers to the business of construction, manufacture or production of any article or thing other than that specified in the Eleventh Schedule. Sub-section 2(b), therefore, refers to the uses to which the machinery can be put. It does not specify that the assessee himself should use the machinery for these purposes. In the present case, the person to whom the machinery is hired does use the machinery for specified purposes under Section 32-A(2)(b)(iii). That person, however, is not the owner of the machinery. The High Courts of Karnataka and Madras have held that looking to the requirements specified in Section 32-A the assessees, in the present case, fulfil all the requirements of that section, namely, (1) the machinery is owned by the assessees; (2) the machinery is used for the purpose of the assessees' business and; (3) the machinery is as specified in sub-section (2).

10. We are inclined to agree with this reasoning of the High Courts of Karnataka and Madras."

17. The same judgment commented on the analogous nature of Section 33 on Development Rebate and clarified that the phrase "used for the purpose of business" does not necessarily require a usage of the asset itself. It held thus:

"11. The provisions relating to investment allowance are akin to the provisions under Section 33 of the Income Tax Act, 1961 relating to development rebate... *** *** ***

12. Since the provisions of Section 33 dealing with development rebate are similar to the provisions of Section 32-A, it is necessary to look at cases dealing with the grant of development rebate under Section

33. In the case of CIT v. Castlerock Fisheries (1980) 126 ITR 382 the Kerala High Court considered the case of an assessee which temporarily let out its cold-storage plant to a sister concern. The income derived by such letting was assessed by the Income Tax Officer in the hands of the assessee as business income of the assessee for the relevant accounting years. The assessee claimed development rebate in respect of the cold-storage plant. The High Court said that it was accepted by the department that in letting out the plant and machinery, the assessee was still doing business and the hire charges which it had received, had been assessed as business income of the assessee. Hence the assessee had complied with all the conditions for the grant of development rebate including the condition that the assessee had used the machinery for the purposes of its business. The High Court said that it must, therefore, necessarily be assumed that the conditions laid down in Section 33(1)(a) that the machinery or plant is wholly used for the purposes of the business carried on by the assessee, is duly satisfied and the assessee is entitled to development rebate. In

> appeal before this Court, a Bench of three Judges of this Court upheld the decision of the Kerala High Court in the above case in CIT v.

Castle Rock Fisheries (1997) 10 SCC 77. This Court also held that since the department has proceeded on the explicit basis that despite the fact that the plant had been temporarily let out by the assessee to a sister concern, the plant and machinery was nevertheless being used by the assessee for its business purpose by treating the income derived by the assessee by such letting out as business income of the assessee, the development rebate must be considered as having been rightly granted. Therefore, where the business of the assessee consists of hiring out machinery and/or where the income derived by the assessee from the hiring of such machinery is business income, the assessee must be considered as having used the machinery for the purposes of its business.

13. A similar view has been taken by the Andhra Pradesh High Court in the case of CIT v. Vinod Bhargava (1988) 169 ITR 549 (AP) where Jeevan Reddy, J. (as he then was) held that where leasing of machinery is a mode of carrying on business by the assessee the assessee would be entitled to development rebate. The Court observed (p. 551):

> "[O]nce it is held that leasing out of the machinery is one mode of doing business by the assessee and the income derived from leasing out is treated as business income it would be contradictory, in terms, to say that the machinery is not used wholly for the purpose of the assessee's business."

> 18. Hence, the assessee meets the second requirement discussed above. The assessee did use the vehicles in the course of its leasing business. In our opinion, the fact that the trucks themselves were not used by the assessee is irrelevant for the purpose of the section.

> 19. We may now advert to the first requirement i.e. the issue of ownership.

No depreciation allowance is granted in respect of any capital expenditure which the assessee may be obliged to incur on the property of others. Therefore, the entire case hinges on the question of ownership; if the assessee is the owner of the vehicles, then he will be entitled to the claim on depreciation, otherwise, not.

20. In Mysore Minerals Ltd., M.G. Road, Bangalore Vs. Commissioners of Income Tax, Karnataka, Bangalore[3], this Court said thus:

> "...authorities shows that the very concept the depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset is utilizing the capital asset and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time."

21. Black's Law Dictionary (6th Edn.) defines 'owner' as under:

> "Owner. The person in whom is vested the ownership, dominion, or title of property; proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right of enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.
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> The term is, however, a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject- matter to which it is applied. The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the terms also included one having a possessory right to land or the person occupying or cultivating it.
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> The term "owner" is used to indicate a person in whom one or more interests are vested his own benefit. The person in whom the interests are vested has 'title' to the interests whether he holds them for his own benefit or the benefit of another. Thus the term "title" unlike "owner"..." It defines the term 'ownership' as – "Collection of right to use and enjoy property, including right to transmit it to others.... The right of one or more persons to possess or use a thing to the exclusion of others. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. The exclusive right of possession, enjoyment or disposal; involving as an essential attribute the right to control, handle, and dispose."
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> The same dictionary defines the term "own" as 'To have a good legal title'.
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> These definitions essentially make ownership a function of legal right or title against the rest of the world. However, as seen above, it is "nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied."

22. A scrutiny of the material facts at hand raises a presumption of ownership in favour of the assessee. The vehicle, along with its keys, was delivered to the assessee upon which, the lease agreement was entered into by the assessee with the customer. Moreover, the relevant clauses of the agreement between the assessee and the customer specifically provided that:

> (i) The assessee was the exclusive owner of the vehicle at all points of time;
>
> (ii) If the lessee committed a default, the assessee was empowered to re-possess the vehicle (and not merely recover money from the customer);
>
> iii) At the conclusion of the lease period, the lessee was obliged to return the vehicle to the assessee;

iv) The assessee had the right of inspection of the vehicle at all times.

For the sake of ready reference, the relevant clauses of the lease agreement are extracted hereunder:-

> "2. Lease Rent The lessee shall, during the period of lease punctually pay to the lessor free of any deduction whatsoever as rent for the assets the sum of moneys specified in the Schedule 'B' hereto. All rents shall be paid at the address of the Lessor shown above or as otherwise directed by the Lessor in writing. The rent shown in Schedule 'B' shall be paid month on 1st day of each month and the first rent shall be paid on execution thereof.
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> 4. Ownership The assets shall at all times remain the sole and exclusive property of the lessor and the lessee shall have no right, title or interest to mortgage, hypothecate or sell the same as bailee
>
> 9. Inspection The Lessor shall have the right at all reasonable time to enter upon any premises where the assets is believed to be kept and inspect and/or test the equipment and/or observe its use.
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> 18. Default If the lessee shall make default in payment of moneys or rent payable under the provisions of this agreement, the Lessee shall pay to the Lessor on the sum or sums in arrears compensation at the rate of 3% per month until payment thereof, such compensation to run from the day to day without prejudice to the lessor's rights under any terms, conditions and agreements herein expressed or implied. All costs incurred by the Lessor in obtaining payment of such arrears or in endeavoring to trace the whereabouts of the equipments or in obtaining or endeavouring to obtain possession thereof whether by action, suit or otherwise, shall be recoverable from the lessee in addition to and without prejudice to the lessors right for breach of this lease.
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> 19. Expiration of Lease:
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> Upon the expiration of this Lease, the Lessee shall deliver to the Lessor the assets at such place as the Lessor may specify in good repair, condition and working order. As soon as the return of the asset the Lessor shall refund the amount of security deposit. If the lessee fails to deliver the equipment to the Lessor in accordance with any direction given by the Lessor, the Lessee shall be deemed to be the tenant of the assets at the same rental and upon the same terms herein expressed and such tenancy may be terminated by the Lessor immediately upon default by the lessee hereunder or upon 7 days notice previously given.."

23. The Revenue's objection to the claim of the assessee is founded on the lease agreement. It argued that at the end of the lease period, the ownership of the vehicle is transferred to the lessee at a nominal value not exceeding 1% of the original cost of the vehicle, making the assessee in effect a

financer. However we are not persuaded to agree with the Revenue. As long as the assessee has a right to retain the legal title of the vehicle against the rest of the world, it would be the owner of the vehicle in the eyes of law. A scrutiny of the sale agreement cannot be the basis of raising question against the ownership of the vehicle. The clues qua ownership lie in the lease agreement itself, which clearly point in favour of the assessee. We agree with the following observations of the Tribunal in this regard:

> "20. It is evident from the above that after the lessee takes possession of the vehicle under a lease deed from the appellant-company it (sic.) shall be paying lease rent as prescribed in the schedule. The ownership of the vehicles would vest with the appellant-company viz., ICDS as per clause (4) of the agreement of lease. As per clause (9) of the Lease agreement, M/s. ICDS is having right of inspection at any time it wants. As per clause (18) of the Lease agreement, in case of default of lease rent, in addition to expenses, interest etc. the appellant company is entitled to take possession of the vehicle that was leased out. Finally, as per clause (19), on the expiry of the lease tenure, the lessee should return the vehicle to the appellant company in working order.
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> 21. It is true that a lease of goods or rental or hiring agreement is a contract under which one party for reward allows another the use of goods. A lease may be for a specified period or in perpetuity. A lease differs from a hire purchase agreement in that lessee or hirer, is not given an option to purchase the goods. A hiring agreement or lease unlike a hire purchase agreement is a contract of bailment, plain and simple with no element of sale inherent. A bailment has been defined in S.148 of the Indian Contract Act, as "the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
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> 22. From the above discussion, it is clear that the transactions occurring in the business of the assessee-appellant are leases under agreement, but not hire purchase transactions. In fact, they are transactions of 'hire'. Even viewed from the angle of the author of 'Lease Financing and Hire Purchase', the views of whom were discussed in pages 16 and 17 of this order, the transactions involved in the appellant business are nothing but lease transactions.
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> 23. As far as the factual portion is concerned now we could come to a conclusion that leasing of vehicles is nothing but hiring of vehicles. These two aspects are one and the same. However, we shall discuss the case law cited by both the parties on the point."

24. The only hindrance to the claim of the assessee, which is also the lynchpin of the case of the Revenue, is Section 2(30) of the MV Act, which defines ownership as follows: -

> ""owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of a hypothecation, the person in possession of the vehicle under that agreement."
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> 25. The general opening words of the Section say that the owner of a motor vehicle is the one in whose name it is registered, which, in the present case, is the lessee. The subsequent specific statement on leasing agreements states that in respect of a vehicle given on lease, the lessee who is in possession shall be the owner. The Revenue thus, argued that in case of ownership of vehicles, the test of ownership is the registration and certification. Since the certificates were in the name of the lessee, they would be the legal owners of the vehicles and the ones entitled to claim depreciation. Therefore, the general and specific statements on ownership construe ownership in favour of the lessee, and hence, are in favour of the Revenue.
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> 26. We do not find merit in the Revenue's argument for more than one reason: (i) Section 2(30) is a deeming provision that creates a legal fiction of ownership in favour of lessee only for the purpose of the MV Act. It defines ownership for the subsequent provisions of the MV Act, not for the purpose of law in general. It serves more as a guide to what terms in the MV Act mean. Therefore, if the MV Act at any point uses the term owner in any Section, it means the one in whose name the vehicle is registered and in the case of a lease agreement, the lessee. That is all.

It is not a statement of law on ownership in general. Perhaps, the repository of a general statement of law on ownership may be the Sale of Goods Act; (ii) Section 2(30) of the MV Act must be read in consonance with sub-sections (4) and (5) of Section 51 of the MV Act, which were referred to by Mr. S. Ganesh, learned senior counsel for the assessee. The provisions read as follows: -

> "(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.
>
> (5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle from the registered owner owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is

not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force." Therefore, the MV Act mandates that during the period of lease, the vehicle be registered, in the certificate of registration, in the name of the lessee and, on conclusion of the lease period, the vehicle be registered in the name of lessor as owner. The Section leaves no choice to the lessor but to allow the vehicle to be registered in the name of the lessee Thus, no inference can be drawn from the registration certificate as to ownership of the legal title of the vehicle; and (iii) if the lessee was in fact the owner, he would have claimed depreciation on the vehicles, which, as specifically recorded in the order of the Appellate Tribunal, was not done. It would be a strange situation to have no claim of depreciation in case of a particular depreciable asset due to a vacuum of ownership. As afore- noted, the entire lease rent received by the assessee is assessed as business income in its hands and the entire lease rent paid by the lessee has been treated as deductible revenue expenditure in the hands of the lessee. This reaffirms the position that the assessee is in fact the owner of the vehicle, in so far as Section 32 of the Act is concerned.

27. Finally, learned senior counsel appearing on behalf of the assessee also pointed out a large number of cases, accepted and unchallenged by the Revenue, wherein the lessor has been held as the owner of an asset in a lease agreement. [Commissioner of Income-Tax Vs. A.M. Constructions[4];

Commissioner of Income- Tax Vs. Bansal Credits Ltd.[5]; Commissioner of Income-Tax Vs. M.G.F. (India) Ltd.[6]; Commissioner of Income-Tax Vs. Annamalai Finance Ltd.[7]]. In each of these cases, the leasing company was held to be the owner of the asset, and accordingly held entitled to claim depreciation and also at the higher rate applicable on the asset hired out. We are in complete agreement with these decisions on the said point.

28. There was some controversy regarding the invoices issued by the manufacturer – whether they were issued in the name of the lessee or the lessor. For the view we have taken above, we deem it unnecessary to go into the said question as it is of no consequence to our final opinion on the main issue. From a perusal of the lease agreement and other related factors, as discussed above, we are satisfied of the assessee's ownership of the trucks in question.

29. Therefore, in the facts of the present case, we hold that the lessor i.e. the assessee is the owner of the vehicles. As the owner, it used the assets in the course of its business, satisfying both

requirements of Section 32 of the Act and hence, is entitled to claim depreciation in respect of additions made to the trucks, which were leased out.

30. With regard to the claim of the assessee for a higher rate of depreciation, the import of the same term "purposes of business", used in the second proviso to Section 32(1) of the Act gains significance. We are of the view that the interpretation of these words would not be any different from that which we ascribed to them earlier, under Section 32 (1) of the Act. Therefore, the assessee fulfills even the requirements for a claim of a higher rate of depreciation, and hence is entitled to the same.

31. In this regard, we endorse the following observations of the Tribunal, which clinch the issue in favour of the assessee.

"15. The CBDT vide Circular No. 652, dated 14-6-1993 has clarified that the higher rate of 40% in case of lorries etc. plying on hire shall not apply if the vehicle is used in a non- hiring business of the assessee. This circular cannot be read out of its context to deny higher appreciation in case of leased vehicles when the actual use is in hiring business.

(Emphasis supplied) Perhaps, the author meant that when the actual use of the vehicle is in hire business, it is entitled for depreciation at a higher rate.

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39. The gist of the decision of the apex court in the case of Shaan Finance (P) Ltd. is that where the business of the assessee consists of hiring out machinery and/ or where the income derived by the assessee from the hiring of such machinery is business income, the assessee must be considered as having used the machinery for the purpose of business.

40. In the present case, the business of the assessee consists of hiring out machinery and trucks where the income derived by the assessee from hiring of such machinery is business income. Therefore, the assessee- appellant viz. ICDS should be considered as having used the trucks for the purpose of business.

41. It was further brought to our notice that the Hon'ble Karnataka High Court in its judgment in ITRC No. 789 of 1998 for the asst. year 1986- 87 in the case of the assessee- appellant itself (viz. ICDS) has already decided the issue in question in favour of the assessee, confirming the decision of the CIT (A) and the ITAT holding that the assessee company is entitled to the investment allowance and additional depreciation. In this judgment of the Karnataka High Court the decision of the Supreme Court reported in 231 ITR 308 was relied upon. Therefore we have no hesitation to hold that the appellant- company is entitled to a higher rate of depreciation at 50% on the trucks leased out by it. We therefore, reverse the orders of the CIT (Appeals) on this issue."

32. For the foregoing reasons, in our opinion, the High Court erred in law in reversing the decision of the Tribunal. Consequently, the appeals are allowed; the impugned judgments are set aside and

the substantial questions of law framed by the High Court, extracted in para 7 (supra), are answered in favour of the assessee and against the Revenue. There will, however, be no order as to costs.

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	(D.K. JAIN, J.)
	……..…….
	(JAGDISH SINGH KHEHAR, J.)
NEW DELHI,	
JANUARY 14, 2013	

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[1] (1998) 3 SCC 605

[2] (1976) 4 SCC 562

[3] (1999) 7 SCC 106

[4] (1999) 238 ITR 775 (AP)
[5] (2003) 259 ITR 69 (Del)
[6] (2006) 285 ITR 142 (Del.)
[7] (2005) 275 ITR 451 (Mad)