Court No. - 32 **A.F.R.**

Reserved on 11.11.2013

Delivered on 13.12.2013

Case :- INCOME TAX APPEAL No. - 367 of 2012

Appellant :- Commissioner Of Income Tax-Ii Kanpur
Respondent :- M/S Commercial Motors Finance Ltd. Kanpur
Counsel for Appellant :- B.J.Agarwal,S. Chopra
Counsel for Respondent :- S.D. Singh

Connected with

ITA No. 32 of 2002

ITA No. 77 of 2002

ITA No. 78 of 2002

ITA No. 79 of 2002

ITA No. 366 of 2012

ITA No. 368 of 2012

ITA No. 369 of 2012

ITA No. 370 of 2012

ITA No. 371 of 2012

ITA No. 247 of 2012

ITA No. 246 of 2012

ITA No. 109 of 2002

ITA No. 76 of 2002

ITA No. 289 of 2012

Hon'ble Sunil Ambwani,J.
Hon'ble Surya Prakash Kesarwani,J.

(Delivered by Hon'ble Surya Prakash Kesarwani,J.)

1. Income tax appeal No. 32 of 2002, ITA No. 77 of 2002, ITA No. 78 of 2002, ITA No. 79 of 2002, ITA No. 366 of 2012, ITA No. 368 of 2012, ITA No. 369 of 2012, ITA No. 370 of 2012, ITA No. 371 of 2012, ITA No. 76 of 2002, ITA No. 289 of 2012 filed by the Revenue raise a common substantial question of law. The Appeal No. 367 of 2012 (earlier defective no. 23 of 2002) is being taken up as a leading appeal which was admitted on 1.5.2007 on the following substantial question of law :

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in holding that hire purchase transactions of the assessee were not loan transactions despite admitted facts on assessee's records that it was not a trading company and finance charges have been shown as revenue receipts and auditors certification that assessee has followed norms issued by Reserve Bank of India for Non-Banking finance Companies (NDFC)?"

2. The Income Tax Appeal No. 109 of 2002 (AY 1995-96), Appeal No. 247 of 2012 (AY 1996-97) and Appeal No. 246 of 2012 (AY 1997-98) have been filed by the assessee questioning the legality of reassessment proceeding under Section 10 of the Interest Tax Act, 1974 (in short the Act of 1974).

3. The appeals arise out of common order dated 28.9.2001 passed by the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as ITAT) relating to assessment years 1992 -93, to 1997 -98 filed by the respondent assessee.

4. Briefly stated the facts of the present case are that as per the assessment order dated 5.6.1998, the assessee company is engaged in the business of "financing and leasing." On hire purchase transaction the assessee charged "finance charges" as well as interest on repayment of principal amount, which was shown in the balance sheet as capital receipt. As per final accounts filed along with return of income under the Income Tax Act 1961 for the assessment year 1994-95, the finance charges as well as interest received during the previous year was shown as under :

(I)	Finance charges	12,91,027/-
(II)	Interest earned on loans and advances	34,052/-
	Total	13,25,079/-

5. The Assessing Officer held that finance charges received by the assessee are nothing but interest charges on the money financed to the hirer and,

therefore, it is chargeable interest as defined under Section 2 (5) read with Section 2(7) of the Interest Tax Act, 1974 (hereinafter referred to as the Act, 1974) and consequently the charging provision of Section 4 of the Act, 1974 gets attracted. The Assessing Officer held the assessee to be a finance company. Aggrieved with the assessment order passed under Section 8(2) of the Act, 1974 the assessee filed an appeal before the CIT (A) who upheld the assessment order. Thereafter the assessee filed an appeal before the ITAT which set aside the order of the authorities below by the impugned order. ITAT observed that the transactions involved are in the nature of contract of hire purchase having an element of bailment as well as that of sale. Therefore, the hire purchase transactions in the present case cannot be considered as transactions of money lending or advancing of loans. Consequently, provisions of the Act, 1974 are not applicable. Aggrieved with the impugned order of the ITAT dated 28.9.2001 the department has preferred appeals on the above quoted substantial question of law.

6. We have heard Sri Shambhu Chopra, learned counsel appearing for the appellant and Sri S.D.Singh assisted by Sri Abhijeet Banerjee, Advocate appearing for the respondent assessee.

Submissions on behalf of appellant

7. Sri Shambhu Chopra submits that the assessee is a “credit institution” under Section 2 (5-A) and thus a financial company as defined under Section 2(5-B) of the Act of 1974. The amount collected by it is interest under Section 2(7) and is a chargeable interest under Section 2(5). The assessee is liable to pay tax on such amount in view of Section 4 of the Act, 1974. He submits that customers purchased vehicles through the assessee company and got it financed from it. As per the audited accounts/financial statements, assessee company is engaged in the business of financing and leasing. Referring to the finding recorded by the Assessing Officer, and the CIT (A) he submits that real nature of the transaction is financing by the assessee company and hirer is the real purchaser of vehicles. He submits that the assessee company has not

disclosed the purchases of vehicles to the sales tax department. No sales tax return has been filed by it. It is not a dealer or trader of the articles financed by it. In its audited accounts filed with the income tax returns, the appellant has shown the finance charges as revenue receipts. The auditor has certified that assessee is not a trading company and it has followed the norms issued by the Reserve Bank of India for non banking financial companies. He submits that as per findings recorded by A.O. and CIT (A), it is the hirer who selects the vehicle for purchase and to this stage the assessee company does not come into picture. It is only after the hirer has exercised his purchasers rights to identify the product, he approaches the assessee company for reason that he needs someone who can pay the price of vehicle or a substantial part thereof on his behalf. The hirer pays the financed amount in instalment and also pays the price for this facility. He submits that, therefore, transaction of the assessee company has all the features of a loan transaction. He submits that vehicle is registered in the name of assessee company. An agreement is entered into between the hirer and the assessee company only by way of a security for repayment of loan. The amount paid by hirer to the assessee company in excess of the amount financed is nothing but interest on loan and, therefore, chargeable to tax under Section 4 of the Act of 1974. Sri Chopra has drawn our attention to various clauses of the agreement filed at page 113 of the paper book in the Appeal No. 367 of 2012. He submits that it is not the case of the assessee company that it holds trade certificate under Rule 34 and 35 of the Central Motor Vehicle Rules 1989. In support of his submissions Sri Chopra has relied on the judgment of Hon'ble Supreme Court in the case of **Sundaram Finance Ltd. Vs. State of Kerala and another, AIR 1966 SC 1178, para 23, 24 and 28.** He submits that the judgment of Madras High Court in the case of CIT Vs. Sanmac Motor Finance Ltd. (2010) 323 ITR 0309 is distinguishable in view of the facts recorded in the last but one paragraph of the said judgment to the effect that it was not the case of the revenue that the hirer was the real purchaser of the asset and the assessee was only a financier

to help the purchaser. He submits that the other judgment of Madras High Court in the case of CIT Vs. Harita Finance Ltd. (2006) 283 ITR 370 is also distinguishable for the same reason as stated in the case of Sanmac Motor Finance Ltd.(supra). He submits that in view of the provisions of the Act, 1974, the judgment in the case of Sundaram Finance (supra) and the facts of the present case, the impugned order passed by the ITAT deserves to be set aside and the assessment order is liable to be restored.

Submissions on behalf of respondent assessee

8. Sri S.D.Singh submits that the respondent assessee purchased vehicles which are registered by the prescribed authority in the name of hirer. The assessee company is recorded in the registration certificate in terms of the agreement as under :

> *"The motor vehicle above described is held by the registered owner under a hire purchase agreement with M/s Kailash Motor Finance Ltd. Kanpur."*

He submits that the transaction entered between the respondent assessee and hirer is a transaction of hire purchase which does not fall within the ambit of Section 4 of the the Act, 1974. He submits that the scope of section 4 of the Act of 1974 cannot be enlarged so as to include the transactions of the nature which have been entered by the respondent assessee. Section 4 being the charging Section has to be construed strictly and its scope cannot be widened. He submits that the assessee company is not a financial company within the meaning of section 2(5-A/B) of the Act, 1974. He submits that in paragraph 29 to 34 of the impugned order, the ITAT considered the provisions of the Act of 1974, CBDT Circular No. 738 dated 25th March 1996, CBDT Circular No. 760 dated 13th January, 1998 and the terms of hire purchase agreement (Annexure 12 of the paper book) and thereafter recorded the following findings of fact :

> *"(I) The article hired by the hirer is owned by the assessee company. The ownership arises from the purchase of the articles from its suppliers, who draw the bill in the name of*

the company.

(II) The ownership of article is also acknowledged by the hirer who takes the article on hire.

(III) The Agreement provides that on payment of all dues and hire purchase price the hirer will acquire an option to purchase the article.

(IV) The possession of the article is delivered to the hirer on behalf of the company.

(V) The hirer has to pay hire purchase price and other dues and for his agreement to do so, the article is delivered to him for use by him.

(VI) During the period of hire, he pays the official money and other charges as stipulated in the agreement.

(VII) The property in the article is to be passed to the hirer on the payment of last instalment.

(VIII) The Hirer has a right to terminate the agreement during the continuation of hire and even before the property in article passed to him."

Sri S.D.Singh further submits that after recording the aforesaid findings of fact, the ITAT held in para 34 that the intention of the parties as is discernible in the agreement appears to be that it is a pure arrangement of hire purchase. The principal business activity of the assessee being hire purchase trading, it cannot be treated to be financing activity and thus it will not be correct approach to say that profit on hire purchase trading is "interest of loan and advances" within the meaning of Section 2(7) of the Act, 1974. He submits that in view of the findings of facts recorded by the ITAT which is the last fact finding authority, the appeal of the department is devoid of substance and, therefore, deserves to be dismissed. The order of the ITAT is wholly correct and, therefore, it may not be interfered with. He has relied on the following judgments :

(i) CIT Vs. Sanmac Motor Finance Ltd. (2010) 323 ITR 0309(Madras)

(ii) CIT Vs. Harita Finance Ltd. (2006) 283 ITR 0370 (Madras)

(iii) Charanjit Singh Chadha and others Vs. Sudhir Mehra (2001)7 SCC 417.

Our Findings

9. By Circular No. 760 dated 13.1.1998 the CBDT explained its the earlier Circular No. 738 dated 25.3.1996 and clarified in paragraphs 2, 3 and 4 as under :

> "2. *The Board have since considered the issue and are advised that in the case of transactions which are, in substance, in the nature of hire-purchase, the receipts of hire charges would not be in the nature of interest.* ***On the other hand, if the transactions are in substance in the nature of financing transactions, the hire charges should be treated as interest subject to interest-tax.***
>
> *3. As to what constitutes a transaction in the nature of hire-purchase, the Assessing Officer should consider the issue on merits taking into account, inter alia, the following facts and circumstances :*
>
> *(i) The terms of the agreement;*
>
> *(ii) The nature of the arrangement between the supplier of the asset, the hire-purchase company and the end – user of the asset.*
>
> *(iii) The intention of the parties which manifests itself in the fixation of the initial payment, the method of determination of the hire-purchase price, etc.* ***When a hirer is the real purchaser of the asset but does not pay the full purchase price and the hire-purchase company pays the price or a substantial part thereof on behalf of such hirer, and a hire-purchase agreement is entered into merely as an arrangement, then such agreement is a security for***

repayment of the loan and is essentially a loan transaction.

4. In this connection, the Assessing Officer should keep in mind the tests laid down by the Supreme Court in the case of Sundaram finance Ltd. V. State of Kerala, AIR 1966 SC 1178, wherein it has been held as under :---

"If there is a bona fide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transaction, may not be regarded as a loan transaction even though the reason for which it was entered into was to raise money... the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loan advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions, were merely financing transactions....."

10. In the case of Sundaram Finance Ltd. (supra) the Hon'ble Supreme Court considered the distinction between the hire purchase transaction and financing transaction and held in paragraphs 23, 24 and 28 as under :

"23. A hire-purchase agreement is normally one under which an owner hires goods to another party called the hirer and further agrees that the hirer shall have an option to purchase the chattel when he has paid a certain sum, or when the hire-rental payments have reached the hire-purchase price stipulated in the agreement. ***But there are variations when a financier is interposed between the owner of the goods and the customer. The agreement, ignoring variations of detail, broadly takes one or the other of two forms : (1) when the owner is unwilling to look to the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are***

purchased by the financier from the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price. *The decision of this Court in AIR 1965 SC 1082 dealt with a transaction of this character. (2)* ***In the other form of transactions,*** *goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a licence to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement .*

24. The true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances. In each case, the Court has, unless prohibited by statute, power to go behind the documents and to determine the nature of the transaction, whatever may be the form of the documents. *An owner of goods who purports absolutely to convey or acknowledges to have conveyed goods and subsequently purports to hire them under a hire-purchase agreement is not stopped from proving that the real bargain was a loan on the security of the goods.* ***If there is a bona fide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction, even though the***

reason for which it was entered into was to raise money. If the real transaction is a loan of money secured by a right of seizure of the goods, the property ostensibly passes under the documents embodying, the transaction, but subject to the terms of the hiring agreement, which become part of the buyer's title, and confer a licence to seize. When a person desiring to purchase goods and not having sufficient money on hand borrows the amount needed from a third person and pays it over to the vendor, the transaction between the customer and the lender will unquestionably be a loan transaction. *The real character of the transaction would not be altered if the lender himself is the owner of the goods and the owner accepts the promise of the purchaser to pay the price or the balance remaining due against delivery of goods.* ***But a hire-purchase agreement is a more complex transaction. The owner under the hire-purchase agreement enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase exercisable by the customer on payment of all the instalments of hire arises when the instalments are paid and not before. In 'such a hire-purchase agreement there is no agreement to buy goods; the hirer being under no legal obligation to buy, has an option either to return the goods or to become its owner by payment in full of the stipulated hire and the price for exercising the option. This class of hire-purchase agreements must be distinguished from transactions in which the customer is the owner of the goods and with a view to finance his purchase he enters into an arrangement which is in the form of a hire purchase agreement with the financier, but in substance***

evidences a loan transaction, subject to a hiring agreement under which the lender is given the licence to seize the goods.

28. In the light of these principles the true nature of the transactions of. the appellants may now be stated. ***The, appellants are carrying on the business of financiers: they are not dealing in motor-vehicles. The motor-vehicle purchased by the customer is registered in the name of the customer and remains at all material times so registered in his name.*** *In the letter taken from the customer under which the latter agrees to keep the vehicle insured, it is expressly recited that the vehicle has been given as security for the loan advanced by the appellants.* ***As a security for repayment of the loan, the customer executes a promissory-note for the amount paid by the appellants to the dealer of the vehicle.*** *The so-called "sale letter" is a formal document which is not made effective by registering the vehicle in the name of the appellants and even the insurance of the vehicle has to be effected as if the ,customer is the owner.* ***Their right to seize the vehicle is merely a licence to ensure compliance with the terms- of the hire-purchase agreement. The customer remains qua the world at large the owner and remains in possession, and on condition of performing the covenants has a right to continue to remain in possession. The right of the appellants may be extinguished by payment of the amount due to them under the terms of the hire-purchase agreement even before the dates fixed for payment. The agreement undoubtedly contains several onerous covenants, but they are all intended to secure to the appellants recovery of the amount advanced.*** *We are accordingly of the view that*

the intention of the appellants in obtaining the hire-purchase and the allied agreements was to secure the return of loans advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. ***The transactions were merely financing transactions."***

(Emphasis supplied by us)

11. While dismissing the appeal of the assessee respondent CIT, (A) held in paragraphs 8, 11, 12, 13, 14 and 15 as under :

8. The assessment order in question describes the nature of the transactions entered into by the appellant. The appellant does not challenge the accuracy of this description. ***The manner in which these transactions were effected is in brief as follows. A potential hirer or customer, desirous of acquiring a vehicle but unable or unwilling to pay the entire price from his own funds, approaches the appellant with a proposal. He requests the appellant to buy and hire to him the vehicle required by him. The potential hirer or customer identifies the vendor or the dealer from whom the vehicle should be purchased. He also specifies the vehicle that should be purchased. The choice in these areas is entirely that of the customer or the potential hirer. On acceptance of the proposal by the appellant company, the hirer pays the initial hire money. The appellant company buys the vehicle, from the dealer identified by the hirer. The hirer gets the vehicle from the dealer. An agreement is entered into between the appellant company and the hirer to hire the motor vehicle to the Hirer.*** *The Hirer agrees to pay to the appellant company, a certain sum as initial payment by way of 'hire'. He also agrees to pay to the appellant company the "total amount of hire" in pre-determined instalments (generally monthly instalments, the frequency and interval of*

which are determined at the time of the agreement). ***The Hirer gets an option to purchase the hired motor vehicle from the appellant company on payment of the total amount of hire plus Re.1/- .*** *On payment of this additional amount of Rs. 1/- over and above the total amount of hire paid in instalments, the hiring comes to an end and the appellant company makes over all their rights, title and interest in the motor vehicle to the Hirer.*

11.The manner in which the transactions were effected in the appellant's case differs from that in the case of Sundaram Finance Ltd. (AIR 1966 SC 1178) in some respects. ***In the case before me the motor vehicle was purchased from the dealer by the appellant company. The vehicle was registered in the name of the appellant and continued to be so until its transfer to the Hirer, following payment by the Hirer to the appellant, of the total amount of hire plus one rupee.*** *In Sundaram Finance Ltd., the customer, and not the financier, purchased the vehicle from the dealer.* ***The vehicle was registered in the name of the customer. However, a "Sale Letter" was executed, reciting that the customer had on the date of the application for loan sold to the financier the motor vehicles. The discussion in the following paragraphs will show that despite some difference in the pattern of transactions in the two cases, the principle that emerges from the Supreme Court's decision in the case of Sundaram Finance Ltd. are fully applicable to the facts of the case before me.***

12. ***An important principle that emerges from*** *the Supreme Court's decision in the case of Sundaram Finance Ltd. is that* ***one must not merely look at the documents but must***

discover what the real transaction was. *If one goes by the terms of the agreements between the Hirers and the appellant company and the intention of the parties (which manifests itself in the fixation of the initial payment and instalments and the right of the Hirer to become the absolute owner of the motor vehicle, freed from encumbrance, on payment of the amount stipulated to be paid to the appellant), it becomes clear that the appellant is carrying on the business as a financier and not as a dealer of motor vehicles.* ***As pointed by the Assessing Officer in the assessment order, no sale of vehicles has been shown by the appellant in its Profit and Loss Account. No sales tax return has been filed by it. The appellant is not a dealer or trader of the articles financed. In its audited accounts, filed with the income tax returns, the appellant has shown the finance charges as revenue receipts. The auditors have certified that the appelalnt is not a trading company.*** *Also, as pointed out by the Assessing Officer,* ***the auditors of the appellant company have certified that in the appellant's case they have followed the norms issued by the Reserve Bank of India for Non-Banking Financial Companies (NBFC).*** *This also shows that the appellant was a finance company, engaged in financing of vehicles. It was not a trading company.* ***In this case, it is the "Hirer" who is the real purchaser of the vehicle from the dealer. It is he who selects the dealer from whom the vehicle should be purchased. It is he who selects the vehicle that is to be purchased. The appellant company does not at all come into the picture up to this stage. It is only after the 'hirer' has exercised his purchaser's right of identifying the product and the seller that he approaches the appellant***

company. He does so because he is either unable or unwilling to finance, out of his own funds, the purchase of the vehicle. He needs some one who can pay the price of the vehicle or a substantial part thereof on his behalf. He wants the delivery of the vehicle now but wants to apply for it later in instalments. He is willing to pay a 'price' for this facility The facility is that the some one else should arrange money for purchase of the vehicle. The appellant company does so. It finances the purchase of the vehicle. *The vehicle is delivered to the hirer. This, therefore, has all the features of a loan transaction. The vehicle is registered in the name of the appellant company and a hire-purchase agreement entered into between the hirer and the appellant company only by way of a security for repayment of the loan. An objection raised by the appellant is that is wrong to think that for the property or article belonging to the appellant itself,* ***the amount paid by it as a price to the supplier amounts to a loan or advance provided by the appellant to the customer.*** *This objection is, in my opinion, without any force. The appellant retains the ownership of the vehicle purchased out of its funds to protect its interests in the face of a situation where the hirer the actual user of the vehicle- is in the possession of the vehicle. This, therefore, is a mode for adding a dimension of security to the transaction that is basically in the nature of a loan transaction between the appellant company and the hirer.*

13. A significant feature of a loan transaction is that the borrower uses the lender's money. The borrower gets this facility at a price- he pays interest on loan to the lender. If 'X' be the principal amount of loan taken for a definite time-

interval 't' and 'y', the amount of interest payable for utilisation of the borrowed funds during the said time-interval 't', the borrower, on repayment of the loan, ends up paying to the lender a sum equal to (X+Y). During the said time-interval 't', the borrower is a user of the borrowed funds and not its legal owner. A similar pattern can be seen in the transactions entered into between the hirer and the appellant company in this case. Here the hirer uses the vehicle purchased out of the appellant's money. He thus uses the appellant's money. He pays instalments of money to the appellant company over a pre-determined period of time at pre-determined frequencies. The total amount of hire that the hirer pays to the appellant company exceeds the price at which the appellant purchased the motor vehicle from the dealer. The hirer, who exercises the option to purchase the motor vehicle, ends up paying an amount equal to the total amount of hire plus one rupee. This is more than the purchase consideration paid by the appellant company to the dealer or what the hirer would have been required to pay to the dealer had he purchased the vehicle from it directly, instead of entering into an agreement with the appellant company. ***The excess amount so paid by the hirer to the appellant is nothing but interest on loan.*** *The amount invested by the appellant company in the purchase of the vehicle for, and on behalf of, the hirer is amount of loan advanced by it to the hirer.*

14. The appellant has pointed out to a possibility where the hirer terminates the transaction at any time. This, according to the appellant,is possible only when there is no loan transaction. In my opinion, this possibility (even if a distant

and remote one-that in any case, did not materialise in this case in the year under consideration) does not lead to the conclusion that this is not a loan transaction. Premature termination of the transaction by the hirer will lead to recovery of the vehicle by the appellant company. This will ensure recovery, by the appellant, of the entire loan amount plus interest payable by the hirer. A similar pattern can be seen in any other loan transaction. Therefore, this situation also leads to the conclusion that the transactions entered into between the appellant company and hirers are in reality loan transactions and the hire purchase agreements act as security for repayment of the loans.

15. In view of the points made above, I am of the opinion that the Assessing Officer rightly held that the finance charges in this case were nothing but the interest charged on the loan transactions between the appellant company and the hirers and the hirers and that the Finance Charges were, therefore, chargeable to tax under the interest-tax Act, 1974. I, therefore, confirm the Assessing Officer's action in including the Finance Charges in the chargeable interest. The assessment for the assessment year 1994-95 made, on this basis, by the Assessing Officer on 05.06.1998 under Section 8(2) of the Act in this case is, therefore, confirmed."

(Emphasis supplied by us)

12. By the impugned order, the ITAT allowed the appeal of the respondent assessee after recording the following findings in paragraphs 32, 33 and 34 :

"32. So far as the hire purchase agreements entered into between the assessee company and the hirer are concerned, on a careful and close examination of various clauses, we find that the intention of the parties in executing the agreement is not to advance or take loan, but to give and take

the vehicle on lease on certain conditions including the condition that on total payment of charges, the hirer shall have the option to get the vehicle transferred in his name. The examination of various clauses of the hire purchases agreement goes to show that the ownership of the vehicle remains with the hire purchase trader and not with the hirer, although, on certain terms and conditions, the hirer is allowed to retain the possession of the vehicle and to use the same. It may be specifically pointed out that the assessee company has not advanced loan for the purchase of the vehicle by the hirer as the vehicle is initially and originally purchased by the hire purchase trader (i.e. by the assessee company)and not by not by the hirer. Thus, the transaction cannot be said to be a money-lending transaction or financing transactions. In fact, it is a lease of the vehicle by the hire purchase the vehicles and for the damages caused to it. The Trader remains owner of the vehicles for all purposes and the hirer simply has the option to purchase the vehicle in the last. A close scrutiny of other documents executed by the hirer simply shows that these are executed only for securing the payment of instalments. The above conclusions are based on the following terms of the hire purchase agreement :

(a) The heading of the agreement is Hire Purchase Agreement.

(b) WHEREAS the owners are full owners of the motor vehicle with fittings tools, accessories and additions, more particularly described in the SCHEDULE A hereto hereafter collectively called the Motor Vehicle.

(c) AND WHEREAS the Guarantor along with the Hirer has approached the owner to hire out the said Motor Vehicle

to the Hirer on the guarantee for the due performance of the Clauses. Terms and conditions of this Agreement by the Hirer

(d) AND WHEREAS the Hirer and the Guarantor have completed and signed the owners 'Proposal Form' (which is the basis of Agreement with respect to Hirer's means, properties and other assets as being absolutely true and correct which has induced the owners to enter into this Agreement and whereas they have declared that they shall neither sell, alienate, encumber nor charge their property or any part thereof till such time their liability is fully discharged under this Agreement and the owners the first and paramount lien on all the assets stated by the hirer and Guarantor in the proposal form for any amount due to the owners under this Agreement.

(e) Clause–I: The owners are the absolute owners of the Motor Vehicle with fittings, tools, tyres and accessories, inclusive of the body, already built or to be built by the Hirer. The body so built by the Hirer as his own expense, shall always be an integral part of the Motor Vehicle and shall also be the sole and absolute property and shall also be the sole and absolute property of the owners. In the event of repossession by the owners the hirer will not raise any objection on the ground that the body has been built by him.

(f) The owners hereby agree to let, and Hirer hereby agrees to take on hire the Motor Vehicle, particular described in the SCHEDULE A hereto subject to the TERMS AND CONDITIONS hereinafter contained, which shall be part and parcel of this Agreement.

(g) CLAUSE-IV : If the Hirer shall duly perform and observe at the TERMS AND CONDITIONS of this agreement

and shall have paid to the owners the total amount by way of hire as stipulated in the SCHEDULE B and earlier and has also paid all other dues and expenses due to the owners, under the TERMS AND CONDITIONS of this agreement, the Hirer will h ave the option to purchase the said Motor Vehicle on payment of Re 1/- and on such payment the hiring will come to an end. The owner will then make over all their rights, title and interest in the Motor Vehicle to the Hirer and until the owners transfer the Motor Vehicle to the Hirer shall remain the absolute property of the owners.

(h) The hirer shall be at liberty at any time during the continuance of this Agreement to terminate the hiring by returning the Motor Vehicle to the owners in Jabalpur in the order and condition in which it was delivered to the Hirer (fair wear and tear expected) at his own cost but this shall be without prejudice to any claim the owners may have against the Hirer in respect of this Agreement.

33. Coming to the nature of hire purchase transactions, as discernible and as decipherable from the above agreement and in view of the above terms and conditions, the following conclusions may be drawn :

(i) The article hired by the hirer is owned by the assessee company. The ownership arises from the purchase of the articles from its suppliers, who draw the bill in the name of the company.

(ii) The ownership of article is also acknowledged by the hirer takes the article on hire.

(iii) The agreement provides that on payment of all dues and hire purchase price the hirer will acquire an option to purchase the article.

(iv) The possession of the article is delivered to the hirer on behalf of the company.

(v) The hirer has to pay hire purchase price and other dues and for his agreement to do so, the article is delivered to him on hire for use by him.

(vi) during the period of hire, he pays the official money and other charges as stipulated in the agreement.

(vii) The Hirer has right to terminate the agreement during the continuation of hire and even before the property in article passed to him.

34. We, therefore, conclude that the intention of the parties as discernible from the agreement appears to be that ***it is a pure arrangement of hire purchase and the principal business activity of the assessee being hire purchase trading cannot be treated to be financing activity.*** *There may be an element of financing in these transactions, but it cannot be said that they are exclusively and solely financing transactions. The process of the hire purchase transaction involves choice of article required by the hirer, purchase of such article by him from the hire purchase trader and his choice to purchase the vehicle not at the initial stage, but at the last stage, which shows that it is not the financing activities simplicitor, but activity of hire purchase alone.*

34.1. There is another point involved, which is deferable to the treatment of the accounts. The assessee company has prepared balance sheet & profit & Loss Account. In Schedule 'D', which is hire purchase trading account, cost of article in stock is shown at commencement to, which is added the cost of the article purchased in the year of account and from the total of this, the cost of article realized in the year of account

is deducted and closing stock of articles on hire is carried forward. Thus, only profit on hire purchase is credited to Profit & Loss Account by the company on hire purchase trading account. Thus, it will not be correct approach to say that profit on hire purchase trading is "Interest on Loans & Advances" within the meaning of Section 2(7) of the Interest Tax Act."

13. We find that the ITAT has failed to consider condition nos. 9, 10 and 11 under the heading "Terms and Conditions forming Part of the Agreement" which are reproduced below :

"9. The Hirer shall keep the Motor Vehicle insured during the period of hiring, against any loss of damage by accident or fire or other risks, under a comprehensive policy with an insurance company approved by the Owners with an endorsement assigning the policy in favour of the owners, and shall punctually pay all premiums and other sums required for keeping the said insurance effective. In case, the Hirer shall, at any time, fail to effect or keep effective the Insurance Policy the Owners will, at their sole discretion, effect such Insurance and pay the premium to the Insurance Company and the Hirer shall, on demand, pay forthwith to the owners, full premiums so paid by the Owners. The Owners shall receive all claims payable by the Insurance Company for any loss or damage to the Motor Vehicle. ***The Hirer will be given the benefit of this claim if he is not overdue with his payments. In case of total loss the amount of claim will be first applied towards the recovery of the Total hire and all other dues payable under this Agreement and the excess, if any, shall be paid to the Hirer. The hirer shall be liable to pay the short fall, if any, forthwith****. The*

Hirer agrees that he will be bound by any settlement the Owners may make with the Insurance Company regarding any claim and that their discharge to the Insurance Company will be final and binding on him and the Owners will in no way, be answerable to the Hirer in respect of the said settlement. Further more, the Owners will have no liability in matter of settlement of claims with the Insurance Company and the Hirer and the Guarantor absolve the Owners from any loss of damage that may occur through any bona fide mistake or omission of the Owners in their dealings with the Insurance Company.

10. ***The Hirer and the Guarantor shall execute a Demand Promissory Note with joint and several liability in favour of the Owners for Total Hire payable for the Motor Vehicle*** *as per "SCHEDULE B" as Collateral Security. The Owners shall have the right to negotiate the said Demand Promissory Note in favour of their bankers or any other party for valuable consideration and also sue upon the same. This extends to Bankers the right to inspect vehicle at the Cost of Hirer.*

11. ***The Hirer and the Guarantor hereby indemnify the Owners against any additional Sales Tax liability that the Owners may incur and this indemnify will be a Continuing indemnify and shall remain effective till the Sales Tax assessment of the Owners has been finalised in respect of this Motor Vehicle."***

14. Section 4 of the Act of 1974, is the charging Section. Sub-Section (2) of Section 4 provides that notwithstanding anything contained in Sub-Section (1), subject to other provisions of this Act, there shall be charge on **every credit institution** for every assessment year commencing of and from the first

day of April, 1992, interest tax in respect of its **chargeable interest** of the previous year at the rate of 3% of such chargeable interest. The word "credit institution" has been defined under Section 2(5-A) and Clause-(iv) thereof includes any other financial company. The word "financial company" has been defined in Section 2 (5-B) as under :

> *"(5B) "financial company" means a company, **other than a company referred to in sub-clause (I), (ii) or (iii) of clause (5A),** being -*
>
> *(i) **a hire-purchase finance company,** that is to say, a company which carries on, as its principal business, **hire-purchase transactions** or the financing of such transactions ;*
>
> *(ii) an investment company, that is to say, a company which carries on, as its principal business, the acquisition of shares, stock, bonds, debentures, debenture stock, or securities issued by the Government or a local authority, or other marketable securities of a like nature;*
>
> *(iii) a housing finance company, that is to say, a company which carries on, as its principal business, the business of financing of acquisition or development of land in connection therewith ;*
>
> *(iv) a loan company, that is to say, a company [not being a company referred to in sub-clauses (I) to (iii)] which carries on, as its principal business, the business of providing finance, whether by making loans or advances or otherwise:*
>
> *(v) a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under Section 620 A of the Companies Act, 1956 (1 of 1956), to be Nidhi or*

Mutual Benefit Society;

(va) a residuary non-banking company [other than a financial company referred to in sub-clause (I), (ii), (iii), (iv)or (v)], that is to say, a company which receives any deposit under any scheme or arrangement, by whatever name called, in one lump sum or in instalments by way of contributions or subscriptions or by sale of units or certificates or other instruments or in any other manner or;

From 1.4.1993 : Finance Act, 1992 : *The word "or" appearing at the end of sub-clause (v) was omitted and the above sub-clause (vii) was inserted with effect from 1.4.1993 from 1.4.1993. The above insertion was made so as to include in the definition of a "finance company", finance and investment companies which receive deposits under any scheme or arrangement in one lump sum or in instalments.*

(vi) a miscellaneous finance company, that is to say, a company which carries on exclusively, or almost exclusively, two or more classes of business referred to in the preceding sub-clauses ;"

The word "interest" has been defined in Section 2(7) of the Act as under :

"(7) "interest" means ***interest on loans and advances made in India*** *and includes-*

(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India ; and

(b) discount on promissory notes and bills of exchange drawn or made in India,

but does not include-

(i) interest referred to in sub-section (1B) of section 42 of

the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills;"

15. Section 4(2) of the Act makes it clear that every credit institution which includes a financial company i.e. a company which carries on its principal business in hire purchase transaction or the financing of such transactions or a loan company or residuary non-banking company etc. are liable to pay interest tax on the chargeable interest as defined in Section 2(5) of the Act, 1974. The definition of the word "interest" given in Section 2 (7) of the Act is an inclusive definition and not exhaustive. Section 2(7) excludes only the interest referred in Sub-Section 1(B) of Section 42 of the Reserve Bank of India Act, 1934 and the discount of treasury bills. The respondent assessee will thus fall within the scope charging Section 4 of the Act if the charges as recorded in its books of accounts is found to be in the nature of interest as defined under Section 2(7) of the Act.

16. In para 1 to 6, the ITAT noted the appearance of counsel and history of the case. In para 7 to 24, it discussed and decided the validity of reassessment proceeding under Section 10 of the Act. In para 25 to 34, the ITAT has briefly noted few facts, reproduced certain provisions of the Act of 1974; CBDT Circular dated 13.1.1998; certain terms of the agreement and then drawn conclusion (in para 33) merely on the basis of certain terms of agreement. In para 35, 36 and 37, it has referred to certain judgments. In para 38, the ITAT abruptly recorded the finding that "transaction of sale was first transaction between assessee company and the vendor. The hire purchase transaction is subsequent to that." These facts distinguish the present case from the facts in the case of Sundaram Finance Ltd.(supra) and, therefore, on the facts of this case it cannot be said that in substance hire purchase transaction in the present case is merely loan transaction.

17. We find that the ITAT has failed to examine the agreement in totality and the documents to discover the real nature of the transaction which was

emphasised by the CBDT vide Circular No. 760 dated 13.1.1998 (quoted above) and also by Hon'ble Supreme Court in the case of Sundaram Finance Ltd.(supra). We also find that the ITAT has neither considered nor has upset the findings recorded by the CIT (A) in paragraphs 8, 11, 12, 13, 14 and 15 of the order. The findings recorded by the CIT (A) based on evidences were very crucial to be read with the agreement so as to find out the real nature of the transactions entered between the respondent assessee and the hirer. ITAT has also failed to consider the principles regarding hire purchase transactions and loan transactions as laid down in para 23, 24 and 28 of the judgment of Hon'ble Supreme Court, in the case of Sundaram Finance Ltd. (supra) which have been reproduced above. The judgment of Madras High Court in the case of Sanmac Motors Finance Ltd.(supra) and relied in Harita Finance Ltd. (supra) is wholly distinguishable on the facts of the present case inasmuch as in the present appeals, the stand of the revenue is that the hirer was the real purchaser of vehicles and the respondent assessee was only a financier to help the purchaser to purchase vehicle while this was not the stand of the Revenue before the Madras High Court, as noted in last but one paragraph of the judgment. The judgment of Hon'ble Supreme Court in the case of Charanjit Singh Chaddha and others (supra) relied by the respondent assessee is not applicable on the facts of the present case inasmuch as that judgment arose from a petition filed under Section 482 Cr.P.C. The allegation in that case was that the appellants forcibly took away the vehicles from the motor mechanic and thus committed offences under Section 406/420/120-B IPC and pursuant to the complaint, the Magistrate took cognizance of the offences and issued summons to the appellants and thereupon the appellants filed a petition under Section 482 Cr.P.C.

18. We find that CIT (A) has recorded the finding of fact in paragraph 8 and 11 to 15 of the order (quoted in para 11 above) that the assessment order describes the nature of transactions entered into by the appellant and the appellant does not challenge the accuracy of this description. In the

description it has been narrated that a potential hirer or customer, desirous of acquiring a vehicle but unable or unwilling to pay the entire price from his own funds, approaches the appellant with a proposal. He requests the appellant to buy and hire to him the vehicle required by him. The potential hirer or customer identifies the vendor or the dealer from whom the vehicle should be purchased. He also specifies the vehicle that should be purchased. The choice in these areas is entirely that of the customer or the potential hirer. On acceptance of the proposal by the appellant company, the hirer pays the initial hire money. The appellant company buys the vehicle, from the dealer identified by the hirer. The hirer gets the vehicle from the dealer. An agreement is entered into between the appellant company and the hirer to hire the motor vehicle to the Hirer. The Hirer agrees to pay to the appellant company, a certain sum as initial payment by way of 'hire'. He also agrees to pay to the appellant company the “total amount of hire” in pre-determined instalments (generally monthly instalments, the frequency and interval of which are determined at the time of the agreement). The Hirer gets an option to purchase the hired motor vehicle from the appellant company on payment of the total amount of hire plus Re.1/- . On payment of this additional amount of Rs. 1/- over and above the total amount of hire paid in instalments, the hiring comes to an end and the appellant company makes over all their rights, title and interest in the motor vehicle to the Hirer.

19. It is undisputed that the vehicles were registered in the name of the respective customers. However, in the registration certificate a remark in terms of agreement was to be recorded to the effect that vehicle is held by the registered owner under a hire purchase agreement with the respondent assessee. A “Sale Letter” was executed, reciting that the customer had on the date of the application for loan sold to the financier the motor vehicles. The ITAT completely ignored the discussion and findings of fact recorded by CIT (A) in paragraphs 8 and 11 to 15 which will show that despite some difference in the pattern of transactions in the two cases, the principle that emerges from

the Supreme Court's decision in the case of Sundaram Finance Ltd. are fully applicable to the facts of the case. It was pointed out by the Assessing Officer that sale of vehicles have not been shown by the respondent assessee in its profit and loss account and no sales tax return has been filed by it. In its audited account, filed with the income tax returns, the respondent assessee has shown the finance charges as revenue receipts. The auditor has certified that the respondent assessee is not a trading company. The auditor has also certified that the respondent assessee has followed the norms issued by the Reserve Bank of India for non-banking financial companies (NBFC).This shows that the respondent assessee is a finance company engaged in financing of vehicles. There is no evidence that respondent assessee is a trader dealing in purchase and sale of vehicles. Thus the hirer is the real purchaser of vehicles from the dealer. He selects the vehicle for purchase and also the dealer from whom it was to be purchased. At this stage the respondent assessee does not come into picture. After the hirer identified the vehicle and the dealer i.e. the seller then he approached the respondent assessee for finance due to his inability to purchase out of his own funds. At this stage the respondent assessee extended the facility of finance to hirer on willingness of the hirer to pay a price for this facility. The total amount of hire that hirer pays to the respondent assessee exceeds the price at which the vehicle was purchased from the dealer. This is more than that part of the purchase consideration which was paid by the respondent assessee to the dealer as finance to the hirer. The excess amount so paid by the hirer to the respondent assessee is nothing but interest on loan. The amount so invested by the respondent assessee in the purchase of vehicles is the amount of loan advanced by it to the hirer. As per Clause (10) of the agreement a promissory note was also executed by the hirer in favour of the assessee company for total hire payable for the motor vehicle as per “Schedule B” as co- lateral security and the assessee company was given the right to negotiate the said Demand Promissory Note in favour of their bankers or any other party for valuable

consideration and also sue upon the same. All these facts supported by the findings of fact recorded by the CIT(A) in paragraphs 8, 11, 12, 13, 14 and 15 (as quoted in paragraph 11 above) when tested on the principles of law laid down by Hon'ble Supreme Court in paragraphs 23, 24 and 28 of the case of Sundaram Finance Ltd.(supra), the only conclusion that can be reached is that the transactins entered by the respondent assessee with the customer/hirer is a loan transaction and the finance charges were nothing but interest.

20. In view of this we are of the view that the CIT (A) has correctly held that the finance charges are in the nature of interest liable to interest tax under the Act of 1974.

21. The ITAT has failed to follow the principle laid down by Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, AIR 1959 SC 1238, para 42 wherein Hon'ble Supreme Court held that every fact for and against the assessee must be considered with due care and the Tribunal must give its finding in a manner which would clearly indicate as to what were the questions which arose for determination, what was the evidence pro and contra in regard to each of them and what were the findings reached on the evidence held before it. Para 42 of the said judgment is reproduced below :

> *"42. We are aware that the Income -tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this Court will not interfere.* ***It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it.*** *The*

conclusions reached by the Tribunal should not coloured by any irrelevant considerations or matter of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given opportunity of doing so. ***On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions , conjectures or surmises and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court."***

(Emphasis supplied by us)

22. So far as the challenge to the validity of reassessment proceedings under Section 10 of the Act, 1974 as raised in Appeal No. 109 of 2002, 247 of 2012 and 246 of 2012 is concerned, we find that in paragraph 8 and 14 of the impugned order the ITAT has noted the grounds No. 7(a) and 7 (b) of the assessee's as under :

"7. Because the reassessment proceedings U/s 10 (a) of the act cannot be said to have been validly initiated as -

(a) there existed neither any material which could lead to the formation of belief that "chargeable interest" for the A.Y. 1994-95 had escaped assessment.

(b) nor the related notice dated 27.4.98 has been validly issued and served on the appellant."

23. The ITAT elaborately discussed the afore noted grounds in paragraphs no. 8 to 23 of the impugned order and recorded its finding in paragraph 12 and 13 with regard ground no. 7 (a) and in paragraphs 17, 18 and 21 with regard to ground no. 7 (b) and thus rejected both the grounds in appeal of the assessee. Paragraphs 12, 13, 17, 18 and 21 of the impugned order of the ITAT are reproduced below :

"12. A perusal of the above, goes to demonstrate that the A.O. had applied mind and held that there were reasons to believe that chargeable interest had escaped assessment within the meaning of Sec. 10(a) of the Interest Tax Act. The reasons so recorded by the A.O. are, in our view, very specific and not vague and, in our opinion, these reasons serve a solid basis of reopening the assessment.

13. So far as the contention of the Ld. Counsel for the assessee that the notice provided only seven days time instead of 30 days time is concerned, we do not find any force in this submission, because no tome limit h as been provided u/s 10 of the Interest Tax Act. It may also be pointed out that time limit of 30 days for filing the return is laid down u/s 7 of Interest Tax Act, but the object of that Section is different from that of Section 10. It may be pointed out that the notice dated 27.4.1998 has been issued u/s 10 of the Interest Tax Act and not u/s 10 read with Sec. 7 of the Act. The Ld. Counsel for the assessee, Shri Garg cioted several decisions to canvass the point that the notice u/s 10 of the Interest Tax Act being akin to notice u/s 148 of the I.T.Act, 1961, is a jurisdictional notice and, therefore, if the notice is invalid, the entire assessment order and proceedings of assessment stand vitiated. So far as this legal position is concerned, there cannot be any dispute. However, the situation is different. Under the Income Tax Act, 1961, the provisions of Sec. 148, before 1989, contained a clause in accordance with which the notice waqs to be issued requiring the assessee to file the return "within the period not being less than 30 days". By the finance Act (No.2) of 1996, these words have been omitted and the amended

provisions of Sec. 148 as it stands now does not contain this time limitation. So far as Sec. 10 of Interest Tax Act is concerned unlike un-amended Section 148, it does not contain any time limitation. Thus, the authorities cited before us , which related to the interpretation of un-amended provision of Sec. 148 are not applicable to the present matter. In view of this difference, most of the cases cited before us on this point are difference, most of the cases cited before us on this point are distinguishable and not relevant. Thus, this ground taken before us fails.

17. We have carefully considered the facts and circumstances relating to this issue. In view of the provisions contained u/s 10 of the Interest Tax Act, the notice is to be served on the assessee. The service has to be, of course, on the assessee itself or on its representative of Agency or its employee. As revealed out on scrutiny of Notice dated 27.4.1998, the notice was received on behalf of the assessee on 5.5.98. The signatures of the recepiants have also been made below the endorsement of receipt as is clear from paper no.3 of the paper book. The person, who received the notice has neither disclosed the full name nor has indicated his designation. However, the fact remains that he received the notice on behalf of the assessee. Not only this, the assessee filed returns in response to this notice and also attended assessment proceedings before the A.O. In his letter dated 30.1.2001, available at page 2 of the paper book of Department. The Dy. CIT, Kanpur, has clarified that in the assessee's group of cases, all works relating to income tax proceedings,is being looked after by their employees of Tax Department and services of notices, orders etc. are being

effected on them. This practice is not un-common. It is usually observed that employees of a particular company or firm receive notices and make their signatures endorsing the receipt and the Departmental Officials do not enquire about their authority or power of attorney.

Particular company or firm receive notices and make their signatures endorsing the receipt and the Department officials do not enquire about their authority or power of attorney. What is relevant is the conduct of the assessee in acquiescing in such practice. If the assessee continues to give impression that such official or employees are duly and regularly representing it, then the Departemntal Officials are bond to be led or misled by such conduct. This representation of the assessee is further found to be supported by the conduct of the assessee in making compliance of the notice on the basis of such receipt. In the present case, it is established on record that the assessee had filed return in compliance to the notice, which was received on its behalf by is employees. Not only this, the assessee continued to be represented during assessment proceedings and never raised any objection on this count. It is significant to point out that neither during the assessment proceedings nor during first appellate proceedings, the plea regarding improper service was taken by the assessee. It may also be pointed out that the assessee had filed reply dt. 1.6.98 and 2.6.98, but in these replies, no objection has been taken about the appeal also no ground was taken to challenge the validity of notice. It was only on 12.10.2000 that the ground was taken for the first timebefore the Tribunal and subsequent to that the documents/evidences in support of

this ground was adduced. This conduct of the assessee shows that the additional ground has been taken as an after thought.

18. So far as the affidavit of Shri Ishwar Chand, Director of the assessee company is concerned, it is true that no affidavit has been filed by the Department in rebuttal to this affidavit, but it may be very difficult for the Department to ascertain and depose about the authority of the person, who received the notice. However, the reports of the department, against this affidavit controvert the contents of the notice. Under these circumstances, we are of the view that the assessee had fully acquiesced by its conduct in acknowledging the receipt of notice through its employee and thus, the service should be deemed to be a proper service.

The facts of the above cited cases are similar to the facts of the case before us and, therefore, these authorities are fully applicable to the instant case, inasmuch as the receipt of the notice on behalf of the assessee was not denied and acted upon by the assessee, who filed return on the basis of such notice and also participated in the proceedings as indicated above. The following decisions also support the above view :-

(a) Ramnivas hanuman Dass Comani Vs. ITO, 37 ITR 329 (Bom.)

(b) Mohammed Idress barry & Co. Vs. CIT, 32 ITR 180. (Lahore)

(c) The Bhopal Trading Co., Kanpur Vs. CIT, 28 ITR 478 (All.)"

24. We do not find any infirmity in the afore quoted findings recorded by

the ITAT. The findings so recorded by the ITAT are findings of fact based on evidences. In view of these facts, we do not find any substance in the challenge made by the assessee in Appeal No. 109 of 2002, 247 of 2012 and 246 of 2012.

25. In view of the above discussions, the impugned order of the ITAT in so far as it held the transaction in question to be hire purchase transaction and finance charges to be not liable to interest tax, is set aside and the order of the CIT(A) is upheld. The Appeal No. 109 of 2002, 247 of 2012 and 246 of 2012 filed by the assessee is dismissed.

26. In result the ITA No. 32 of 2002, ITA No. 77 of 2002, ITA No. 78 of 2002, ITA No. 79 of 2002, ITA No. 366 of 2012, ITA No. 368 of 2012, ITA No. 369 of 2012, ITA No. 370 of 2012, ITA No. 371 of 2012, ITA No. 76 of 2002, ITA No. 289 of 2012 succeed and are hereby allowed. The impugned order dated 28.9.2001 passed by the ITAT in so far as it holds the transactions in question to be hire purchase transactions and finance charges to be not liable to interest tax is set aside. ITA No. 109 of 2002, ITA No. 247 of 2012 and ITA No. 246 of 2012 filed by the assessee fail and are hereby dismissed. However, there shall be no order as to cost.

Order Date : 13.12.2013

Ashish Pd.