



# **MAD HC: Quashes Excess Depreciation Disallowance On Genuine Cinematographic Film Sale-Leaseback Transactions; Suspicion Alone Insufficient**

## **Facts and Issues**

Vijay Shanthi Builders Ltd. (Assessee) is engaged in the business of construction activity and has filed returns for AYS 1996 - 97 and 1997 - 98 claiming deduction of construction expenditure and depreciation on cinematograph films purchased from M/s Sri Veeru Creations and leased back to the same party. The AO disallowed the depreciation claim alleging that the sale and leaseback arrangement was not genuine and constituted a colourable device for availing excess depreciation. Both the CITA and the Tribunal allowed the claim of depreciation. Aggrieved by the same, the Revenue preferred appeals before the High Court. The substantial issues before the Court were whether the Assessee was entitled to depreciation on cinematograph films acquired under sale and leaseback transactions, whether such transactions could be disregarded as colourable devices merely because they resulted in tax benefit.

## **Contentions of the Revenue before the High Court**

In relation to depreciation on cinematograph films, the Revenue argued that the lease transaction preceded the actual purchase of the films and therefore the Assessee did not possess valid rights in the asset at the time of lease. It was further contended that the sale and leaseback arrangement was merely a sham and colourable device with the intention of evading tax.

## **Contentions of the Assessee before the High Court**

In relation to depreciation on cinematograph films, the Assessee submitted that the transactions of sale and leaseback were genuine business transactions duly supported by lease agreements, invoices, payments through banking channels, and transfer documents evidencing transfer of title and ownership rights. The Assessee further argued that merely because the transaction resulted in tax benefit, it could not be treated as a colourable device based merely on surmises and conjectures, when the transaction was valid and permissible in law.

## **Observations and Ruling of the High Court**

On the issue of depreciation on cinematograph films, the Court observed that the title in the cinematograph rights had been transferred in favour of the Assessee and the transactions were supported by valid documentation and banking records. The Court held that sale and leaseback transactions are recognized commercial transactions and depreciation cannot be disallowed merely on suspicion or conjectures without any material evidence establishing sham or illegality. The Court further reiterated that tax planning within the framework of law is permissible and a transaction cannot be disregarded merely because it results in tax advantage. Accordingly, the substantial questions of law was answered against the Revenue and the appeals were dismissed.

## **Citation**

Vijay Shanthi Builders Ltd [TS-587-HC-2026(MAD)]



### **Our Comments**

The ruling reiterates the settled principle that genuine commercial transactions cannot be disregarded merely on suspicion or because they result in tax benefits. The judgment also reinforces the principle that tax planning within the framework of law is permissible and a transaction cannot be branded as a colourable device in absence of material evidence establishing sham or illegality.

While, as a fundamental proposition, these principles are laudable, it needs to be noted that the High Court did not deal with the aspect of the lease back transaction preceding the purchase transaction. Further, the assessee was in the business of construction. At the fag end of the financial year, on 29.3.1996, it entered into the transaction for purchase and sale and lease back of the cinematographic film which enabled it to claim depreciation to set off against its income from construction business. In these circumstances, prima facie, the Revenue was entitled to draw an adverse inference and for the Tribunal, as the last fact-finding authority to scratch below the surface and to appreciate the facts in their proper perspective.