IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE MR.JUSTICE **R.KARUPPIAH**

Tax Case (Appeal) Nos.468 to 470 of 2008

The Commissioner of Income Tax
Tamil Nadu - III, Madras.
.. Appellant in the above T.C.s

versus

M/s.S.S.M.Estates Ltd.,
82, Govindappa Naicken Street,
Chennai - 600 001.
.. Respondent in the above T.Cs

PRAYER: Tax Case Appeals filed under Section 260 A of the Income Tax Act, 1961 as against the order dated 24.08.2007 made in I..T.A..Nos.1189 to 1191/Mds/2005 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment years 1996-97, 1998-99 and 2001-2002.

For Appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.)**

The above Tax Case (Appeals) filed by the Revenue as against the order of the Income Tax Appellate Tribunal were admitted by this Court on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was right in law in holding that Godown/Ware Houses rents received by the assessee as business income, even though the rental income received by the assessee in the nature of income from house property?"

2. The brief facts of the case are as follows:

The assessee is having godowns/warehouses. The Assessing Officer completed the assessment and held that the income from warehousing has to be taxed as income from house property only. Aggrieved by the same, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who confirmed the order of the Assessing Officer, thereby dismissed the appeals. As against the said order of the Commissioner of Income Tax (Appeals), the assessee once again pursued the matter before the Income Tax Appellate Tribunal.

3. The Tribunal, after considering the logistics services provided by the assessee, in paragraph Nos.15 and 16 came to the conclusion that the nature of receipts is not rental receipt, but business income. The Tribunal further found that the assessee company had approached its business by making use of the godown in a novel way, which is not merely a case of letting out on rent. In paragraph 18 of the order, the Tribunal clearly held that the assessee company is providing logistic services, which are complex in nature, to its clients for the purpose of earning profit and hence it is a business activity.

4. For better understanding, we extract below the findings of the Tribunal:

> *"18. On the surrounding set of facts and circumstances, it is well established beyond doubt that the assessee-company carried out an organised, systematic activity of providing logistic service which are complex in nature to its clients and profit earning is the motive of the assessee. Hence, it is the business activity of the assessee. The warehouse charges received by the assessee-company arise out of commercial assets and they are business receipts. They have to be charged under the head business only. The action of the authorities to charge under rental receipt under the head "property" is not justified as there is no fiduciary relationship of either landlord and tenant or licensor and*

> *licencee. For the above foregoing reasons, we set aside the orders of the authorities below and allow the claim of the assessee."*

5. Aggrieved by this order of the Tribunal, the Revenue is before this Court.

6. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

7. It is seen that the findings of fact arrived at by the Tribunal is not in dispute. The decision of the Supreme Court in the case of ***Commissioner of Income Tax V. Indian Warehousing Industries Ltd.*** reported in ***258 ITR 93*** and that of the jurisdictional High Court in the case of ***Chennai properties and Investments Ltd.*** reported in ***(2004) 266 ITR 685 (Mad)*** are distinguishable on facts. In those cases, the receipts itself are rental receipts. Whereas, in the present case, the assessee itself had retained the possession and there is no fiduciary relationship of landlord and tenant.

8. The Tribunal, by going into the individual aspects of the

business to come to the conclusion that it is a case of warehousing business and, therefore, would fall only under the head “Business Income”.

9. In view of the well considered reasoning given by the Tribunal, we find no reason to differ with the findings of fact recorded by the Tribunal, which reasoning is fully justified in the facts of the present case. This Court finds no good reason to differ with the said findings of fact. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.

10. In the result, finding no merit in the present appeals, the same are dismissed. However, there shall be no order as to costs.

Index: Yes / No (R.S.,J.) (R.K.,J.)
Internet: Yes / No 24.02.2015

sl

To

The Income Tax Appellate Tribunal, Madras 'D' Bench.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

sl

Tax Case (Appeal) Nos.468 to 470 of 2008

24.02.2015