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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case (Income Tax Appeal) No.2 of 2016

Assistant Commissioner of Income Tax, Central Revenue Building Raipur, Chhattisgarh.

---- Appellant

Versus

Chhattisgarh State Warehousing Corporation, Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

Tax Case (Income Tax Appeal) No.3 of 2016

Assistant Commissioner of Income Tax , Central Revenue Building Raipur, Chhattisgarh.

---- Appellant

Vs

Chhattisgarh State Warehousing Corporation, Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

Tax Case (Income Tax Appeal) No.4 of 2016

Assistant Commissioner of Income Tax, Central Revenue Building Raipur, Chhattisgarh.

---- Appellant

Vs

Chhattisgarh State Warehousing Corporation, Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

Tax Case (Income Tax Appeal) No.5 of 2016

Assistant Commissioner of Income Tax , Central Revenue Building Raipur, Chhattisgarh.

---- Appellant

Vs

Chhattisgarh State Warehousing Corporation, Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

Tax Case (Income Tax Appeal) No.6 of 2016

Assistant Commissioner of Income Tax, Central Revenue Building Raipur, Chhattisgarh.

---- Petitioner

Vs

Chhattisgarh State Warehousing Corporation, Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

&
Tax Case (Income Tax Appeal) No.7 of 2016

Assistant Commissioner of Income Tax , Central Revenue Building Raipur, Chhattisgarh.

---- Appellant

Vs

Chhattisgarh State Warehousing Corporation , Avanti Vihar, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Ms. Naushina Ali, Advocate.
For Respondent	:	Shri S. Rajeshwara Rao, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

By, Thottathil B. Radhakrishnan, CJ

04/04/2017

1. These appeals under Section 260-A of the Income Tax Act,1961 (in short the Act, 1961) are filed by the Revenue in relation to assessment year from 2003-04, 2004-05, 2005-06,2006-07, 2007-08 and 2008-09.
2. The respondent-assessee is the Chhattisgarh State Warehousing Corporation, one which was constituted in terms of the provisions of the Warehousing Corporation Act, 1962, which is a Central Act and presently governed also by the provisions of the Warehousing (Development and Regulation) Act, 2007.
3. The issue raised for decision is as to whether the activity of the respondent-assessee, to the extent it is relevant for these appeals, could be treated as generating income from business or generating income from house property for assessment in terms of relevant provisions of the Act, 1961.

4. Learned counsel for the Revenue as well as respondent-assessee have referred to different decisions of different High Courts as also to some of the decision of the Apex Court.
5. The primary issue that arises for decision at the outset is as to whether this court would be justified, through these appeals under Section 260-A of the Act, 1961, to interfere with the decision rendered by the Tribunal reversing the decision of the first appellate court which confirmed the assessment order and thereby holding that the income derived by the respondent-assessee is to be treated as falling under income to business and not income from house property.
6. We may refer to paragraphs 6,7 and 8 of the order of Tribunal. They dilate on the nature of activities of the respondent-assessee and the manner of the business carried on by the respondent in terms of its statutory authority and the contractual rights and obligations as between it and the parties with which it enters into transactions. In paragraphs 9 and 10 of its order, the Tribunal went on to discuss and consider the different aspects and differences between 'rent' and 'warehousing charges received by the assessee' and ultimately concluded, through the reasoning process discernible in paragraph 11 of the impugned order, that the activity of the respondent is such that its income has to be reckoned as income from business and not as income from house property.
7. The question as to how the transactions of the respondent-assessee has to be assimilated and understand for the purpose of imposing or classifying the provisions under which it becomes liable to tax under the

Act, is essentially a mixed question of fact and law. We say this because the Tribunal has pointedly considered the nature of transactions to which the respondent-assessee becomes party in the common course of its business transactions. Those are transactions which stand governed by the statutory authority under which the assessee is constituted. By and large, the transactions are such that they have to be treated as one where the respondent carries on its activity of warehousing and in the course of such activity, utilizes its premises for the purpose of carrying out its obligations under warehousing transaction. Those do not contain the salient features of lease of immovable property and cannot be considered as one falling purely as utility of house property to generate income as such. We arrive at this conclusion on the basis of the findings rendered by the Tribunal through which it has reversed decision of the first appellate authority and the assessing authority after duly adverting and considering the relevant facts and materials and by assimilating the nature of the transaction of the assessee-corporation.

8. Reverting to the judgment of the Constitution Bench of the Apex Court in Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax, 1964 AIR SC-1389, it has to be noted that each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. The concept of letting of a property by an owner is clearly distinct in business parlance and commercial parlance from utilizing the premises available to a person for carrying out the activity of letting such premises to use, in

the course of its activity, particularly warehousing. In this view of the matter, we are guided by the principles of law laid down in Sultan Brothers (Supra) and we cannot but conclude that the findings rendered by the Tribunal essentially rest as mixed question of law and facts.

9. For the aforesaid reasons, we are of view that no substantial question of law arises for decision at the instance of the Revenue and hence, these appeals fail.

10. In the result, these appeals are dismissed.

Sd-

(Thottathil B. Radhkrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge

inder