IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.203 OF 2015
WITH
INCOME TAX APPEAL NO.235 OF 2015

THE COMMISSIONER OF INCOME TAX – 10)...APPELLANT

V/s.

M/S.PLAZA HOTELS PVT. LTD.)...RESPONDENT

Mr.Arvind Pinto, Advocate for the Appellant.

Mr.F.V.Irani a/w. Mr.A.K.Jasani, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 31st JULY 2017

P.C. :

1 The present appeals are for Assessment Year 2007-08 and 2008-09.

2 The Revenue has raised following questions in the present appeal :

1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in treating the receipts from the lease of its hotel as business income ignoring the primary fact that the transaction involved the long terms lease of a property which should be rightfully taxed as house property income ?

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in dismissing the revenue's appeal of determining the FMV in terms of section 23(1)(a) of the Act on the basis of deposits received in lieu of leasing the house property ?

3. Whether on the facts and in the circumstances of the case and in law, the ITAT was right in ignoring Rule 8D which mandates the computation of expenditure in case of exempt income ?

3 As far as Question No.3 is concerned, the same has been restored to the Assessing Officer under the impugned order of the Tribunal and the same is also not pressed.

4 As far as Question No.2 is concerned, it is dependent upon Question No.1.

5 As far as Question No.1 is concerned, Mr.Pinto, the learned counsel for the appellant strenuously contends that whether a particular income is an income from house property or a business income, would depend upon facts and circumstances of each case. The learned counsel submits that the agreement has to be looked into. The business of the respondent is to run a hotel and the respondent has rented his premises wherein he was carrying on hotel business to another person. Such an income received by leasing the hotel has to be considered as an income from house property. The learned counsel relies on the judgment of Madras High Court in the case of **Keyaram Hotels Pvt. Ltd. vs. Assistant Commissioner of Income Tax** reported in **[2008] 300**

<u>ITR 118 (Mad)</u>. According to the learned counsel, only because for the earlier year, said income was assessed as a business income, would not preclude the authorities to reexamine the agreement and arrive at an independent conclusion. According to the learned counsel, the agreement read as it is, would lead to an irrestible conclusion that income received by leasing the hotel has to be considered as an income from house property.

6 The learned counsel for the respondent supports the order.

7 It has been observed that the business was handed over by the respondent assessee to KHIL in the year 1994 and since the assessment year 1995-96 till the assessment year 2005-06, the income from the same was assessed as a business income. The assessment for the year 1995-96 was completed under Section 143(3) of the Income Tax Act. So also, for the assessment year 2003-04 and assessment year 2005-06, the assessment was completed under Section 143(3) of the Income Tax Act. The claim

of the assessee of the said income being a business income was accepted.

8 The assessee is not receiving any rent amount but is receiving 1% of the total revenue earned by KHIL and does not get any fix amount as rent. These aspects are considered by the Tribunal.

9 Question No.2 being dependent upon Question No.1, no substantial question of law arises. As such, the appeal is dismissed. No costs.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**