

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

I.T.T.A. Nos.59, 151, 152, 153, 154 and 156 of 2005,
and 25 of 2014

DATED:22-11-2017

Between:

M/s. Viswarupa Builders &
Developers (P) Ltd.,
Hyderabad ... Appellant

And

Income Tax Officer
Ward-3(1)
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. A.V.A. Siva
Kartikeya

COUNSEL FOR THE RESPONDENT: Mr. B. Narasimha Sarma,
Senior Standing Counsel
for the Income Tax
Department

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:

(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This batch of seven appeals not only involves identical questions, but also the same parties. Hence, they are heard and disposed of together.

2. The appellant (hereinafter referred to as “the assessee”) has constructed sixteen apartments and claimed to have let out the same on rent. In response to the notices issued under Section 148 of the Income Tax Act, 1961 (for short, “the Act”), the assessee has filed returns disclosing “nil” income, claiming the rental income and maintenance charges as “income from business source”. The assessee has claimed the expenditure and depreciation on building, and maintenance. The Assessing Officer (AO), on consideration of the accounts and the legal position, treated the rental income as “income from house property” and receipts towards maintenance charges as “income from other sources”. Feeling aggrieved by these orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals). On considering the case of the assessee, the Commissioner has confirmed the assessment orders. Assailing the said orders, the assessee filed appeals before the Tribunal.

3. Before the Tribunal, the assessee has raised two contentions, namely, (i) that the AO has committed an error in treating the income from rentals and maintenance charges received by the assessee as “income from property” and “income from other sources” respectively, and (ii) that instead, he ought to have treated the amounts received from both the sources under the head income from business. The Tribunal in its order observed that the Authorized Representative of the assessee has conceded in the course of hearing that the rental income received by the assessee in different years is assessable under the head “house property” and that he has restricted himself to the claim that the maintenance charges received by the assessee for different years are assessable under the head “business”. These observations are reflected in paragraphs 3 and 9 of the Tribunal’s orders. As regards the maintenance charges, the Tribunal declined to interfere with the view taken by the AO, as confirmed by the first appellate authority. Feeling aggrieved by the said orders of the Tribunal, the assessee filed these appeals.

4. In the appeals, the following substantial question of law is framed.

“Whether on facts and circumstances of the case, the Hon’ble Tribunal was right in confirming the orders of the revenue authorities to the effect that the

rental income and the maintenance charges received by the Appellant – Assessee are not assessable under the head ‘income from business?’”

5. At the hearing, Mr. A.V.A. Siva Kartikeya, learned counsel for the assessee, made a strong bid to convince us to adjudicate on the issue as to whether the rental income must be treated as business income or not. We are afraid, we cannot decide this issue at this stage for the reason that the Tribunal in categorical terms placed on record the fact that the Authorized Representative of the assessee has given up the issue and has not disputed that the rental income is assessable under the head income from house property. The law is well settled that recording of any fact by the judicial authority of any event that transpired during the proceedings is conclusive. If any party disputes such recoding of fact, he has to necessarily approach the same forum seeking correction of the error. For the reasons best known to the assessee, it has not taken recourse to this procedure. Therefore, it is not possible for us to ignore the finding of the Tribunal recorded in its order on the concession of the Authorized Representative of the assessee, and adjudicate the issue on merits. Accordingly, we are not inclined to interfere with the finding of the Tribunal as regards the rental income.

6. Coming to the maintenance charges, the Tribunal has placed reliance on the judgments of the Supreme Court in *Sultan Brothers (P) Ltd. v. C.I.T.*¹ and *Shambhu Investment (P) Ltd. v. C.I.T.*² and held that applying the test laid down in *Sultan Brothers (P) Ltd.*, (1 supra), irrespective of whether the rents and maintenance charges are under one composite agreement or separate agreements, where the services are not provided independent of letting out of the property, the maintenance charges being incidental to the activity of letting out of the property, they are integral part of rental receipts and are assessable under the head “house property”. The Tribunal further observed that the AO has not included the maintenance charges under the head “house property”, but he has separately assessed them under the head “other sources”, and computed the said income at a “nil” figure for all the years, and that the maintenance charges cannot be treated under the head “business income”.

7. On a careful consideration of the reasoning of the Tribunal, we do not find any error in order to interfere with it. Admittedly, there are no separate agreements for rental income and maintenance charges. On the facts of the case, it cannot be

¹ [1964] 51 ITR 353 (SC)

² [2003] 263 ITR 143 (SC)

disputed that the maintenance of flats was undertaken by the assessee in connection with the letting out of the apartments to the lessees. When the rentals, which are the main source of income, are treated as not falling under the head “business source”, it would be anomalous to treat the maintenance charges under the head from “business source”. Therefore, the maintenance charges have to be treated as either falling under the head “income from property” or “income from other sources”. It is not the pleaded case of the assessee that the said charges must be treated under the head “income from property”. When its claim to treat the said source under business income is declined, it has to be necessarily included under the head “other sources”.

8. For all the above mentioned reasons, the substantial question of law raised in these appeals is answered against the assessee. The appeals are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

T. AMARNATH GOUD, J

22-11-2017

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