IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.807 OF 2016

Pr.Commissioner of Income Tax, Central-4. … Appellant

V/s.

Shreeji Exhibitors … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Jitendra Singh with Ms.Gauri Velankar i/by Mr.Mandar Limaye for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 10, 2018.

P.C.:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 14th August, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2009-10.

2. The Revenue urges the following question of law for our consideration:

> "1. Whether, on the facts and circumstances of the case and in law the Hon'ble Tribunal was

> justified in holding that the Assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the Assessee to be taxable as income from business and not under the head "Income from House Property"?"

3. The basic issue which arises in this appeal is whether income from letting out shopping mall and Cinema Theatre alongwith multiplex centre is to be held "Income from house property" as contended by the Revenue or "business income" as contended by the assessee. Briefly, the facts are that the respondent-assessee is a partnership firm engaged into the business of construction and maintenance of mall, letting out premises on lease and providing amenities therein and exhibition of feature films at multiplex. In the subject assessment year the respondent offered its income on the above account under the head of income from business or profession. However, the Assessing Officer did not accept it and treated the income therefrom as "Income from house property".

4. Being aggrieved, the respondent filed an appeal to the

Commissioner of Income Tax (Appeals) (CIT(A)). However, appeal of the respondent was dismissed on 10th December, 2013

5. Being aggrieved by the order dated 10th December, 2013 of the CIT (A), the respondent filed an appeal to the Tribunal. The impugned order of the Tribunal noted the fact that the assessee's activity of letting out building premises is its business activity. This, the Tribunal observed it is clear from objects of the respondent as set out in its partnership deed viz. to deal with properties i.e. to construct real estate, multiplex centre, entertainment complex etc. and operate and manage the same. On the basis of the above object clause the impugned order dated 14th August, 2015 placed reliance on **Chennai Properties & Investment Limited Vs. CIT**[1], to hold that the objects clause of the respondent-assessee's partnership deed would be the determining factor to decide the nature of income. On the above basis, it concluded that it is business income. In case of **Chennai Properties & Investment Limited (supra)** the object of the Assessee therein was to acquire properties and let out the

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same. In above view the appeal of the respondent was allowed and held that the income from letting out of business premises was taxable under the head business income not income from the house property.

6. In view of the fact that the Tribunal has applied Apex Court decision in **Chennai Properties & Investment Limited(supra),** on similar facts, the proposed question of law does not give rise to any substantial question of law. Therefore, not entertained.

7. Accordingly, Appeal dismissed. No order as to costs.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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