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

INCOME TAX APPEAL NO.808 OF 2016

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

V/s.

Shreeji Enterprises … 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 common order dated 14^{th} August, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This impugned order dated 14^{th} August, 2015 is common order in respect of this respondent and Shreeji Exhibitors. 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 in the circumstances of the case and in law the Hon'ble ITAT 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 respondent-assessee is a partnership firm engaged in the business of purchase and sale of ready-made garment as well as letting out of commercial premises.

4. In its return of income for Assessment Year 2008-09, the respondent claimed the income earned on letting out of the commercial premises as being chargeable to tax under the head "Income from business or profession". However, the Assessing Officer by his Assessment order dated 28th December, 2011 passed under Section 143(3) of the Act, did not accept the same and the income earned on letting out of commercial premises was classified under the head "Income from house property".

5. Being aggrieved, the respondent filed an appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). By an order dated 26th December, 2012 dismissed the respondent's appeal.

6. Being aggrieved by the order dated 26th December, 2012 the respondent filed a further appeal. The Tribunal by the impugned common order dated 14th August, 2015 in respect of Shreeji Exhibitors and the respondent herein allowed both the appeals. This after recording the facts in respect of Shreeji Exhibitors. Thereafter, on the above facts it held that **Chennai Properties & Investment Limited Vs. CIT**[1] would conclude the issue in favour of the respondent-assessee. This is so as the object of the business was to deal in property by construction and letting out the same. The impugned order of the Tribunal noted that the facts involved in the appeal of the respondent herein (Shreeji Enterprises) were identical and held that income from letting out of premises is classified as "Income from business or profession".

1 (2015) 373 ITR 673(SC)

7. Mr.Suresh Kumar, learned counsel for the Revenue submits that the facts in the case of present respondent are different from the facts in the case of Shreeji Exhibitors. Thus, it is submitted that the impugned order of the Tribunal could not have applied the ratio of its decision in the case of Shree Exhibitors to the respondent herein. In particular, he points out that the respondent is not only engaged in carrying out activity of letting out business premises, but is also engaged in purchase and sale of ready-made garments. Thus, according to him, the decision of Chennai Properties(supra) would not apply to the facts of the present case.

8. We note that it is an undisputed position that the respondent is involved in the business of purchase and sale of ready- made garments and also letting out of commercial premises. The object of the business of the respondent-firm is not restricted to only ready-made garments. Therefore, once it is accepted that the giving commercial premises on rent/lease is also a business activity of the respondent then the decision of

the Supreme Court in case of **Chennai Properties and Investment Ltd. (supra)** and the ratio of the decision in Shreeji Exhibitors would equally apply in the facts of respondent's case.

9. In fact, the appeal by the Revenue in case of Shreeji Exhibitors from the impugned order dated 14th August, 2015 being Income Tax Appeal No. 807 of 2016 (Pr.Commissioner of Income Tax Vs. Shreeji Exhibitors) has been dismissed by us today. This as it does not give rise to any substantial question of law. Thus, for the reasons indicated therein, the proposed question in this appeal also does not give rise to any substantial question of law. Thus, not entertained.

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

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

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