IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1488 to 1490 of 2008

The Commissioner of Income Tax
Chennai ... Appellant in
all the Appeals
-vs-

M/s.S.S.M.Estates Ltd.,
SSM Towers,
Old No.6, New No.13,
Dr.T.V.Naidu Road,
Chetpet,
Chennai-600 031 ... Respondent in
all the Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, dated 31.01.2008 in ITA Nos.1017/Mds/2007, 1018/Mds/2007 and 1017/Mds/2007, for the Assessment Years 1997-98, 1999-2000 and 2000-01, respectively.

For Appellant : Mr.T.R.Senthilkumar
assisted by
Mrs.K.G.Usharani

For Respondent : Mr.V.Vikram for
Mr.R.Venkatanarayanan

COMMON JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]
These appeals by the Revenue are directed against the order passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 31.01.2008, in ITA Nos.1017/Mds/2007, 1018/Mds/2007 and 1019/Mds/2007, for the Assessment Years 1997-98, 1999-2000 and 2000-01, respectively.

2.Heard Mr.T.R.Senthilkumar, learned Standing Counsel for the Revenue and Mr.V.Vikram, learned Counsel for the Respondent.

3.These Appeals have been admitted on 18.09.2008, on the following Substantial Question of Law:
"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was

right in law in holding that Godown/Ware Houses rents received by the assessee as business income, even though the rental income received by the assessee in the nature of income from house property?

4.The learned Counsel for the Respondent submits that the above Substantial Question of Law has been answered, by the Division Bench of this Court, in favour of the assessee and against the Revenue in the Assessee's own case for the Assessment Years 1996-97, 1998-99 and 2001-02, in the case of The Commissiioner of Income Tax, Tamil Nadu-III, Madras vs. M/s.S.S.M.Estates Ltd., in Tax Case (Appeal) Nos.468 to 470 of 2008, dated 24.02.2015. The operative portion of the said judgement reads as follows:

7.It is seen that the findings of fact arrived at by the Tribunal is not in dispute. The decision of the Supreme Court in the case of Commissioner of Income Tax v. Indian Warehousing Industries Ltd., reported in 258 ITR 93 and that of the jurisdictional High Court in the case of Chennai properties and Investments Ltd., reported in (2004) 266 ITR 685 (Mad) are distinguishable on facts. In those cases, the receipts itself are rental receipts. Whereas, in the present case, the assessee itself has retained the possession and there is no fiduciary relationship of landlord and tenant.

8.The Tribunal, by going into the individual aspects of the business to come to the conclusion that it is a case of warehousing business and, therefore, would fall only under the head business Income.
9.In view of the well considered reasoning given by the Tribunal, we find noi reason to differ with the findings of fact recorded by the Tribunal, which reasoning is fully justified in the facts of the present case. This Court finds no good reason to differ with the said findings of fact. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.
10.In the result, finding no merit i the present appeals, the same are dismissed. However, there shall be no order as to costs.

5.Following the above decision, these Appeals, filed by the Revenue, are dismissed and the Substantial Question of Law is answered in favour of the assessee. No costs.

[T.S.S., J.] & [V.B.S., J.]
18.09.2018

msk
Index:Yes/No
Internet:Yes/No

To

1.The Income Tax Appellate Tribunal Madras 'C' Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

msk

T.C.A.Nos.1488 to 1490 of 2008

18.09.2018