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

INCOME TAX APPEAL NO.216 OF 2017

The Pr. Commissioner of Income Tax-6, Pune. … Appellant

V/s.

M/s Krome Planet Interiors Pvt. Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.

CORAM : AKIL KURESHI AND
SARANG V. KOTWAL, JJ.
DATE : APRIL 22, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following question is presented for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal erred in treating the House Property Income as Business Income?"

2. Learned counsel for the revenue brought to our notice the fact that the identical question came up before this Court in

Income Tax Appeal No.282 of 2017. The appeal was dismissed making following observations:-

> "4. We find that the conclusions of the tribunal are perfectly valid and legal. Whether the assessee's income from immovable property is income derived from business or from house property is always a mixed question of law and facts. The answer has to be gathered from range of facts and attendance circumstances. In the present case, the significant features are that the assessee had obtained loan from the bank for its mall-complex project. That the assessee had entered into lease and license agreement with individuals for letting out commercial space. Majority of these licensees was for a period of 60 months. In addition to providing such commercial space on lease, the assessee also provided range of common amenities. List of which is reproduced earlier. These facilities included installation of elevators, installation for Fire Hydrant & Sprinkler system, installation of central garbage collections and disposal system, installation of common dining arrangement for occupants and the staff, common water purifier and dispensing system, lighting arrangement for common areas etc.
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> 5. In plain terms thus, the assessee did not simply rent a commercial space without any additional responsibilities. The assessee executed lease and license agreements and also provided range of common facilities and amenities upon which the occupiers could run their business from the leased out premises. The charges for such amenities were also broken down in two parts. Charges for several common amenities was included in the rentals. Only on the consumption based amenity such as

> electricity, the occupant would be charged separately.
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> 6. All factors thus clearly indicate that assessee desired to enter into a business of renting out commercial space to interested individuals and business houses. The revenue however strongly relied on the decision of Supreme Court in case of ***Raj Dadarkar & Associates Vs. Assistant Commissioner of Income-tax, reported in (2017) 81 taxmann.com 193***. It was however case in which on facts the Supreme Court held that the assessee was not engaged in systematic activity of providing service to occupiers of the shops so as to constitute the receipt as business income.
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> 7. In the result the Income Tax Appeal is dismissed."

3. In the result, this appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**

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