

In the High Court of Judicature at Madras

Dated : 17.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.437 to 439 of 2017 &
CMP.Nos.10928 & 10929 of 2017

Principal Commissioner of Income
Tax-4, Chennai-34 ...Appellant/Appellant

Vs

M/s.Khivraj Tech Park Limited,
Chennai-32 ...Respondent/Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 24.8.2016 made in ITA.Nos.1181 to 1183/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench respectively for the assessment years 2009-10, 2010-11 and 2011-12,

and preferred against the order of the Commissioner of Income Tax (Appeal)-II Chennai-34 dated 03.11.2014 made in ITA Nos.1526 & 723/2013-14 & 171/2014-15 for the Assessment Year 2009-2010, 2010-11, & 2011-12 and against the order of the Deputy commissioner of Income Tax, Company Circle-II(4), Chennai-34 dated 31.3.2014 made in PAN/GIR No.AACCK4418P, for the Assessment Year 2010-2011 and against the order of the Assistant Commissioner of Income Tax, Chennai-34 dated 31.3.2013 & 30.12.2011 made in PAN/GIR No.AACCK4418 P for the Assessment Year 2009-10 & 2010-11.

For Appellant :Mr.Karthi Ranganathan, SSC

For Respondent : Mr.N.V.Balaji

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel for the appellant - Revenue and Mr.N.V.Balaji learned counsel appearing for the respondent - assessee.

2. These appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 24.8.2016 made in ITA.Nos.1181 to 1183/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench respectively for the assessment years 2009-10, 2010-11 and 2011-12.

3. The Revenue has filed these appeals by raising the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal is correct in upholding the order of the CIT(A) directing the Assessing Officer to treat the rental income from the letting out of property as 'business income' and to allow the claim on deduction under Section 80IA(4)(iii) of the Income Tax Act ?

ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the rental receipts to be assessed under the head 'income from business' when the assessee was not engaged in any business activity and as the condition for chargeability of property income as provided under the provision of Section 22 of the Income Tax Act are satisfied in the present case and thereby to be assessed under the head 'income from house property' only?

iii. Whether, on the facts and circumstances of the case, the Appellate

Tribunal was correct in disregarding the fact that the assessee has not developed or developed and maintained an industrial park by 31.3.2006 as stipulated by the Industrial Park Scheme-2002 and hence, the same has not yet been notified by the CBDT, therefore, the assessee is not eligible for claiming deduction under Section 80IA(4)(iii) of the Income Tax Act?

iv. Whether the Appellate Tribunal is right in not following the ratio of the Apex Court's decision in Keyaram Hotels Vs. CIT [reported in (2015) 63 Taxmann.com 301 (SC)] wherein the Apex Court has upheld the Madras High Court's decision reported in 373 ITR 494 that where the assessee was not engaged in any business activity, rental income earned out of letting out of commercial complex would be assessed as 'income from house property' and not as 'business income' and further, whether non appreciation/ignorance of the ratio of decision of the Hon'ble Apex Court, while deciding the issue, had made the order of the Tribunal perverse, both in law and facts? And

v. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the rental income of the assessee will qualify for deduction under Section 80IA without giving a clear finding that such income is 'derived from' the eligible business of the assessee and ignoring the Hon'ble Supreme Court judgments?" सत्यमेव जयते

4. The learned Senior Standing Counsel for the appellant has produced a letter in Corporate Circle 4(2)/2017-18 dated 05.1.2018 issued by the Deputy Commissioner of Income Tax, Corporate Circle 4(2), Chennai-34 stating that the approval notification from the Central Board of Direct Taxes in respect of deduction under Section 80IA(4) of the Act has been received for the respondent and he submits that he has been instructed to withdraw these appeals.

5. The said submission of the learned Senior Standing Counsel for the Revenue is recorded. The letter dated 05.1.2018 is placed on record. The above tax case appeals are dismissed as withdrawn. The substantial questions of law are left open. Consequently, the connected CMPs are also dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Member,
Income Tax Appellate Tribunal,
Chennai 'B' Bench.
- 2.The Commissioner of Income Tax (Appeals-II),
Chennai-34.
- 3.The Deputy Commissioner of Income Tax,
Company Circle-II(4),
Chennai-34.
- 4.The Assistant Commissioner of Income Tax
Company Circle-II(4),
Chennai-34.

+3cc to Thiru Karthi Ranganathan, Advocate Sr.60493 to 60495
+1cc to Thiru N.V.Balaji, Advocate Sr.62004

mr[col]
srg 26/08/2019

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