IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.901 of 2015

The Commissioner of Income Tax,
Chennai.
...Appellant

.Vs.

M/s. Tidel Park Ltd.,
C/o.M/s.R. Janakiraman & Co., C.A.,
6, Old No.43, Maharaja Suriya Road,
Alwarpet,
Chennai 600 018.
...Respondent

Prayer: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "B" Bench, dated 27.09.2013 in ITA.No.2122/Mds/2011 as against the order of the Commissioner of Income Tax(Appeals)- VI 121, Mahatma Gandhi Road, Chennai - 600 034 made in ITA No.56/11-12 dated 30-09-2011 as against the order the Assistant Commissioner of Income Tax Company circle-III(2), Chennai - 600 034 in GIR No/PAN AABCTO666R dated 31/12/2010 for the Assessment year 2008-09.

For Appellant : Mr.M. Swaminathan,
Sr. Standing Counsel

For Respondent : Mr.R. Venkatnarayanan for
Mr. Subbaraya Aiyar

ORDER

(Delivered by Dr.Vineet Kothari, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. The Revenue has filed the present appeal aggrieved by the order of the learned Income Tax Appellate Tribunal, Madras "B" Bench, dated 27.09.20213 in ITA.No.2122/Mds/2011 for the assessment years, 2008-09, dismissing the appeal of the Revenue and upholding the order of the learned Commissioner of Income Tax (Appeals) VI, Chennai, dated 30.09.2011 for the assessment year 2008-09 and holding that except the interest income of Rs. 7,74,19,358/- and other income of Rs. 21,29,999/-, rest of the incomes are assessable under the head "income from business" for the purpose of computing deduction under section 801A(4) of the Act and to treat interest income and other income only under the head "income from other sources" and allow deduction under section 80IA on rest of the incomes i.e., rent from premises, operation and maintenance income etc.

3. The following purported substantial questions of law are sought to be raised in the present appeals filed by the Revenue :-

1. Whether on the facts and circumstance of the case the Tribunal was right in holding that the income derived from letting out of property to tenant for the purpose of running technological park is income from business and not income from house property?"

2. Whether on the facts and circumstances of the case the assessee is entitled to deduction u/s.80IA (4)(iii) on rental income and lease rent income of the industrial park which is mean for I.T.industries?"

4. The findings of the Tribunal, in this regard, are quoted as under:

> "10. We also find that an identical issue came up before the Hon'ble jurisidictional High Court in the case of CIT Vs. Elnet Technologies Ltd. in Tax Case Appeal Nos.391 & 392 of 2007, wherein the High Court following its earlier order in TCA Nos.2336 and 2623 of 2006 and 2169 of 2008 dated 9.10.2012 held that the income received from leasing out of the property with all amenities and facilities would be only income from business and not to be assessed either as 'income from house property' or as 'income from other sources'. Respectfully following the said decision, we uphold the order of the Commissioner of Income Tax (Appeals) in holding that lease rent income from

modules/ built-up space of the industrial park is assessable under the head 'income from business' and such income is eligible for deduction under section 801A of the Act.

11. Further, the co-ordinate Bench of this Tribunal in the case of ACIT Vs. Ticel Bio Park Ltd. (supra) affirming the order of the Commissioner of Income Tax (Appeals) held that rental income, operation and maintenance income, a/c. charges, electricity charges are eligible for deduction under section 80IA(4) of the Act.

12. Following the decision of the Hon'ble Madras High Court in the case of Elnet Technolgies Pvt.Ltd (supra) and the decision of the co-ordinate Bench of this Tribunal in the case of Ticel Bio Park Ltd. (supra), we hold that except the interest income of Rs.7,74,19,358/- and other income of Rs.21,29,999/- rest of the incomes are assessable under the head "income from business" for the purpose of computing deduction under section 801A(4) of the Act Therefore, we direct the Assessing Officer to treat interest income and other income only under the head "income from other sources" and allow deduction under section 801A on rest of the incomes, i.e. rent from premises, operation and maintenance income, revenue sharing income, common facilities such as rent from auditorium and rent from others."

5. The issues raised in this appeal are already covered by an earlier decision of this Court rendered in Principal Commissioner of Income Tax 4 v. M/s. Khivraj Motors Pvt. Ltd. [TCA.Nos.314 and 315 of 2017 dated 27.7.2020], wherein, this Court following the ratio laid down in M/s. PSTS Heavy Lift and Shift Ltd., Wavoo Mansion, 2nd Floor 48, (Old No.39), Rajaji Salai vs. M/s. CeeDeeYes IT Parks Pvt. Ltd., decided on 30 January 2020, in Tax Case Appeal Nos.2193 to 2195 of 2008 & 979 of 2009, held as follows:

> "6. Though the learned counsel for the Revenue Mr.Karthik Ranganathan, sought to urge before us that the development of I.T. Park was not the main business activity of the Assessee company, he failed to establish his contention with the help of any relevant evidence, including the memorandum of association of the company or any other relevant documents.
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> 7. On the contrary, we found from the

discussion in the order of the Commissioner of Income Tax (Appeals) as well as the learned Tribunal that the Assessee has not only shown part of its income as income from other property, but has only allowed the claim of the Assessee to tax the income from the software companies in the form of lease rentals from Olympia Tech Park as income from business and thereupon allowing this deduction under Section 80IA of the Act, which is allowed only if the income from business is taxed under the head "Income from business" at the hands of the Assessee. We do not find any material on record to establish that such income of the Assessee during the relevant year was from any of its idle properties and the Assessee company used to enjoy such properties as a landlord from only earning the rental income.

8. On the contrary, it seems that the Assessee diversified and added its business line for the development of real estate of particular type, namely software companies and even though the name of the company continue to remain as M/s. Khivraj Motors Pvt. Ltd. The burden of the argument of the learned counsel for the Revenue, perhaps emanated from only the name of the company, forgetting that the main business activity of the company from its motor business had been diversified into developing a special kinds of property and earning lease rental income as its main business income. By no stretch of imagination, could a software park developed with the special facilities and amenities for software companies, be described or believed to be a property created for earning rental income as income from house property. The Tribunal not only relied upon an earlier decision of Madras High Court in the case of CIT v. Elnet Technologies Ltd. [(2012) 213 Taxman 129], but also having considered all these aspects in great detail, the Division Bench of this Court to which one of us (VKJ) was a member, in M/s. PSTS Heavy Lift and Shift Ltd., had clearly held that where the main business of the company is to earn rental income as its business income, the income would be taxable under the head "Income" entitling the petitioner Assessee to have the deductions of notional expenses like depreciation and special

deductions like Section 80IA etc."

5. Following the above decision, this appeal of the revenue is also dismissed on the above lines. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr/kpl

To

1.The Income Tax Appellate Tribunal,
Madras B Bench

2.The Commissioner of Income Tax(Appeals)- VI
121, Mahatma Gandhi Road,
Chennai - 600 034.

3.The Commissioner of Income Tax,
Chennai.

4.The Assistant Commissioner of Income Tax,
Company Circle - III(2),
Chennai - 600 034.

+1cc to M/s.Subbaraya Aiyar, Advocate, SR.No.25908

T.C.A.No.901 of 2015

SPD(CO)
RN(22/10/2020)