

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

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

Tax Case Appeal Nos.732 & 733 of 2018

Commissioner of Income Tax,
Corporate Circle - III(1),
Chennai-600 034 .. Appellant in both TCAs

versus

M/s.Tidel Park Limited,
No.4, Rajiv Gandhi Salai,
Taramani,
Chennai - 600 013. .. Respondent in both TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the common order made in ITA Nos.1808 & 1809/Chny/2017 dated 04.04.2018 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai, for the Assessment Years 2011-12 and 2012-13.

Against the order dt.28.4.17 made in ITA.Nos.41/14-15 & 141/15-16 CIT(A)-II on the file of the Commissioner of Income Tax (Appeals)-II, Chennai for the Assessment Year 2011-12, 2012-13.

Against the order dt.27.3.15 and 11.3.2014 made in GIR No/PAN No.AABCT06666R on the file of the Assistant Commissioner of Income Tax Corporate Circle -3 (1) Chennai and the Deputy Commissioner of Income Tax, Company Circle-III (2) Chennai for the Assessment Year 2012-13, 2011-12 respectively.

For Appellant : Mr.M.Swaminathan
in both TCAs Senior Standing Counsel
Assisted by Mrs.V.Pushpa
Standing Counsel

For Respondent : Mr.R.Vijayaraghavan, Sr. Counsel
in both TCAs

COMMON JUDGMENT

T.S.SIVAGNANAM, J.

These appeals at the instance of the revenue filed under
<https://hcservices.ecourts.gov.in/hcservices/> section 260A of the Income Tax Act, 1961 (the 'Act' for

brevity), are directed against the common order passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai in ITA Nos.1700 & 1701/Chny/2017 dated 04.04.2018 for the Assessment Years 2011-12 and 2012-13.

2. The appeals were admitted on 04.03.2020 on the following Substantial Questions of Law.

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income derived from letting out of property to the tenants as income from business in the hands of the owner of the property?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that disallowance u/s.14A read with Rule 8D should be restricted to the extent of exempted income especially when neither Section 14A nor Rule 8D provide for any such restriction?"

3. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant/revenue, assisted by Mrs.V.Pushpa, learned Standing Counsel for the appellant/revenue and Mr.R.Vijayaraghavan, learned Senior Counsel for the respondent/assessee.

4. We take up for consideration the substantial question of law no.2 referred above. The tribunal in paragraph No.8.1, held that the Assessing Officer is not justified in making excessive disallowance and that the CIT(A) rightly restricted the disallowance to the extent the dividend income declared by the assessee. In fact the tribunal records that the revenue could not controvert the findings rendered by the High Court of Delhi in the case of Joint Investments Private Limited Vs. CIT, reported in (2015) 372 ITR 0694 (Del).

5. It is relevant to point out that in the said decision the Division Bench of the Delhi High Court referred the decision in the case of Commissioner of Income Tax VI Vs. Taikisha Engineering India Limited [ITA No.115/2014 decided on 25.11.2014]

6. Further, the Bombay High Court in the case of Godrej & Boyce Manufacturing Company Limited, Mumbai Vs. Deputy Commissioner of Income Tax, reported in (2010) 328 ITR 0081, has elaborated the procedure to be followed by the Assessing Officer under Section 14A in the following terms.

"The following principles would emerge from s.

14A : (a) the mandate of s. 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income of the assessee; (b) sec. 14A(1) is enacted to ensure that

only expenses incurred in respect of earning taxable income are allowed; (c) the principle of apportionment of expenses is widened by s. 14A to include even the apportionment of expenditure between taxable and non-taxable income of an indivisible business; (d) the basic principle of taxation is to tax net income. This principle applies even for the purposes of s. 14A and expenses towards non-taxable income must be excluded; (e) once a proximate cause for disallowance is established—which is the relationship of the expenditure with income which does not form part of the total income—a disallowance has to be effected. All expenditure incurred in relation to income which does not form part of the total income under the provisions of the Act has to be disallowed under s. 14A. Income which does not form part of the total income is broadly adverted to as exempt income as an abbreviated appellation. Under sub-s. (2), the AO is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in s. 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the AO to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the AO is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income. Moreover, the satisfaction of the AO has to be arrived at, having regard to the accounts of the assessee. Hence, sub-s. (2) does not ipso facto enable the AO to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The AO must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the AO must be arrived at on an objective basis. It is only when the AO is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. Sub-s. (3) of s. 14A provides for the application of sub-s. (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to

income which does not form part of the total income under the Act.

7. The above legal position has been rightly followed by the tribunal while deciding the assessee's case and therefore, rightly dismissed the appeal filed by the revenue. Thus, we find that the Substantial Question of Law No.2 has to be answered against the revenue and in favour of the assessee.

8. So far as Substantial Question of Law No.1 is concerned, it has to be seen as to whether the income derived from letting out of the property in an industrial park/SEZ including the amenities and the income received by the owners for such property and the amenities therein would be business income in the hands of the owner of the property.

9. We need not labour much on this issue, on account of the circular No.16 of 2017 issued by the CBDT dated 25.04.2017. The CBDT after taking note of the two decisions of the Karnataka High Court held that it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out the premises / developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

10. As rightly pointed out by Mr.R.Vijaya Raghavan, the emphasis is on not only letting out of the premises / developed space but along with other facilities in an industrial park/SEZ. The tribunal in this regard followed a decision of the Division Bench of this Court in the case of CIT Vs. Elnet Technologies Limited, reported in (2013) 30 Taxmann.com 63 (Mad). In the said decision, at paragraph No.11, the Division Bench, has held as follows:

"11. In considering whether the income arising on the leasing of the property was business of the assessee, one has to get into the nature of the business of the assessee, to find out the receipts are assessable under the head of income from house property or as business income and if receipts does not fall in any of those classified heads, would fall consideration under the residuary head of income as income from other sources."

11. After referring to the decision in the case of CIT Vs. Chennai Properties and Investments Limited, reported in (2005) 274 ITR 117, it was pointed out that income derived from letting out of the property with all amenities and facilities would be income from business and cannot be assessed either as income from house property or as income from other sources. The said decision of the Hon'ble Division Bench was appealed against by the revenue before the Hon'ble

Supreme Court in SLP No.11638 of 2013 and we are informed that the appeal was dismissed on 27.01.2020 on the ground of Low Tax Effect.

12. Considering all those facts as wells as the circular issued by CBDT, substantial question of law No.1, has to be answered against the revenue and in favour of the assessee. The Tax Case Appeals are dismissed and the Substantial Questions of Law are answered against the revenue. No Costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
A Bench, Chennai.

2.The Deputy Commissioner of Income Tax,
Company Circle - III(2),
Chennai.

3.The Assistant Commissioner of Income Tax,
Corporate Circle - III(1).

4.The Commissioner of Income Tax,
Appeals II, Chennai.

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