Order dt.04.08.2020 in
TCA Nos.314 & 315/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

TCA Nos.314 and 315 of 2017 and CMP8709/2017

Principal Commissioner of Income Tax 4,
No.121,Mahatma Gandhi Road,
Chennai - 600 034. ... Appellant

vs.

M/s. Khivraj Motors Pvt. Ltd,
623, Anna Salai,
Chennai - 600 006. ... Respondent

Prayer::- Appeal filed against the order of the Income Tax Appellate Tribunal, Madras B Bench, dated 5.8.2016 in ITA Nos.1179/Mds/2015 and 1180/Mds/2015.

For appellant : Mr.Karthik Ranganathan

For respondent :Mr.N.V.Balaji

COMMON JUDGMENT

(Made 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 residence and the counsel, staff of the Court appearing from their respective residences.

2. The matter was listed today under the caption "for Being Mentioned", as it is brought to our notice that in paragraph 4 of the order dated 27.07.2020, the reference to paragraph 4 of the order of the Tribunal ought to have been made, instead of paragraph 10 of the order of the Tribunal.

3. In view of the above, paragraph 4 of our earlier order dated 27.07.2020, extracting wrongly paragraph 10 of the Tribunal's order instead of paragraph 4, which is a bona fide typing error, is substituted as under:

"4. The finding of the learned Tribunal in this regard are quoted below from its order:

"4.We have considered the rival submissions on either side and perused the relevant material

available on record. The assessee admittedly developed a technology park by name "Olympia Tech Park", which is exclusively meant for developing software and I.T. enabled services. The assessee, apart from the building, has also provided infrastructure facilities such as specialized air-conditioners, specialized cabling, specialized electrical fittings, specialized furniture in the form of business modules, etc. Therefore, it has to be construed as infrastructure facility with all specifications and requirements. Therefore, the CIT(Appeals) has rightly placed reliance on the judgment of Madras High Court in Elnet Technologies Ltd. (supra). As rightly submitted by the Ld. representative for the assessee, the judgment of Madras High Court in Chennai Properties & Investments Ltd. (supra) was reversed by the Apex Court. The Apex Court found that when the assessee let out the property as business, the rental income *has to be assessed as income from business. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed."*

(V.K.J.) (K.R.J.)
04.08.2020

Note:

Registry is directed to remove the already uploaded order from the website and to upload the corrected order again.

Sd/kpl

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DR.VINEET KOTHARI,J,
and
KRISHNAN RAMASAMY,J

Sd

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