

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HON'BLE MR.JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Tax Case (Appeal) No.977 of 2010

Judgment reserved on 24.02.2021	Judgment pronounced on 23.03.2021
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Commissioner of Income tax III,
Chennai. ... Appellant

Vs.

M/s.Shriram Properties Pvt. Ltd
C-2 III Floor Sindur Tower,
No.160 Luz Church Road, Mylapore,
Chennai-600 004. ... 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, Chennai Bench "B", dated 23.04.2010 in I.T.A.No.1520/Mds/2009 for the assessment year 2002-2003 preferred against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai-34 dated 06/08/2008 made in ITA No.207/05-06 preferred against the order passed by the Deputy Commissioner of Income Tax, Company Circle-VI(2), Chennai dated 30/03/2005 for the assessment year 2002-03.

For Appellant : Mr.J.Narayanaswamy
Senior Standing counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT

T.V.THAMILSELVI, J.

This appeal has been filed by the appellant under Section 260A of the Income Tax Act, 1961, against the order of the Income-Tax Appellate Tribunal, Chennai Bench "B", dated

23.04.2010 in I.T.A.No.1520/Mds/2009 for the assessment year 2002-2003.

2. Facts of the case are as follows:

The assessment of the assessee company under Section 143 (3) r/w 147 was completed on 30.03.2005 on a total income of Rs.47,55,709/-. In the assessment order, the Assessing Officer held that the assessee / company was in the business of Real Estate development and loss on account of sale / redemption of Mutual Fund unit could not be set off under the head of " Income from business". Aggrieved by the Assessment order, the assessee filed an appeal before the Commissioner of Income tax (Appeals) in ITA.207/05-06. In the said appeal with regard to loss on sale of investment, the assessee contended that, as per the Memorandum and Article of Association of the assessee company, it could be seen that Clauses 6, 9 and 26 incorporated the objects to purchase, acquire, sell and deal in property, shares, stocks, debited stocks and other security. The assessee contended that Mutual Fund unit had been held as business assets and therefore, the loss on redemption would be "business loss".

3. The Commissioner of Income Tax (Appeals) agreed with these contentions and allowed the assessee's appeal. Aggrieved by the order of the Commissioner of Income Tax, the Revenue filed an appeal before the Income Tax Appellate Tribunal, in ITA.No.1520 /Mds/2009. The Tribunal concluded that the assessee company was authorised by its Memorandum and Article of Association to invest in Mutual Funds and also the Mutual fund unit had been held as business assets by the assessee company. Accordingly, the Tribunal held that the sale or redemption of the mutual fund would result in business loss and dismissed the Revenue's appeal. Aggrieved by the order, the Revenue has preferred this appeal.

4. Heard Mr.J.Narayanaswamy, learned Senior Standing counsel for the appellant and Mr.R.Sivaraman learned counsel for the Respondent.

5. The above Tax Case Appeal was admitted, vide order dated 25.10.2010 on the following substantial Question of law:

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was holding the Mutual Fund units as stock-in-trade and not as investments on the ground that the Memorandum and Articles of Association authorized the assessee to invest in Mutual Funds even though the transactions in Mutual Fund units were booked in the accounts as investments only ?"

6. The learned standing counsel appearing for the appellant contended that the main object of the assessee company

is to promote real estate development, and while submitting its return of income on 31.10.2002, in its profit and loss account, it debited an amount of Rs.4,08,63,486/- describing it as loss on redemption /sale of investment/ assets from Schedule -V to the Balance Sheet. The assessee's investment in mutual fund is shown as reduction in value and it is evident that the said loss of Rs.4,08,63,486/- was on account of redemption of the mutual fund units. These units were held by the assessee as investments. But, the assessee is in the business of real estate development, and loss on account of sale of investment being the capital loss, cannot be allowed as business loss. So, the said loss was allowed to be carried forward as "capital loss" and the assessment order to that effect is valid one. But, the Appellate Authorities erroneously concluded that the assessee company's transaction in such Mutual fund unit comes under the head of "income from the business" for the reason that investment in mutual fund is not the main object of the company and investment in the shares, was included as ancillary by incorporating it in the additional ancillary object in the Memorandum / Articles of Association.

7. Per contra, the learned counsel for the respondent submitted that, ancillary object has been incorporated in the Memorandum / Article. As per clauses 6,9 and 26 incorporated in the Memorandum / Articles of association, the assessee company was authorised to invest in mutual funds and also such mutual fund units have been held as "business assets" by the assessee company, hence, the sale or redemption of the concerned mutual fund units, would result in a business loss and this was rightly accepted by the Appellate authorities and the learned counsel for the respondent prayed for the dismissal of the appeal.

8. In the Memorandum of association of Shriram Properties Private Limited the main object of the company has been mentioned as - "To carry on the business of developers maintenance, upkeepers, designers, consultants managers and to under take all kinds of infrastructural development projects such as buildings, group housing projects, construction projects.....". Thus, the main object of the business is Real Estate Development and the same was also admitted by the assessee while submitting its Return to the Income Tax Department. Therefore, the main object of the assessee company is to promote the real estate and not to make investments in mutual funds in any financial service company etc.

9. Even as per the incorporated ancillary clauses [(B)- the objects incidental or ancillary for the attainment of main object] the assessee company is authorised to invest, share in the company for the attainment of main object to promote the real estate business. But as per their own written statement,

they made an investment in Shri Ram Transport Finance Corporation which is the brother concern of the assessee company and in Medicorp Tech. Ltd., who are all not having similar objects i.e., Promoting Real Estate Development.

10. Thus the learned counsel for the appellant submitted that the investment made in the mutual fund units by the assessee company is deviated from the main object, and therefore, any loss arising out of sale / redemption of any such asset would only be "capital loss".

11. The learned counsel for the respondent relied on the judgment in the case of Calibre Financial Services Ltd., v. Income Tax Officer, Company Ward-1(1), Chennai reported in (2018) 100 taxmann.com 415 (Madras) and argued that the loss of income from the transaction relating to the mutual fund units, is the capital loss. But on perusal of the above judgment, it reveals that the assessee in that case is a "Calibre Financial services limited". Even as per the Memorandum of Association of that company, "it authorised the company to deal in shares and stocks vide its main object clause". However, in the instant case, the main object of the assessee company as well as the nature of the business is Promotion of Real Estate and not any financial services. Hence the aforesaid judgment would not support the case of the respondent.

12. Yet another judgment relied by the learned counsel for the respondent in Commissioner of Income-Tax-IV v. Devasan Investment (P.) Ltd., reported in (2015)53 taxmann.com 219 (SC) is also not applicable to the facts of the case for the aforesaid reason. Moreover, the nomenclature of the assessee company itself is Shriram Properties Private Limited with its main object to promote the real estate, construction of building etc.,

13. But the assessee company very much relied on the ancillary object which was incorporated in Memorandum and Article of Association, but, it is settled proposition that the ancillary clause always should sail along with the main object of the company for which, it was formulated. The Senior Standing Counsel appearing for the appellant in support of his contention relied upon the judgment of the Hon'ble Supreme Court of India in the case of Chennai Properties and Investment limited vs. Commissioner of Income-Tax, Central-III, Tamil Nadu, reported in (2015) 56 taxmaan.com 456(SC), which reads as follows:-

"The appellant -assessee is a company incorporated under the Indian Companies Act. Its main objective, as stated in the Memorandum of Association, is to acquire the properties in the city

of Madras (now Chennai) and to let out those properties. The assessee had rented out such properties and the rental income received therefrom was shown as income from business in the return filed by the assessee. The assessing officer, however, refused to tax the same as business income. According to the assessing officer, however, refused to tax the same as business income. According to the assessing officer, since the income was received from letting out of the properties, it was in the nature of rental income. He, thus, held that it would be treated as income from house property and taxed the same accordingly under that Head.

2. The assessed filed the appeal before the Commissioner of Income Tax (Appeals) who allowed the same by his orders dated 06.04.1989 holding it to be income from business and directed that it should be treated as such and taxed accordingly. Aggrieved by that order, the Department filed appeal before the Income Tax Appellate Tribunal which declined to interfere with the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal. The Department approached the High Court. This appeal of the Department has been allowed by the High Court vide its order dated 05.09.2002 holding that the income derived by letting out of the properties would not be income from business but could be assessed only income from house property.

5. The Memorandum of Association of the appellant - company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasise is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the assessing officer himself in his order.

11. We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."

14. The judgment of the Hon'ble Supreme Court cited supra squarely applies the facts of the present case.

15. The assessee is in the business of Real Estate and the investment in the mutual fund units is neither the main activity of the company nor it could be treated as "stock in trade" for the said business. Therefore, the loss on account of sale / redemption of mutual fund can not be treated as a business loss. In these circumstances the order of the Tribunal is liable to be set aside. Accordingly, the same is set aside. The substantial question of law is decided infavour of the Revenue - Appellant.

16. In the result, the Tax Case appeal is allowed. No costs.

Sd/-
Assistant Registrar

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सत्यमेव जयते Sub Assistant Registrar

RRI

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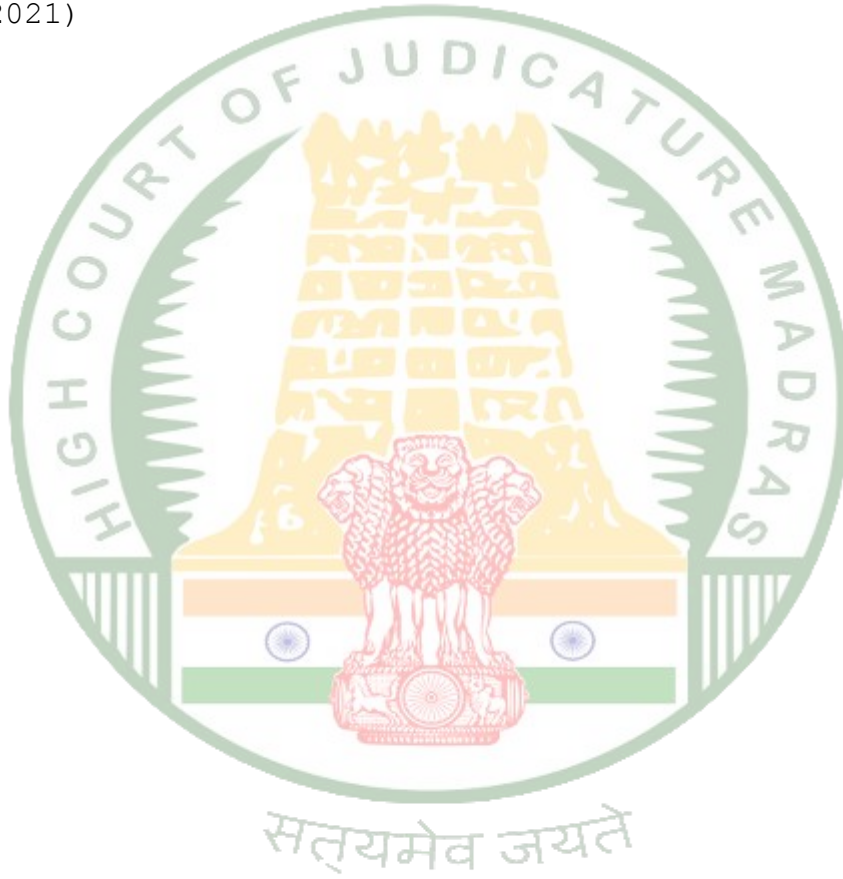
1. The Income Tax Appellate Tribunal "B" Bench, Chennai.
2. The Commissioner of Income Tax III, Chennai.
3. The Commissioner of Income Tax (Appeals)-V, Chennai-34.

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

5. The Assistant Commissioner of Income Tax
Company Circle-VI(2),
Nungambakkam, Chennai.

Judgment in
Tax Case Appeal No.977 of 2010

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