



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.Nos.136 to 139 of 2016

The Commissioner of Income Tax,
Central - 1,
No.108, Nungambakkam HighRoad,
Chennai - 600 034.

...Appellant in all 4 TCAs

Vs.

M/s.Rishabh Infopark Pvt. Ltd.,
Super A-16 & A-17,
Thiru.Vi.Ka Industrial Estate,
Guindy,
Chennai - 600 032.

...Respondent in all 4 TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 15.05.2015 in I.T.A.Nos.831, 832 & 1900/Mds/2012 for the Assessment Year 2007-08, 2008-09, 2009-10 and C.O.No.192/Mds/2012 in I.T.A.No.190/Mds/2012 for the Assessment Year 2009-10 against the order of the Commissioner of Income Tax (Appeals)-V Chennai-34 dated 31.01.2012 for the Assessment years 2007-2008 and 2008-2009 in ITA No.106/2010-2011 and ITA No.105/2010-2011 dated 31.01.2012 and ITA No.398/2011-2012 dated 31.07.2012 for the Assessment year 2009-2010 against the Assessment orders of the Income Tax Office (OSD) Company Circle V(4), Chennai dated 18.11.2010 and the order of the Commissioner of Income Tax Company Circle V(4), Chennai-34 dated 18.11.2010 & 21.12.2011 for the assessment year 2007-2008, 2008-2009 and 2009-2010 respectively.

For Appellant : Mr.T.R.Senthil Kumar
(in all 4 TCAs) Senior Standing Counsel
and Mrs.K.G.Usha Rani
Junior Standing Counsel

For Respondent : Mr.Siddharth Govind
(in all 4 TCAs) for Nithayesh & Vaibhav



COMMON JUDGMENT
(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the orders passed in I.T.A.Nos.831, 832 & 1900/Mds/2012 and C.O.No.192/ Mds/2012 in I.T.A.No.1900/Mds/2012 in respect of the Assessment Years 2007-08, 2008-09, 2009-10 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench, the Revenue has filed the above appeals.

2.The only issue in the appeals of the Revenue is that the Income Tax Appellate Tribunal erred in holding that the lease rent income received from letting out modules of Software Technology park to various lessees would constitute income from business and eligible for deduction under Section 80IA of the Act.

3.The above appeals were admitted on the following substantial questions of law:

Common questions in all TCAs:

"a)Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the income from letting out of building as 'income from business' assessable under Section 28 of the Income Tax Act?

b)Whether the Appellate Tribunal was correct in not appreciating the fact that the services rendered by landlord and therefore do not partake the character of 'business'?

Common question in T.C.A.Nos.138 & 139 of 2016:

c)Whether the Appellate Tribunal is correct in allowing the claim of interest under Section 36(1)(iii) under the head 'business' to the extent expended for the purpose of business?"

4.When the appeals were taken up for hearing, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant/ Revenue fairly submitted that the questions of law that arose for consideration in the above appeals were already decided against the Revenue and in favour of the assessee in the judgment dated 14.06.2021 made in T.C.A.No.16 of 2014 [The Commissioner of Income Tax, Chennai. Vs. M/s. Tidal Park Ltd., 4, Rajiv Gandhi Salai, Taramani, Chennai - 600 113] wherein this Bench held as follows:

"...

2.The above appeal was admitted on the following substantial questions of law:



"Whether the Tribunal was right in holding that the income derived from letting out of property to the tenants for the purpose of running a software technology park is 'income from business'?"

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3. When the appeal is taken up for hearing, Mr. M. Swaminathan, learned Senior Standing Counsel for the appellant/Revenue fairly submitted that the issue involved in the above appeal has already been decided by the Hon'ble Division Bench of this Court, by its Judgment dated 07.07.2020 in T.C.A. No. 732 & 733 of 2018, wherein the Hon'ble Division Bench held as follows:-

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



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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.

Further, the learned Senior Standing Counsel submitted that in view of the ratio laid down by the Hon'ble Davison Bench of this Court in the Judgement cited supra, the question of law that has been raised by the Revenue in this appeal may be decided against the Revenue and in favour of the respondent/assessee.

4.Mr.Vijayaraghavan Vikram, learned counsel appearing for the respondent submitted that in view of the Judgement of the Division Bench of this court cited supra, the appeal may be dismissed.

5.Having regard to the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Division Bench of this Court reported in T.C.A.No.732 and 733 of 2018, the questions of law is decided against the appellant/Revenue and in favour of the respondent/assessee. Accordingly, the Tax Case Appeal is dismissed. No costs."



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5.Mr.Vikram Vijayaraghavan, learned counsel appearing for the respondent/assessee submitted that in view of the judgment of the Division Bench of this Court made in T.C.A.No.16 of 2014, the appeals may be dismissed.

6.Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the judgment dated 14.06.2021 made in T.C.A.No.16 of 2014 (cited supra), the questions of law are decided against the Revenue and in favour of the assessee. Accordingly, the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Registrar,
The Income Tax Appellate Tribunal,
Chennai, "C" Bench, Chennai.
- 2.The Commissioner of Income Tax (Appeals)-V
Central-I, Chennai - 34.
- 3.The Assistant Commissioner of Income Tax,
Company Circle-V(4),Chennai-34.
- 4.The Income Tax Officer(OSD),
Company Circle V (4),Chennai.

+1cc to M/s.T.R.Senthilkumar, Advocate, S.R.No.33798

T.C.A.Nos.136 to 139 of 2016
(2/3)

PPA(CO)
RGA(24/08/2021)