IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.07.2021

CORAM:

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

T.C.A.Nos.887 to 889 of 2016

The Commissioner of Income Tax,
Company Circle III (2)
Chennai - 600 034. ... Appellant in all TCAs

Vs.

M/s.Tidel Park Limited,
No.4, Rajiv Gandhi Salai,
Taramani, Chennai - 600 113. ... Respondent in all TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 19.02.2016 in I.T.A.Nos.1554, 1555 & 1556/Mds/2014 for the Assessment Year 2006-07 & 2009-10 against the Order of the office of the Commissioner of Income Tax (Appeals)-III dated 17.03.2014 in I.T.A.No.1502/13-14, for the Assessment year 2006-07; dated 24.03.2014 in I.T.A.No.1447/13-14, for the Assessment year 2006-07 and dated 24.03.2014 in I.T.A.No.1446/13-14,for the Assessment year 2009-10, made against the Order dated 08.12.2008, 26.12.2011 and 26.12.2011 in GIR No/PAN AABCT066R passed by the Assistant Commissioner of Income Tax, Company Circle III(2), Chennai-34, respectively.

For Appellant (in all TCAs) : Mr.M.Swaminathan
Senior Standing Counsel
and Mrs.V.Pushpa
Junior Standing Counsel

For Respondent (in all TCAs) : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar

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

Challenging the orders passed in I.T.A.Nos.1554, 1555 & 1556/Mds/2014 in respect of the Assessment Year 2006-07 & 2009-10 on the file of the Income Tax Appellate Tribunal, Chennai, "D" 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:

"a)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?

b)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income from letting out of building comprising of communication and various other facilities as income from 'business' assessable under Section 28?"

4.When the appeals were taken up for hearing, Mrs.V.Pushpa, learned 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'?"

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 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.”

5.Mr.R.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(CS-VII)

// True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Chennai, "D" Bench

2. The Commissioner of Income Tax(Appeals)-III
   Chennai-34

3. The Assistant Commissioner of Income Tax,
   Company Circle (III) 2,
   Chennai - 34

+1cc to Mr.M.Swaminathan , Advocate, S.R.No.34494

T.C.A.Nos.887 to 889 of 2016

AK-II(CO)
SU(06/08/2021)