IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

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

Tax Case Appeal No.16 of 2014

The Commissioner of Income Tax,
Chennai. ... Appellant

v.

M/s. Tidal Park Ltd.,
4, Rajiv Gandhi Salai,
Taramani,
Chennai - 600 113. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 03.06.2013 passed in I.T.A.No.1198/Mds/2010 against the order dated 30/4/10 made in ITA No.591/09-10/A-111 on the file of the Commissioner of Income Tax (Appeals) III Chennai and against the order dated 18/12/09 made in GIR No.PAN AABCT0666R(32335-7) on the file of the Additional Commissioner of Income Tax, Company Circle III Chennai.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondent : Mr. Vijayaraghavan Vikram

J U D G M E N T
(Delivered by M.DURAISWAMY, J.)

Challenging the order dated 03.06.2013 passed by the Income Tax Appellate Tribunal, Madras "D" Bench in I.T.A.No.1198/Mds/2010, in respect of the assessment year 2007-2008, the Revenue has filed the above appeal.

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.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Rj

To

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

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

3. The Additional Commissioner of Income Tax,
   Company Circle -III, Chennai.

+1cc to Mr..M.Swaminathan, Advocate SR.No.27820

+1cc to Mr.Subbaraya Aiyar, Advocate SR.No.27813

Tax Case Appeal No.16 of 2014

RSV(CO)
GMY(09/07/2021)