

OD- 24 & 25

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

IA NO.GA/1/2021
ITAT 66/2021
PRINCIPAL COMMISSIONER OF INCOME
TAX - 1, KOLKATA
-Versus-
M/S. GANESH REALTY AND MALL
DEVELOPMENT PVT. LTD.

IA NO.GA/2/2021
ITAT 66/2021
PRINCIPAL COMMISSIONER OF INCOME
TAX - 1, KOLKATA
-Versus-
M/S. GANESH REALTY AND MALL
DEVELOPMENT PVT. LTD.

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. Vivek Murarka, Adv.
For the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 11th February, 2022.

The Court : We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr. Vivek Murarka, learned standing counsel appearing for the respondent/assessee.

There is delay of 540 days in filing the appeal. We have suggested the learned counsel for the appellant that we are

desirous of hearing the merits of the matter and also put such a suggestion to the learned counsel for the respondent/assessee. As both the learned counsel have agreed, we exercise the discretion and condone the delay in filing the appeal.

Accordingly, the application for condonation of delay being IA No.GA/1/2021 is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed challenging the order dated 22nd July, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) in ITA No.1621/Kol/2017 for the assessment year 2010-11.

The revenue has raised the following substantial questions of law:

- (i) *Whether the Learned Income Tax Appellate Tribunal erred in facts and circumstances of the case and in law in allowing for treatment of income of Rs.45,63,699/- as License fees received on account of letting out of property as "Business Income" instead of House Property Income?*
- (ii) *Whether the Learned Income Tax Appellate Tribunal erred in facts and circumstances and in law in allowing for treatment of income of Rs.1,17,76,064/- received as utility charges on renting of various utility services as "Business Income" instead of "Income from Other Sources"?*
- (iii) *Whether the Learned Income Tax Appellate Tribunal erred in facts and circumstances and in law in allowing for depreciation of Rs.8,04,49,959/- when*

the nature of receipts is not in the nature of Business?

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr. Vivek Murarka, learned standing counsel appearing for the respondent/assessee.

The short question which falls for consideration is whether the treatment of the income as licence fee received on account of letting out of property is business income or income from house property. The Assessing Officer while completing the assessment under Section 143(3) of the Act by order dated 12th March, 2021 held the same to be income from house property. The assessment order was challenged by filing appeal before the Commissioner of Income Tax (Appeals) - 15 [CIT(A)]. The appeal was allowed by order dated 28th April, 2017. Aggrieved by the same, the revenue has preferred appeal before the Tribunal. The Tribunal dismissed the appeal. Challenging the same, the revenue is before us by way of this appeal.

After elaborately hearing the learned counsel for the parties, we are of the clear view that the CIT(A) and the Tribunal were perfectly right in granting relief to the assessee as because the CIT(A) and the Tribunal had taken note of the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investment Vs. CIT [2015] 56 taxmann.com 456(SC). That apart, the Memorandum of Association of the assessee company was also

analysed and on facts it was found that the licence fee and utility services income would be business income and cannot be treated as income from house property. Further, on facts, the CIT(A) and the Tribunal held that the assessee has carried out its business activity of renting of commercial space as per the Memorandum of Association, which was evident from books of accounts which was not disputed by the revenue. Thus, we find that the Tribunal rightly applied the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investment (supra) and dismissed the appeal filed by the revenue.

We find no grounds to interfere with the said order. Accordingly, the appeal fails and the same stands dismissed. Consequently, the substantial questions of law are answered against the revenue.

With the dismissal of this appeal, the stay application (IA No.GA/2/2021) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)