IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case Appeal No.226 of 2012

M/s.Rayala Corporation Pvt. Ltd.,
144/7, Old Mahabalipuram Road,
Kottivakkam,
Chennai - 600 041.
PAN : AAB CR 7230 D

...Appellant

Versus

The Assistant Commissioner of Income Tax,
Company Circle V (3),
Uthamar Gandhi Salai,
Chennai - 600 034.

... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 16.05.2012 in I.T.A.No.1947/Mds/2011 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai for the Assessment Year 2007-2008 against the order dated 24.10.2011 made in ITA.NO.253/10-11 by the Commissioner of Income Tax (Appeals)-VI, 121, Mahathma Gandhi Road, Chennai 600 034 the Assessment Year 2007-2008

as against the order dated 30.09.2009 made in PAN.AABCR7230D/53043 R by the Income Tax Officer(OSD) Company circle -V(3),Chennai for the Assessment Year 2007-2008.

For Appellant : Mr.R.Vijaya Narayanan
for Mr.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.Ravikumar

JUDGMENT

(Judgment of the Court was made by R.MAHADEVAN, J.)

The present Tax Case Appeal has been filed by the appellant/assessee against the order passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai in I.T.A.No.1947/Mds/2011 dated 16.05.2012, relating to the assessment year 2007-08.

2.On 10.08.2012, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is justified in upholding the assessment of the income received by the appellant by way of (a) sub-leasing of already leased out property and (b) maintenance charges as income from house property and not income from business, having regard to the fact that the appellant company is pursuing the main object of the company, as provided in the Memorandum and Objects?

2. Whether the income earned by the appellant by commercial exploitation of sub-leasing leased premises in terms of the Memorandum and Articles of Associations of the appellant company and providing integrated services such as maintenance and further investing the returns in real estate development is assessable as income from business under Section 28 or income from house property under Section 22 of the Income Tax Act?"

3.The learned counsel appearing for the appellant/assessee and the learned standing counsel for the respondent/Revenue jointly submitted that the issues involved herein have already been decided by a Co-ordinate Bench of this court in the appellant's own case, by order dated 26.02.2020 in T.C.A.No.67 of 2020, the relevant paragraphs of which are usefully reproduced hereunder:

"3.This Tax Case Appeal is admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was justified in upholding the assessment of the Income received by the appellant by

a) leasing and renting of immovable properties with all infrastructural facilities with providing maintenance and related activities of the said immovable properties and

b) maintenance charges and air conditioning hire charges

as income from house property and not income from business, having regard to the fact that the appellant company is pursuing the main object of the company as provided in the Memorandum and Objects?

4.Mr.M.Venkat Narayanan, learned counsel for the appellant would submit that in the assessee's own case in "Rayala Corporation Pvt. Ltd ., Vs. Assistant Commissioner of Income Tax" reported in "[2016] 386 ITR 500 (SC)", the Hon'ble Supreme Court has reversed the Judgment of this Court holding that the assessee's income from the house property should be treated as business income and therefore, he would submit that the appeal has to be allowed.

5.However, Mr.T.Ravikumar, learned counsel for the respondent would submit that the issue covered in the Judgment of Supreme Court is only with regard to treating the lease income or rental income from the property of the assessee as income from business or profession. However, the issue regarding the maintenance charges and air conditioning hire charges, land rent, ground rent etc., is not covered in the Judgment of the Hon'ble Supreme Court.

6.A perusal of the Judgment of the Hon'ble Supreme Court would show that it only treats the assessee's income by leasing out the property as income from business and profession as claimed by the assessee. However, the said Judgment does not deal with the income under other heads and no finding has been given by the Hon'ble Supreme Court. Making it clear as stated above, as no finding has been given with regard to any other heads, this Court is of the view that as per the judgment of the Hon'ble Supreme Court, the rental income derived from the house property should be treated as business income. Hence, the question of law viz., 1(a) is answered in favour of the assessee.

7. With regard to question of law viz., 1(b) as to whether income from maintenance charges and air conditioning hire charges should be treated as business income, it should not be treated as business income as it is covered by the Judgement of this Court in the case of "Tarapore & Co. Vs. Commissioner of Income Tax" reported in "(2002) 70 CCH 0748 ChenHC", "(2003) 180 CTR 0472 : (2003) 259 ITR 0389 : (2002) 125 TAXMAN 0446" wherein this Court has held that Service charges received from tenants are liable to be assessed as "income from other sources" and not as "income from house property". Hence, the question of law viz., 1(b) is answered in favour of the Revenue."

4.Following the aforesaid decision, the question of law no.1(a) is answered in favour of the appellant / assessee and the question of law no.1(b) is answered in favour of the respondent / Revenue. Consequently, the second question of law is left open.

5.Accordingly, this tax case appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrr

To

1.Income Tax Appellate Tribunal, 'D' Bench,
Chennai.

2.The Assistant Commissioner of Income Tax,
Company Circle V (3),
Uthamar Gandhi Salai,
Chennai - 600 034.

3.The Commissioner of Income Tax (Appeals)-VI,
121, Mahathma Gandhi Road, Chennai 600 034.

4.The Income Tax Officer(OSD) Company circle -V(3),Chennai.

+1 cc to Mr.T.Ravikumar, Advocate Sr.NO. 28450
+1 cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate Sr.NO. 28966

Tax Case Appeal No.226 of 2012

KV(CO)
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