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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2022

CORAM:

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

T.C.A.Nos.58 to 63 of 2012
and
M.P.Nos.1,1,1,1 and 1 of 2012

The Commissioner of Income Tax – I,
Chennai.
...Appellant in all T.C.As

Versus

M/s.G.V.Foundations Pvt. Ltd.,
New No.101, Old No.48,
1st Avenue,
Indira Nagar, Adyar,
Chennai 20.
...Respondent in all T.C.As

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal 'C' Bench, Chennai dated 08.06.2011 in ITA.Nos.236/Mds/2010, 237/Mds/2010, 238/Mds/2010, 239/Mds/2010, 240/Mds/2010 and 241/Mds/2010 for the assessment years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07.
In all T.C.As.

Preferred against two separate orders passed by The Commissioner of Income Tax (Appeals)-III Chennai 600 034 dated 22/12/2009 made in ITA.Nos.322,323,324/07-08 & 941/06-07 and ITA.Nos.325/07-08 & 53/08-09 A-III preferred against the orders passed by the The Income Tax officer, Company Ward -II(1) Chennai – 600 034 dated 30/11/2006, 26/11/2007 and 02/07/2008 respectively for the assessment years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07.

For Appellant : Mr.Karthik Renganathan
Senior Standing Counsel

For Respondents: Mr.Subbaraya Aiyar Padmanabhan

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COMMON JUDGMENT

(Judgment of the court was delivered by R.MAHADEVAN, J.)

Assailing the common order dated 08.06.2011 passed by the Income Tax Appellate Tribunal in the respective ITA Nos.236 to 241/Mds/2010 relating to the assessment years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07, the Revenue has preferred these tax case appeals.

2.According to the appellant / Revenue, the respondent / assessee had received rental income from M/s.SBI Home Finance Ltd and claimed the same as business income in their returns filed for the assessment years in question. The returns were originally processed under section 143(1) of the Income-tax Act. After scrutiny of the returns, notices under section 148 came to be issued, on the premise that the income from letting out the property owned by the respondent / assessee had to be assessed under the head 'income from house property', based on the decision of the High Court of Madras in the case of CIT v. Chennai Properties and Investments Ltd [(2004) 266 ITR 685 (Mad)]. The respondent / assessee filed its objections stating that the letting of building along with tables and chairs could not be treated as 'income from house property', but as 'business income'. Being dissatisfied with the same, the assessing officer passed the assessment orders, assessing the rental income under the head 'income from house property'. Challenging the same, the respondent / assessee filed appeals before the CIT(A), who placed reliance on the decision of the Hon'ble Supreme Court in the case of Shambu Investments P. Ltd v. CIT (263 ITR 143) and dismissed the appeals. Aggrieved by the same, the respondent / assessee went on further appeals before the ITAT, which accepted the plea of the respondent / assessee that they had given the commercial space only on licence basis and therefore, the income had to be assessed under the head 'business income' and allowed the appeals. Therefore, the Revenue is before this court with these appeals.

3.By order dated 06.07.2012, this court admitted the aforesaid tax case appeals on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the rent received by the assessee from letting out business premises should be assessed as business income even though as per the classification of heads of income under the Income Tax Act, the income was assessable under the head 'Income from House property?"

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4.Heard the learned counsel appearing on either side and also perused the materials placed before this court.

5.Admittedly, the respondent / assessee had let out the commercial premises together with amenities on lease to M/s.SBI Home Finance Limited. The claim of the assessee treating the income received from lease/licencing the business centre as 'business income', was disallowed by the assessing officer by observing that the income received from the house property has to be assessed under the head 'income from house property'. The orders of the assessing officer passed under section 143(3) r/w 147, were also confirmed by the appellate authority. On the other hand, the Tribunal placed reliance on the decision of this court in CIT v. VST Motors Pvt Ltd, [226 ITR 155] and allowed the appeals filed by the respondent / assessee, after having held that the income received from commercial asset is to be treated as 'business income' and not 'income from house property'. The relevant findings of the Tribunal are quoted below for ready reference:

> "...The Hon'ble Jurisdictional High Court in the case of CIT vs. VST Motors Pvt. Ltd (supra) has held as under:
>
> > Held, (i) that inasmuch as the building in question on Mount Road was a commercial asset, the assessee could exploit it either by itself or by letting it to others. Therefore, in a matter like this the fundamental position that had to be ascertained was whether a particular building or premises was a commercial asset or a house property. If the premises were a commercial asset, then the income derived therefrom would amount to business income, otherwise it would be income derived from property assessable under the head "Property income". On the facts, the Tribunal had found in the present case that the property in question was a commercial asset, which was used by the assessee as such in the beginning and later on after shifting its branches to outside stations, the second floor had become surplus and was exploited by the assessee by letting it out to others. Therefore, the rental income derived therefrom was rightly assessable under the head "Business income".
>
> 4.The facts of the above Hon'ble Jurisdictional High Court's decision and the case in hand are same and similar to each other. The decisions on which the

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Department has relied on are in fact on different footing. In that case, the property was actually let out and in one of the case, the assessee had received rent in advance. The perusal of the record reveals that the commercial complex of the assessee has not been let out in the same manner as it is envisaged in section 22 of the Act.....

5.A plain reading of the above section show that there has to be a relation between the owner of the property and the occupier of the property as that of owner and tenant. In the given case, the assessee has not given the property on rent, but has given the commercial complex on licence for three years instantaneous user, hence, the income from this commercial asset is to be treated as 'business income' and not 'income from house property'. The decision of the Hon'ble Jurisdictional High Court rendered in the case of CIT vs. VST Motors Pvt Ltd (supra) is directly on the issue. So, we are bound to follow. Such cases are to be decided on the basis of facts of a particular case and cannot be generalized. We have rendered this decision in the given facts and circumstances of this case alone. Therefore, on merits, the assessee succeeds and we set aside the finding of the ld. CIT(A) in all these years on merits of the case and order that this receipt is to be accepted under the head 'income from business' in all these years.”

6.We are of the view that the Tribunal being fact finding authority, has passed the well considered order after anlaysing the entire facts and circumstances of the case, in the light of the material evidence placed before it and hence, the same does not call for any interference.

7.It is also to be noted that in similar circumstances, in TCA Nos.468 to 470 of 2008 in the case of CIT v. M/s.S.S.M. Estates Ltd, a Co-ordinate Bench of this court by a common judgment dated 24.02.2015, has answered the issue involved herein in favour of the assessee and against the revenue. The operative portion of the same is profitably extracted below:

"7.It is seen that the findings of fact arrived at by the Tribunal is not in dispute. The decision of the Supreme Court in the case of Commissioner of Income Tax v. Indian Warehousing Industries Ltd., reported in 258 ITR 93 and that of the jurisdictional High Court in the case of Chennai properties and Investments Ltd. reported in (2004) 266 ITR 685 (Mad)

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are distinguishable on facts. In those cases, the receipts itself are rental receipts. Whereas, in the present case, the assessee itself has retained the possession and there is no fiduciary relationship of landlord and tenant.

8.The Tribunal, by going into the individual aspects of the business to come to the conclusion that it is a case of warehousing business and, therefore, would fall only under the head 'business Income'.

9.In view of the well considered reasoning given by the Tribunal, we find no reason to differ with the findings of fact recorded by the Tribunal, which reasoning is fully justified in the facts of the present case. This Court finds no good reason to differ with the said findings of fact. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue."

8.Therefore, we dismiss the present tax case appeals filed by the Revenue, answering the substantial question of law raised herein in favour of the respondent/ assessee. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

vkr

To

1. The Commissioner of Income Tax – I, Chennai.

2. The Income Tax Appellate Tribunal,
   Chennai, "C" Bench

3. The Commissioner of Income Tax (Appeals)-III
   Chennai 600 034.

4. The Income Tax officer, Company Ward -II(1)
   Chennai – 600 034.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.11836

T.C.A.Nos.58 to 63 of 2012

PM(CO)
CT 22/03/2022