IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2023

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THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.315 of 2014

The Commissioner of Income Tax,
Chennai. .. Appellant

Vs.

M/s.Rattha Holding Company Private Limited,
37, TTK Road, Alwarpet,
Chennai – 600 018. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 28.08.2013 passed in I.T.A.No.995/Mds/2011 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai.

For Appellant : Mrs.V.Pushpa
Senior Standing Counsel
assisted by Ms.Anu Ganesan
Junior Standing Counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

The Tax Case Appeal is filed by the Revenue against the order dated 28.08.2013 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.995/Mds/2011 relating to the Assessment Year 2005-06.

2. By order dated 04.09.2014, the aforesaid appeal was admitted on the following substantial questions of law:

> *"1. Whether under the facts and circumstances of the case the Income Tax Appellate Tribunal was right in holding that the income of the assessee from letting out its technology park and the alternate premises where the tenant was accommodated pending development of the technology park are assessable under the head 'income from business' and not under the head 'income from house property'?*
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> *2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred by the assessee in its leased premises is current repairs and is allowable as deduction under the head income from business?"*

3. Regarding the first substantial question of law raised herein, the learned Standing Counsel appearing for the appellant submitted that the

same has been clarified by the Department of Revenue, Central Board of Direct Taxes, New Delhi, after taking note of the decisions of the Karnataka High Court in *CIT v. Velakani Information Systems Pvt Ltd v. [2013-LL-0402-44] and in CIT v. Information Technology Park Ltd [2014-LL-0430-141]*, *vide* Circular No.16/2017 dated 25.04.2017, wherein, it is *inter alia* stated as follows:

> *"3. In view of the above, 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 of 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'."*

On the basis of the aforesaid circular and following the earlier decisions of this Court, a Division Bench of this court in its judgment dated 07.07.2020 passed in TCA Nos.732 and 733 of 2018, has decided the issue against the Revenue. The relevant paragraphs of the said judgment are usefully extracted below:

> *"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 of 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 well 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."*

In view of the above, the substantial question of law no.1 is answered against the Revenue and in favour of the assessee.

4. As regards the second substantial question of law relating to repairs, the learned counsel for the appellant / Revenue fairly agreed with the view expressed by the Tribunal. For better appreciation, the operative portion of the order impugned herein is reproduced below:

> *"8.Now, we come to the second plea of the Revenue regarding repairs (supra). As stated herein above, the assessee had taken the buildings on lease; refurnished them after incurring expenses in the manner stated in the preceding paragraphs and provided incubating facilities to its lessee. The question sought to be raised by the Revenue is that since the assessee is not the owner of the building, it is not entitled for the claim in question. From the case law cited by the assessee of M/s.Thiru Arooran Sugars Ltd (supra), it is evident to us that the same issue of current repairs undertaken by a lessee in a rented property and its allowability had arisen and the Hon'ble jurisdictional high court has decided the issue as under:*
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>> *"3. Learned counsel appearing for the assessee placed reliance on the decision of this court in CIT v. Ayesha Hospitals (P.) Ltd [2007] 292 ITR 266 (Mad.), wherein in respect of the claim made for the assessment year 1991-92, the assessee claimed the amount spend on painting, relaying of the damaged floors, partitions, etc., as revenue expenditure. On the appeal before this court by the Revenue, it was pointed out the assessee incurred expenditure for relaying of the damaged*

floors, painting and partition in respect of the leased property. Referring to the decision of the apex court in CIT v. Madras Auto Service (P) Ltd [1998] 233 ITR 468/99 Taxman 575, this court pointed out that the expenditure incurred in respect of the maintenance of the leased premises was deductible as revenue expenditure.

4. As regards the contentions taken by the Revenue placing reliance on Explanation 1 to section 32(1)(ii) of the Income-tax Act, which was inserted with effect from April 1, 1988, this court pointed out that the explanation is an exceptional one which permits depreciation in cases where the assessee does not own a building in respect of which the assessee incurs capital expenditure on the construction of any structure or doing of any work, in or in relation to, and by way of renovation or extension of, or improvement to the building.

5. Applying the above said decision of this court to the facts of the present case, we hold that the temporary structure by means of false ceiling and office renovation had not resulted in any capital expenditure. The benefit of the above said decision of this court, hence, applies to the facts of the case. Accordingly, the question is answered in favour of the assessee and the tax case (appeal) stands allowed. No costs."

In the light thereof as well as in view of similarity of facts, we hold that in principle, the assessee is entitled for the expenses in question. We also find that the Commissioner of Income Tax (Appeals) has already issued necessary directions to the Assessing Officer to allow 'revenue' expenditure and also to capitalize the expenses which are not in the nature of current repairs. In our opinion, since the Commissioner of Income Tax (Appeals) has issued appropriate directions to the Assessing Officer to verify the nature of the expenses, we affirm with the same and leave the Assessing Officer to act as directed by the Commissioner of Income Tax (Appeals)."

In view of the above, this court is inclined to answer the second substantial question of law accordingly.

5. In fine, this tax case appeal stands dismissed. No costs.

[R.M.D., J.] [M.S.Q., J.]
21.09.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No

To

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

2.The Assistant Commissioner of Income Tax,
Company Circle – V(3), Chennai.

3.The Commissioner of Income Tax (Appeals)-V
Chennai.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

T.C.A.No.315 of 2014

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