IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.280 of 2011

==

H. R. Properties Pvt. Ltd., A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna

... ... Respondent/s

==

with

Miscellaneous Appeal No. 281 of 2011

==

H. R. Properties Pvt. Ltd., A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 295 of 2011

==

H.R. Properties Pvt. Ltd. A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and District of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income Tax Circle -2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 296 of 2011

==

H.R. Properties Pvt. Ltd. A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and District of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income Tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 297 of 2011

==

H. R. Properties Pvt. Ltd., A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 298 of 2011

==

H. R. Properties Pvt. Ltd. A limited company incorporated under the Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Smt. Punam Sahi, daughter of Late Sri Yadunandan Prasad Narayan Singh, presently aged about 57 years, resident of Hathwa House, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income Tax Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 366 of 2011

==

Chero Medico and Developers Pvt. Ltd. a limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Dhrub Shankar, Son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. - Kadam Kuan, P.S. Kadam Kuan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income Tax Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 414 of 2011

==

Chero Medico and Developers Pvt. Ltd., A limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Dhrub Shankar, son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. Kadam Kuan, P.S. Kadam Kuan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 415 of 2011

==

Chero Medico and Developers Pvt. Ltd., A limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Dhrub Shankar, son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. Kadam Kuan, P.S. Kadam Kuan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 416 of 2011

==

Chero Medico and Developers Pvt. Ltd., A limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Dhrub Shankar, son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. Kadam Kuan, P.S. Kadam Kuan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax, Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 417 of 2011

==

Chero Medico and Developers Pvt. Ltd. A limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and District of Patna through its Executive Director, Dhrub Shankar, son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. Kadam Kuan, P.S. Kadam Kuan in the town and District of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income Tax Circle 2, Patna.

... ... Respondent/s

==

with

Miscellaneous Appeal No. 418 of 2011

==

Chero Medico and Developers Pvt. Ltd. A limited company incorporated under Companies Act, 1956, having its registered office at Hathwa House, South Gandhi Maidan, G.P.O. Patna, P.S. Gandhi Maidan in the town and district of Patna through its Executive Director, Dhrub Shankar, Son of Late Bishwanath Prasad Narayan Singh, presently aged about 62 years, resident of Chainpur Kothi, Nawal Kishore Road, Kadam Kuan, P.O. - Kadam Kuan, P.S. Kadam Kuan, in the town and district of Patna.

... ... Appellant/s

Versus

The Assistant Commissioner of Income tax Circle 2, Patna.

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 280 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 281 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 295 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 296 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 297 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 298 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 366 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 414 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax
Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 415 of 2011)

For the Appellant/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Ms. Smriti Singh, Advocate

For Income Tax : Mrs. Archana Sinha, Sr. SC, Income Tax

Mr. Alok Kumar, Advocate
Ms. Swarna Roy, Advocate
(In Miscellaneous Appeal No. 416 of 2011)

For the Appellant/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate
For Income Tax	:	Mrs. Archana Sinha, Sr. SC, Income Tax Mr. Alok Kumar, Advocate Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 417 of 2011)

For the Appellant/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate
For Income Tax	:	Mrs. Archana Sinha, Sr. SC, Income Tax Mr. Alok Kumar, Advocate Ms. Swarna Roy, Advocate

(In Miscellaneous Appeal No. 418 of 2011)

For the Appellant/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate
For Income Tax	:	Mrs. Archana Sinha, Sr. SC, Income Tax Mr. Alok Kumar, Advocate Ms. Swarna Roy, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-01-2024

The above appeals under the Income Tax Act, arises out of orders of the Income Tax Appellate Tribunal (henceforth for short 'the Tribunal') are of two different assessees, with respect to assessment years 2002-03 to 2007-08, raising the very same question of law. The question of law framed is as below:-

> *'Whether the Tribunal committed a gross error in law by affirming the order of the Assessing Authority reversed by the first appellate authority, finding the rental income of the assessee to be one assessed under the head 'Income From House Property' and not as an Income from Business.'*

2. Learned Senior Counsel for the assessee Sri

A. K. Rastogi argued that both the assessees had only rental income in the subject assessment years and that was the main object of their constitution as revealed from the Memorandum of Understanding (for brevity 'MoU'). It is also pointed out that the rental income of the assessees had been regularly assessed prior to the subject assessment years as 'income from business' and there was no valid ground to deviate from the consistent stand taken by the Department. It is argued that both the assessees had only rental income in their subject year which indicated that this was the only business carried out by the assessee and in that circumstance, there could not be an assessment made of the above rental income generated by the assessee as 'Income from House Property'. The learned counsel would rely on the decision of the Hon'ble Supreme Court in ***Rayala Corporation Pvt. Ltd v. ACIT*** reported in ***(2016) 386 ITR 500 SC*** and ***Chennai Properties & Investments Ltd. v. CIT*** reported in (***2015) 373 ITR 673 SC*** and the judgment of a Division Bench of this Court in M.A. No. 567/2007 dated 18.11.2016, ***Pandooi Palace v. CIT, Patna***. The Assessing Officer has erroneously relied on the decision of the

Hon'ble Supreme Court in ***Shambhu Investment Pvt. Ltd. v. Commissioner of Income Tax*** reported in (***2003) 263 ITR 143 (SC)***. Insofar as consistency required to be maintained by the Department, reliance was placed on a Division Bench of this Court in ***Dr. Narendra Prasad & Others v. CIT & Another***, ***(2010) 322 ITR 171 (Pat)***.

3. Smt. Archana Shahi, learned Senior Standing Counsel for the Income Tax Department, however, pointed out that the assessee is a real estate developer and builder and the rental income generated is of the buildings constructed by the appellant which were not sold off. The business of the assessee, even as per the MoU was not confined to leasing out properties and the rental income generated can only be assessed as 'income from house properties' and not as 'income from business'. The learned counsel also pointed out that ***Rayala Corporation Pvt. Ltd & Chennai Properties & Investments Ltd.*** *(supra)* are on the facts coming out from the above decision not applicable to the present case. As far as consistency is concerned, it is argued that it is trite that every assessment year is a separate cause of action and if the view taken by the Assessing

Officer in the earlier years is found to be erroneous, there can be no rule of consistency, which would work against the provision of the Act itself.

4. ***Rayala Corporation Pvt. Ltd*** *(supra)* was on the specific finding that admittedly the assessee had only one business; which was of leasing out of properties and earning rent from them. It was specifically noticed by the Hon'ble Supreme Court in paragraph 5 that the assessee was a Private Limited Company, the MoA of which indicated the business to be dealing in real estate and also to earn income by leasing out property belonging to the assessee company. It was going by the admitted facts in that case, that the assessee company had only one business of lease and earning rent from property, the decision was rendered permitting the assessment of income as one arising from 'Profits and Gains of Business and Profession'. ***Chennai Properties & Investments Ltd.*** *(supra)* was a case in which the MoA specifically indicated the main object of the assessee was acquisition and holding of properties called "Chennai House" and "Firhavin Estate", to let out those properties and making advances upon the lands and buildings or other properties or interest therein. The entire income accrued in the subject year was from letting out the specified properties which led to the Hon’ble Supreme Court finding the income to be assessable as income from ‘Profits or Gains of Business or Profession’.

5. A Division Bench of this Court in ***Pandooi Palace v. CIT, Patna*** *(supra)* followed the aforesaid decisions of the Hon’ble Supreme Court. The assessee therein had constructed a Commercial complex in the name and style of Pandooi Palace and was drawing rental income from the same. It was on the facts that the High Court ruled in favor of the assessee in the above case.

6. We will first look at the objects as revealed from the respective MoAs produced in the appeals. Insofar as the one of the assessees H. R. Properties Pvt. Ltd. is concerned, the MoA produced as Annexure-1 indicates the following objects which is extracted below :-

> The main objects to be pursued by the Company on its incorporation are :
>
> (i) To take over and adopt the firm carried on under the name and style of at Patna in the State of Bihar (which is a partnership business carried on by the signatories to these Memorandum and Articles of Association of the present Company) as a going concern including the

goodwill, assets and liabilities thereof and to issue fully paid up shares of the Company of the face value equal to the value of the shares of the several partners respectively in the partnership;

(ii) To carry on all or any of the business carried on by land developers and builders and to purchase, acquire, construct, re-construct, build, re-build, remodel, renovate equip, maintain, prepare for market, acquire by purchase, lease or otherwise any land, building, wholly or in part, floors, flats, apartments, shops, godown and to sell, let on hire or on rent, lease out on long/short term, trade or otherwise dispose of and to trade or deal in all real properties and estates buildings, shops, floors, flats, houses, godown or portions thereof to do and carry on all such businesses and transactions as are commonly and usually done or carried on by persons firms and bodies corporate as dealers of real properties and estates and all such other works, conveniences and things connected with all or any of the above.

(iii) To acquire by purchase, lease, exchange, or otherwise land and/or buildings and structures situated in the State of Bihar and/or Uttar Pradesh and to turn the same to account as may seem expedient, and in particular by preparing building sites and by constructing, reconstructing, altering, improving, decorating, houses, shops, cinema houses, theaters, buildings, works and conveniences of all kinds and by consolidating or sub-dividing properties and by leasing; selling or disposing of the same whether in whole or by parts, offices, flats, houses, cinema houses, theaters or other buildings absolutely on ownership basis or other removes wise;

(iv) To manage land, building and other property situated as aforesaid whether belonging to the Company or not and to collect rents and income and to supply to tenants and occupiers and others benefits and uses of lights, waiting room, reading room, eating rooms, lavatories and such other advantages as may be considered fit;

(v) For the present the Company shall under-take, carry out and complete the project with regard to development of the acres of vacant land comprised in Municipal Holding No. C9/207 and C9/207-1 in Mouja Habibpur, Pergana Dehat Amant, Mahalla Chetgunge in the district of Varanasi now held by the said firm for building, estate-cum-cinema centre-cum-shopping complex and to sell, lease or otherwise dispose of the flats, offices, shop-rooms, shops, garages, parking spaces, Cinema-houses, godowns and other accommodations therefore absolutely on ownership basis or otherwise to such persons and on such terms as may be considered fit.

(vi) “To Carry on the business of Hotel keepers, owners of restaurants," lodging and boarding house keepers and as owners of restaurants.”

7. Insofar as the other asseessee Chero Medico & Developers Pvt. Ltd.; the MoA indicates following objects which are extracted below:-

I. To acquire and take over as a going concern the businesses, works and activities of the firm carried on as a partnership in the name and style of Chero Medico and Developers Private Limited, having its principal office situated at Ganga Mahal, Judges Court Road, in the town and district of Patna, in the State of Bihar, including the goodwill, property and assets thereof and to pay the purchase consideration by the issue and allotment of fully paid up Equity Shares in the capital of the Company to the several partners respectively in the partnership and as more fully described hereinabove in the Memorandum of Agreement.

2. To carry on, establish, setup and maintain hospitals and nursing home and aftercare home for the reception and treatment of ailing person and persons suffering from illness and for reception and treatment of patients and persons during convalescence requiring

medical and surgical attention and nursing and after care attendances and to provide medical relief to all suffering persons and to appoint and make arrangements for doctors, specialists in medical science and nurses and other persons and to conduct and carry on biological and pathological tests and examinations and to purchase, acquire and work latest sophisticated plants and machinery for the proper identification of diseases and for medical and surgical treatment and to do all other work and works allied to any of the above relating to surgical, pharmaceutical, biological and pathological tests and examination operations and investigations and to carry on the business as manufacturers buyers, sellers, improvers and exporters of and dealers in all pharmaceutical chemical preparations and compounds, drugs, medicines and surgical implementations and as suppliers of food and estables to patients and others and to carry on the business of dry and machine cleaners, dyers and launderers on all other acts, activities, work and works allied thereto and any of the above.

3. To carry on the business of buyers sellers and developers of and dealers, buildings, premises, real estates, flats, apartments, built in spaces, and as builders, constructors, civil and electrical engineers, architects, plumber polishers, wood workers, structural engineers, designers, buyers and sellers materials of all kinds including iron, cement, stone chips, sand etc., and build, rebuild, pull out, acquire, construct, reconstruct, remodel, renovate maintain and to acquire by purchase, exchange or lease or otherwise a land, building, wholly or in part for the purposes of construction and flats, apartments, premises, godowns, stock yards, shopping and recreating eating places, parking places, and built in spaces of every description either dential or for commercial purposes and to sell, lease out, exchange, let out rent, and otherwise dispose of the same and to trade and deal in all res and estates of every description, buildings, promises, houses, shops, fates, built in floors and places and to deal

withering of the above in any man conducive and they on all work and works allied to all or any of the to do and carry on all other transactions, activities and business as are commonly done and carried on by the real estate developer, and as trade dealers in real properties of every description and as agents and contract estate and properties.

4. To undertake, carry out and complete the project with regard to the development of various plots of lands and buildings belonging to the partnership firm as more fully in part I to VII of the schedule appearing hereinabove and for that demolish, if necessary, the brick built houses and buildings and structure thereon for the purposes of carrying out the above objects of the company.

8. Hence, both the assessee's can be said to be capable of being engaged in the business of land developing and are also builders, but the test as is seen from the cited decisions is as to the actual business carried on by the assessee. It was argued by the Department that in the assessment orders of both the assesses it has been stated that the buildings were handed over to the company in a finished mode and the company had also received advance for their buildings from the prospective purchasers, which sale has not fructified by transfer of ownership since the full consideration had not been rescind. The assessees had thus let out for rent the aforesaid building, the rental income of which is not a business income but the income on house property. The Assessing Officer has also looked at the specific object as extracted herein above from the MoA. The companies were holding the buildings as stock-in trade for more than 20 years. The income from house property has three conditions to be satisfied that the property should consist of buildings, the assessee should be the owner of the building and that the building should not be used by the owner for the purpose of business or profession carried on by him, the profits of which are chargeable to tax. In the present case, the Assessing Officer relies on ***CIT v. Chugandas and Co.*** reported in ***(1965) 55 ITR 17 (SC),*** which declare that even if an assessee carries on business of purchase and selling of buildings, income received from the buildings so long as they are owned by the assessee will be shown as ‘Income from House Property’ and not an income from ‘Profits and Gains of Business and Profession’.

9. In the case of H.R. Properties Ltd., the Assessment Order has recorded that on perusal of balance-sheet, P & L Account and its enclosures as well as TDS Certificates enclosed with the return; the assessee is earning income from letting out of buildings, held as stock in trade. The Company was also earning lease rent from a hotel which building has been furnished as a hotel. The stock in trade of the buildings were received as a consequence of a Development Agreement and it is the finding of the Assessing Officer that despite construction and sale of buildings, being one of the main objects of the assessee, it has not undertaken any construction project till date. Hence, though there were many objects as revealed from the Memorandum of Association, even the Assessing Officer finds that the assessee did not have any other business but lease of the properties. The finding is also that no construction project has been carried out by the assessee since its incorporation in 1975 nor has it booked any major sale since Financial Year 2000-2001. Even the Assessing Officer finds that the assessee has been pursuing its object of earning rental income through letting out and makes a casual statement that this is the object pursued more vigorously than the others referred in the Memorandum of Association. The presumption of the Assessing Officer that no prudent person would wait for more than 10-20 years even after payment of twice the cost of the building cannot be countenanced. If the building has not been conveyed to the purchaser and remains with the developer then there is nothing wrong in the developer leasing out the premises. There is no sale noticed, in the very many years, by the Assessing Officer, who also states that the Company had furnished the name of 25 persons who had entered into agreements for sale who were all related parties of the assessee. It is also presumed that the transactions appear to be a *prima facie* business connivance *(sic)* and that retention of huge advance money without any legal claims from the prospective customers cannot be countenanced.

10. We cannot understand how the absence of legal proceedings by the intending purchasers can impact the tax levy of the assessee. The fact remains that the Assessing Officer has clearly found that but for the lease of properties the assessee is not engaged in any other business. This is the precise facts on which ***Rayala Corporation and Chennai Properties*** (both supra) have been decided.

11. In so far as Chero Medico and Developers Private Limited is concerned, there also the findings of the

Assessing Officer are almost identical to that referred to in the other case; that the assessee was enjoying property rights over the buildings leased out and have been dealing with the buildings as its owner. Irrespective of the fact that they were held as stock in trade or fixed assets, it is admitted by the Assessing Officer that the lease of buildings is the only business carried on by the assessee. The assessee also has been receiving rental income from these buildings as is admitted by the assessee and accepted by the Assessing Officer.

12. The First Appellate Authority rightly found the income to be from business and not under the head, income from house property, especially since the assessee has only the business of renting out buildings in the subject years.

13. On the specific finding of facts made by the Assessing Officer in the assessment order, we are convinced that there is no question of the income of the assessee being treated as income from house property.

14. We find the order of ‘the Tribunal’ to be perverse and set it aside answering the question of law framed, in favour of the assessee and against the Revenue.

15. The appeals stand allowed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Rajiv Roy, J.

(Rajiv Roy, J)

Sharun/Pravin

AFR/NAFR	
CAV DATE	08.01.2024
Uploading Date	15.01.2024
Transmission Date	