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T.C.A Nos.437 of 2015 and 585 to 587 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19-08-2024

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) Nos.437 of 2015
and 585 to 587 of 2016
and CMP.Nos.12105 & 12106 of 2016

The Commissioner of Income Tax
Chennai

... Appellant in all TCAs.

-VS-

M/s.Ascendas IT Park (Chennai) Ltd.,
1st Floor , International Tech Park,
Taramani Road, Taramani
Chennai 600 013.

.. Respondent in all TCAs.

Prayer in TCA.No.437 of 2015 : Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'B', Madras, dated 11.09.2014 in I.T.A.No.1709/Mds/2013 for the Assessment Year 2008-09.



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Prayer in TCA.No.585 of 2016 : Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 24.07.2015 in I.T.A.No.1277/Mds/2015 for the Assessment Year 2006-07.

Prayer in TCA.No.586 of 2016 : Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 24.07.2015 in I.T.A.No.1278/Mds/2015 for the Assessment Year 2009-10.

Prayer in TCA.No.587 of 2016 : Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Madras, dated 24.07.2015 in I.T.A.No.1279/Mds/2015 for the Assessment Year 2007-08.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel
in all appeals

For Respondent : Mr.N.V.Balaji
in all appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

By this common order, all the four appeals have been disposed of.

2. These appeals pertain to the following assessment orders:-



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<i>Sl.No.</i>	<i>T.C.A</i>	<i>Appeal No (before Income Tax Appellate Tribunal)</i>	<i>Assessment Year</i>	<i>Date</i>
1	437/2015	I.T.A.No.1709/Mds/2013	2008-09	11.09.2014
2	585/2016	I.T.A.No.1277/Mds/2015	2006-07	24.07.2015
3	586/2016	I.T.A.No.1278/Mds/2015	2009-10	
4	587/2016	I.T.A.No.1279/Mds/2015	2007-08	

3. The appellant has filed these appeals against the Impugned Order in I.T.A.No 1709/Mds/2013 for Assessment Year 2008-09 dated 11.09.2014 and Impugned Common Order dated 24.07.2015 in I.T.A.Nos.1277 to 1279/Mds/2015 for Assessment years 2006-07, 2009-10 and 2007-08 respectively passed by the Income Tax Appellate Tribunal [Appellate Tribunal for brevity] .

4. By the impugned order dated 11.09.2014, the Appellate Tribunal has dismissed I.T.A.No.1709/Mds/2013 filed by the Income Tax Department against Order dated 18.02.2003 passed by the Commissioner of Income Tax (Appeals) [Appellate Commissioner for brevity] in I.TA.No.154/2012-13 for the Assessment year 2008-09.



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WEB COPY 5. By order dated 24.07.2015 in I.T.A.Nos.1277 to 1279/Mds/2015 (impugned in TCA.Nos.585 to 587 of 2015), the Appellate Tribunal followed its earlier order dated 11.09.2014 in I.T.A.No.1709/Mds/2013 (impugned in T.C.A.No.437/2015) and dismissed the Appellant's aforesaid appeal against Order dated 30.01.2015 in I.T.A.Nos.299, 736 and 357 passed by the Appellate Commissioner.

6. In all these appeals, common questions of law has arisen as to whether the income from leased property of the respondent - Assessee has to be treated as income from House property or business income.

7. The case of the department in these appeals is that the Assessing Officer assessed the income derived from leasing out of the property as rental Income from House property of the Respondent-Assessee while it is the contention of the respondent assessee that such income was to be treated as income from business, which has been now accepted by the Income Tax Appellate Tribunal vide impugned order.



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WEB COPY 8. T.C.A.No.437 of 2015 was admitted on 03.11.2015 and T.C.A.Nos.585 to 587 of 2016 were admitted on 19.09.2016. The following substantial questions of law were framed for being answered in these appeals :-

Case No.	Substantial Questions of law
T.C.A.No.437/2015	1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income derived from letting out of property to the tenants for the purpose of running a software technology park as 'income from business' in the hands of the owner of the property? 2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not appreciating the fact that the prime object of the assessee under the rental agreement is to let out the property and also there is no clause in the Memorandum of association for letting out of the property?
T.C.A.Nos.585 to 587/2016	a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income derived from letting out of property to the tenants for the purpose of running a software technology park as 'income from business' in the hands of the owner of the property? b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not



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appreciating the fact that the prime object of the assessee under the rental agreement is to let out the property and also there is no clause in the Memorandum of association for letting out of the property?

c) Is not the finding of the Tribunal bad especially when the Hon'ble Apex Court and jurisdictional High Court in the case of Shambu Investment P. Ltd., vs. CIT, 263 ITR 143 had clearly held that income derived from letting out of building is to be assessed under the head “income from house property” and not under the head “income from business?”

9. T.C.A.No.437 of 2015 was filed prior to the decision of the Hon'ble Supreme Court in ***Chennai Properties & Investments Ltd. vs. Commissioner of Income-Tax, Central-III, Tamil Nadu***, (2015) 56 taxmann.com 456(SC) and the decisions of various High Court, where there were conflicting views of various High Court. However, the Hon'ble Supreme Court has answered the issue categorically in the case of ***Chennai Properties & Investments Ltd. vs. Commissioner of Income-Tax, Central-III, Tamil Nadu***, wherein, the Hon'ble Supreme Court has held as under :-



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11. We are conscious of the aforesaid dicta laid down in the Constitution Bench Judgment. It is for this reason, we have, at the beginning of this Judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as income from the house property. We accordingly, allow this appeal and set aside the Judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No order as to costs”.

10. After the decision of the Hon'ble Supreme Court in **Chennai Properties and Investment Ltd., supra**, Circular No.16 of 2017 of the Central Board of Direct Taxes was also issued by the Commissioner of Income Tax (A & J), CBDT, New Delhi dated 25.04.2017, wherein it has been clarified 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 is



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to be treated as income from business of an assessee.

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11. Relevant portion of the circular reads as under :-

2. The matter has been considered by the Board, Income from the Industrial Parks/SEZ established under various schemes framed and notified under Section 801A(4)(iii) of the Income Tax Act, 1961 ('Act') is liable to be treated as income from business provided the conditions prescribed under the schemes are not.

In the case of Velankani Information Systems Pvt. Ltd. and CIT vs. Information Technology Park Ltd., the Hon'ble Karnataka High Court observed that any other interpretation would defeat the object of Section 801A of the Act and government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Hon'ble Supreme Court.

In a subsequent judgment dated 30.04.2014 in ITA.Nos.76 & 78 of 2012 in the case of CIT vs. Information Technology Park Ltd., the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee- company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Income from Business" and not under the head "Income from



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House Property”. The judgment has been accepted by the Board.

12. The above said circular was issued on 25.04.2017 by the Central Board of Direct Taxes, based on the decision of the **Karnataka High Court in Velankani Information Systems Pvt. Ltd. and CIT vs. Information Technology Park Ltd.**

13. Pursuant to the said circular, the Commissioner of Income Tax [Appeals] has also allowed the appeals of the respondent - Assessee vide common order dated 24.08.2018 for the Assessment Years **2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 in I.T.A. New Nos.128, 127, 208, 285, 286 & 113/CIT(A)-1/2014-15, 2015-16, 2016-17 & 2017-18** respectively. Although a feeble attempt was made by the learned counsel for the Revenue by placing reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise vs. Ratan Melting & Wire Industries*, (2008) 220 CTR 98, we are of the view, it does not further the case of the Appellant- Income Tax Department.



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14. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they merely represent their understanding of the statutory provisions. At best, they are *Contemporanea Expositio* of law. They are not binding upon the Court.

15. It is for the Court to declare how a particular provision of a statute is to be interpreted and it is not for the executive to issue guidelines contrary to law. If a circular is contrary to the statutory provisions or law declared by Court, it is to be ignored. It is not binding an assessee.

16. Since the law has been categorically settled by the Hon'ble Supreme Court in ***Chennai Properties & Investments Ltd. vs. Commissioner of Income-Tax, Central-III, Tamil Nadu***, referred to *supra* which decision was followed by this Court in ***M/s.Rayala Corporation (P) Ltd. vs. The Deputy Commissioner of Income Tax, Company Circle – V(3), Chennai 600 034*** in TCA.No.993 of 2010 dated 27.09.2022 and few other decisions of the other High Courts of this High Court, we do not wish



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to device. Suffice to state, there is no merits in these cases.

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17. Under these circumstances, these appeals filed by the Income Tax Department have to fail and substantial questions of law raised in these appeals are answered in favour of the assessee. Hence, these Tax Case Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.)

(C.S.N., J)

19.08.2024

Index : Yes / No

Speaking order / Non-speaking order

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**R.SURESH KUMAR, J.
and
C.SARAVANAN, J**

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To

1. The Income Tax Appellate Tribunal,
Bench 'B', Madras.
2. The Income Tax Appellate Tribunal,
Bench 'B', Madras.

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