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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/113/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS
EMC PROJECTS PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 9th June, 2025.

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Amit Sharma, Adv.
…for appellant

Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
…for respondent

The Court :- We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/department and Mr. Saumya Kejriwal, learned counsel appearing for the respondent/assessee.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated August 20, 2024 passed by the Income Tax Appellate Tribunal, `C' Bench, Kolkata (Tribunal) in ITA No. 1063/Kol/2024, for the assessment year 2014-15.

The revenue has raised the following substantial questions of law for consideration :

i) Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law in allowing the rental income earned by the assessee under the head "Income from House Property" instead of "Income from Business Profession" when the assessee's 98% of revenue during the year under consideration, has been earned from rental income in view of ratio laid down in the case of Chennai Properties & Investment Ltd Vs CIT reported in (2015) 373 ITR 673 (SC) ?

ii) Whether on facts and circumstances of the case, the Learned Tribunal was justified in law in treating the rental income earned by the assessee under the head "Income from House Property" instead of "Income from Business Profession" when it is proved beyond doubt that the composite rent on building inseparable from the letting of machinery, plant or furniture will be an income chargeable to tax under the head "Income from Business Profession" and not under the head "Income from House Property" as decided in the case of Chennai Properties & Investment Ltd Vs CIT reported in (2015) 373 ITR 673 (SC) ?

There is a delay of 99 days in filing the appeal. We have perused the affidavit filed in support of the application and we find that reasons set out are acceptable. Hence, the application IA NO: GA/1/2025 is allowed and the delay in filing the appeal is condoned.

The order impugned in this appeal passed by the learned Tribunal is at the instance of the respondent/assessee. Learned Tribunal allowed the assessee's appeal and aggrieved by such order, revenue is before us by way of this present appeal.

We find that legal issue involved in this case is squarely covered by the decision of the Hon'ble Supreme Court in *Chennai Properties And Investments Ltd. vs. Commissioner of Income Tax*, reported in *(2015) 373 ITR 673 (SC).* Apart from that the learned Tribunal also found that in the assessee's own case for the assessment years 2012-13 and 2013-14, which was scrutiny assessment, the Department accepted the assessee's case that the rental income declared by the assessee to be income from house property. Further, the learned Tribunal noted that in the subsequent years such income has been accepted under Section 143(1) as income from house property. Therefore, the learned Tribunal took note of the decision of the Hon'ble Supreme Court that the Department has to maintain consistency. In the instant case, admittedly the Department has not brought out any distinguishing feature for the assessment year under consideration namely, 2014-15 to take a different stand. Thus, we find the learned Tribunal was right in allowing the assessee's appeal and no grounds have been made out to interfere with the same.

Accordingly, the appeal is dismissed.

The stay application IA NO: GA/2/2025 stands dismissed.

The substantial questions of law suggested are answered against the revenue.

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(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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