

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1937/Mds/2014

निर्धारण वर्ष / Assessment Year : 2002-03

M/s Chennai Properties and
Investments Ltd.,
Mena Kampala Arcade,
3rd floor, A Block, B-Wing,
114, Sir Theyagaraya Road,
T.Nagar, Chennai - 600 017.

v. The Assistant Commissioner of
Income Tax,
Company Circle VI(3),
Chennai - 600 034.

PAN : AAACC 3726 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. B. Nischal, JCIT

सुनवाई की तारीख/Date of Hearing : 09.07.2015

घोषणा की तारीख/Date of Pronouncement : 28.08.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)(C)-II, Chennai, dated 24.03.2014 and pertains to assessment year 2002-03.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is with regard to assessment of rental income. According to the Ld. counsel, the assessee claimed the same as income from business. However, the Assessing Officer treated the rental income as income from house property. On appeal by the assessee, the CIT(Appeals) confirmed the classification made by the Assessing Officer as income from house property by following the judgment of Madras High Court in assessee's own case for the assessment year 1986-87. The Apex Court in assessee's own case for the assessment years 1990-91 to 1993-94 examined the issue in respect of the very same property and reversed the judgment of the High Court by ruling that letting out the property by the assessee is the business of the assessee. Therefore, the assessee has rightly disclosed the income under the head "Income from business". The subject matter of the appeal before the Apex Court is in respect of the properties known as "Chennai House" and "Firhavin Estate". The very same properties were subject matter of assessment for the year under consideration also. Therefore, according to the Ld. counsel, the judgment of the Apex Court is squarely applicable to the facts of the case, hence, income on letting out the property has to be assessed only as income from business.

3. On the contrary, Dr. B. Nischal, the Ld. Departmental Representative, submitted that the assessee has let out the property to Indian Overseas Bank, MMTC and State Trading Corporation as a normal owner of the property. According to the Ld. D.R., when the assessee let out the property as a normal owner, the income therefrom has to be assessed only as income from house property. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition.

4. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, the assessee let out two properties, namely, Chennai House and Firhavin Estate. The Apex Court in Civil Appeal No.4494 of 2004 examined the letting out of the very same property in assessee's own case and found that letting out of the property is in fact the business of the assessee. Therefore, the assessee has rightly disclosed the income as "income from business". The Apex Court further found that the income cannot be treated as income from house property. Accordingly, the Apex Court set aside the judgment of the Madras High Court and restored that of the Income Tax Appellate Tribunal. By respectfully following the judgment of the Apex Court in assessee's own case, this Tribunal is of the considered opinion that

the income from letting out of the property has to be assessed only as income from business and not as income from house property. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to assess the rental income under the head "income from business".

5. The next ground of appeal is with regard to giving credit for the tax deducted at source to the extent ₹7,11,914/-.

6. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the tax was deducted at source to the extent of ₹7,11,914/-. However, the Assessing Officer refused to give credit of the tax deducted at source and levied interest under Sections 234A and 234B of the Act. According to the Ld. counsel, once tax was deducted, the same has to be given credit.

7. On the contrary, Dr. B. Nischal, the Ld. Departmental Representative, submitted that the assessee has not produced any details with regard to deduction of tax at source. In the absence of the required details, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

8. We have considered the rival submissions on either side and perused the relevant material on record. In the absence of the

details, the CIT(Appeals) confirmed the order of the Assessing Officer. However, the CIT(Appeals) observed that the assessee is at liberty to produce before the A.O. any material evidence with regard to deduction of tax and seek remedial action. Therefore, the assessee is at liberty to furnish the copies of the TDS certificate issued by the deductor before the Assessing Officer. If the assessee files copy of the TDS certificate, then the A.O. shall consider the same and give credit in accordance with law after giving reasonable opportunity to the assessee. With the above observation, the matter is remitted back to the file of the Assessing Officer.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 28th August, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th August, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)(C)-II, Chennai
4. आयकर आयुक्त/CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.