

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 4362/Mum/2016 (Assessment Year 2012-13)
I.T.A. No. 4363/Mum/2016 (Assessment Year 2013-14)

M/s. Popular Brass Pvt. Ltd. 8, Cama Industrial Estate Walbhat Road, Goregaon E Mumbai-400 063. PAN : AABCPS810D	Vs.	ITO 13(1)(4) Mumbai.
(Appellant)		(Respondent)

Assessee by	Shri Rahul Bagaria
Department by	Shri Ram Tiwari
Date of Hearing	18.9.2017
Date of Pronouncement	27.9.2017

ORDER

Both the appeals filed by the assessee are directed against the orders passed by the learned CIT(A)-21, Mumbai and they relate to A.Ys. 2012-13 & 2013-14. In both these appeals, the assessee is challenging the decision of the learned CIT(A) in confirming the assessment of rental income earned by the assessee under the head “income from business”.

2. The assessee declared rental income earned by it on leasing two house properties under the head “income from house property”. However, the Assessing Officer assessed the same under the head “income from business”, which was also confirmed by the learned CIT(A). Facts relating to the issue have been narrated by the learned CIT(A) as under :-

4. *During the year the assessee company is engaged in the business of Dealers of Non Ferrous Metals like Brass Scrap etc. In the assessment was at Cama Industrial Estate, Goregaon. During the year the assessee had shown lease rent received at Rs.99,47,709/- in respect of these two properties comprising income of Rs.66,31,803/- and Rs.33,15,902/- respectively. The Assessing Officer noted that the Appellant had claimed the income to be assessed under the head income from house*

property. The Assessing Officer however, concluded that the same is to be assessed as income from business. The only ground of appeal is in respect of the Assessing Officer treating the rental income as 'income from business' as against the claim of the Appellant that it is 'income from house property'.

5. *In the appellate proceedings, it was submitted that the primary business of the Appellant was trading in scrap of brass. The properties leased were never used in the trading business of the assessee nor was any depreciation ever claimed on the same. The property situated at 'Verma Chambers' is the ownership property of the assessee company. This property has been leased to 'Canara Bank' since 03.03.1986. The other property situated at 'Cama Estate' is a property leased by the assessee company from M/s. Copper Connell 86 Clifford Pvt. Ltd. for 40 years and which is in turn again sub-let to Canara Bank for 15 years only. As regards, property subleased by the Appellant it was contended that the Appellant is owner of the house property as 'deemed owner' as provided in Section 27(iib) r.w.s. 269UA of the Act. It was therefore submitted that income should not be assessed as income from house property in respect of business income.*
6. *Details were called in the appellate proceedings. It is seen from the submission of the appellant that in respect of both the property at "Cama Estate" and "Verma Chambers" till AY 2007-08, the appellant had been offering the income as business income. The property at "Verma Chambers" was leased to Canara Bank since 3.3.1986. Similarly, the property at "Cama Estate" has been leased to Canara Bank for over 15 years."*
3. The learned CIT(A) noticed that his predecessor has decided an identical issue in A.Ys. 2008-09 & 2011-12 against the assessee. Accordingly, by following the said decision, the learned CIT(A) dismissed the appeals filed by the assessee in both the years. Aggrieved, the assessee has filed these appeals before the Tribunal.
4. Learned AR submitted that the orders passed by the learned CIT(A) in A.Y. 2008-09 and 2011-12 were challenged before the Tribunal by filing the appeals. He submitted that the Tribunal has since decided the said appeals in favour of the assessee vide its order dated 28.7.2017 passed in ITA Nos. 6319

& 6320/Mum/2014. Learned AR furnished copy of the order passed by the Coordinate Bench in the above said two years.

5. On the contrary, learned Departmental Representative placed strong reliance on the order passed by the learned CIT(A) in A.Ys. 2008-09 & 2011-12.

6. I notice that the division bench of Tribunal has decided the impugned issue in favour of the assessee with following observations :-

7. *We have heard the rival submission and perused the relevant material on record. A similar issue arose in the case of Rakesh Builders (supra). In that case the assessee was a registered partnership firm. It took tenancy right of a premise vide agreement dated 01.01.1999 from another partnership firm namely, 'A' Theatre. The case of the assessee was that the said monthly tenancy agreement was later on converted into a lease agreement for 15 years from 01.04.2004 and, thus, the assessee became deemed owner of the property, in the light of provisions of section 27(iii)(b), read with clause (f) of section 269UA. Subsequently, the assessee permitted use of aforesaid premises to MTNL on lease and license basis. In the return of income, the assessee showed amount derived from MTNL under the head 'Property income' after deducting therefrom amount paid to 'A' Theatre. The assessee claimed that since it was a deemed owner, standard deduction was permissible under section 24(a). The AO noticed that lease agreement entered into between the assessee and MTNL was neither registered nor notarized and thus, it has no legal sanctity. He further noted that the partners of the assessee and 'A' Theatre were same. Accordingly, the AO concluded that the lease agreement was a colourable transaction adopted by the assessee with a view to reduce the tax liability. In such circumstances, the AO held that amount received by the assessee from MTNL was to be taxed under the head 'Income from other sources' and the assessee's claim for deduction under section 24(a) was to be rejected. On appeal, the Commissioner (Appeals) upheld the order of the AO.*

On second appeal, the Tribunal held that (i) in the instant appeal, it was seen that even though lease agreement entered into between the assessee and 'A' Theatre was neither registered nor notarized, yet both parties acted upon it and, thus, factum of giving property on lease for 15 years could not be disputed, (ii) in the aforesaid situation, the assessee firm was to be considered as

deemed owner of the property in light of the provisions of section 27 (iiib), read with clause (f) of section 269UA and, therefore, income derived by assessee from MTNL was to be taxed under the head 'Income from House Property', (iii) as far as assessee's claim for deduction u/s 24(a) was concerned, matter was to be remanded back to the AO for disposal afresh in accordance with terms of agreement entered into between the assessee and 'A' Theatre.

7.1 *We may also refer to the decision in Prolific Consultancy Services (P) Ltd. vs. ITO (2016) 74 taxmann.com 203 (Mum-Trib). In that case it has been held that where the assessee earned income from sub-lease of property, since neither the main object nor business activity of the assessee was to take on lease and sub-let properties, amount in question was rightly assessed as income from house property.*

7.2 *Let us look into the audited accounts of PBPL. Its total turnover for the two assessment years under consideration was Rs.7.65 crores and Rs.22.19 crores respectively. It also earned income from rent. For the two assessment years under consideration rental income was Rs.72,75,843/- and Rs.75,82,890/- respectively. We are of the considered view that the issues in the instant appeal are addressed in favour of the assessee by the decision of the Co-ordinate Bench in Rakesh Builders (supra) and Prolific Consultancy Services (P) Ltd. (supra). We follow the above orders of the Co-ordinate Bench and direct the AO to treat the rental income earned by the assessee-company as 'Income from House Property' after examining the claim of deduction for the AY 2008-09 and AY 2011-12."*

6. Since a particular view has already been taken by the Division Bench on identical facts of the assessee in the earlier years, consistent with the view taken therein, I set aside the order passed by the learned CIT(A) in both the years under consideration and direct the Assessing Officer to assess the rental income under the head "income from house property".

7. In the result, both the appeals filed by the assessee are allowed.

Order has been pronounced in the Court on 27.9.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai