

आयकर अपीलीय अधिकरण, C/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
C/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य , के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.231/Mds./2017

(Assessment Year : 2012-13)

The Income Tax Officer,
Corporate Ward 4(3),
Chennai 600 034.

Vs. M/s.Kodai Housing Pvt Ltd.,
No.B-201/21B, DBS Sushma
street, T.Nagar,
Chennai 600 017.

PAN AADCK 0188 P

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr.V.Sriniranjani, JICIT, D.R
: Mr.G.Baskar,Advocate &
Ms.Sri Nirayani Advocate

सुनवाई की तारीख/ Date of hearing : 20.06.2017

घोषणा की तारीख /Date of Pronouncement : 20.06.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the Revenue , aggrieved by the order of the Learned Commissioner of Income Tax(A)-8, Chennai dated 21.11.2016 pertaining to assessment year 2012-13.

2. The ground raised in its appeal is that Ld.CIT(A) erred in deleting the addition of ₹42 lakhs by holding that income from letting out of property be assessed as income from business.

3. The facts of the case are that the assessee is letting out the property owned by the company at Kodaikanal to M/s.Sujana Metal Products Ltd., for a rent of ₹5 lakhs per month totaling to ₹60 lakhs per annum and the assessee claimed various expenses under the head 'Business income'. The Id. Assessing Officer had treated the income earned from renting or premises as "income from house property" instead of "business income" and accordingly, the AO computed income of assessee. Aggrieved with the action of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, Ld.CIT(A) treated it as business income only on the reason that the assessee company has been rendering additional services to their tenant following the judgement of Apex Court in the case of Chennai Properties and Investments Ltd. Vs. CIT (373 ITR 673)(SC). Against the order of Ld.CIT(A), the Revenue is in appeal before us.

4. I have heard both the parties and perused the material on record. In my opinion, in principle, I agree with the findings of the Ld.CIT(A) as there was a binding decision of Supreme Court in the case of Chennai Properties and Investments Ltd. Vs. CIT(supra) wherein held that:

"10. No doubt in Sultan Brothers (P.) Ltd.'s case, a Constitution Bench judgment of this court has clarified that merely an entry in the objects clause showing a particular object would not be the determinative factor to arrive at a conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words :

"We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred to support the proposition that certain assets are commercial assets in their very nature."

11. ... 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"

5. However, the AO straight away treated the income as income from house property and he has not examined the allowability of various expenses under the head income from business. He has not examined whether the deduction claimed by the assessee to be allowed u/s.30 to 38 and Sec.40 of the Act as business income. Being so, while agreeing with the head of income as income from business, the issue is remitted to the file of Id. Assessing Officer to examine the allowability of deduction under the head "income from business" while computing the income. Accordingly, the ground raised by the Revenue is partly allowed for statistical purposes.

6. In the result, the appeal of Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 20th June, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 20th June, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF