

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2527/CHNY/2017
& C.O.No.9/CHNY/2018
(ITA No.2527/CHNY/2017)

निर्धारण वर्ष /Assessment year : 2011-2012.

The Assistant Commissioner of
Income Tax,
Non Corporate Circle 10 (1)
Chennai.

Vs. Shri. S. Vinodh Kumar,
No.25, Ranganathan Avenue,
Kilpauk,
Chennai 600 010.

(अपीलार्थी/Appellant)

**[PAN AAIPV 5798G]
(Respondent/Cross Objector)**

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

: Shri. ARV Sreenivasan, IRS, JCIT.
: Shri. T.N. Seetharaman, Advocate

सुनवाई की तारीख/Date of Hearing

: 19-03-2018

घोषणा की तारीख /Date of Pronouncement

: 05-04-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These are appeal and cross objection of the Revenue and assessee respectively directed against an order dated 16.08.2017 of Id. Commissioner of Income Tax (Appeals)-12, Chennai. Appeal of the Revenue is taken up first for disposal.

2. There are five grounds raised by the Revenue, of which ground No.1 & 5 are general needing no specific adjudication.

3. Through its ground No.2, grievance raised by the Revenue is that Id. Commissioner of Income Tax (Appeals) held interest of ₹54,49,764/- received by the assessee as its business income and directed allowance of expenditure incurred against such income.

4. Ld. Counsel for the Revenue submitted that Id. Assessing Officer had found the assessee to be an employee of two companies and held that he was not carrying on any business. As per the Id. Departmental Representative, assessee had received interest income from one M/s. Siyat Holding Pvt. Ltd. Contention of the Id. Departmental Representative was that assessee claimed such interest as his business income, but, on the other hand, had not paid interest on funds received from nine parties. As per the Id. Departmental Representative, Id. Assessing Officer had come to a correct conclusion that assessee had in the case of some parties received interest whereas in case of some other parties not charged any interest. As per the Id. Departmental Representative, assessee was not doing any business activity. Contention of the Id. Departmental Representative was that Id. Commissioner of Income Tax (Appeals) erred in going by the submissions of the assessee and holding that assessee was

pursuing a business activity. Reliance was placed on the judgments of Hon'ble Apex Court in the case of *M/s. Narain Swadeshi Weaving Mills Ltd. vs. CEPT, 26 ITR 765* and *M/s. Vijaya Laxmi Sugar Mills Limited vs. CIT, 191 ITR 641*.

5. Per contra, Id. Authorised Representative strongly supported the order of the Id. Commissioner of Income Tax (Appeals).

6. We have considered the rival contentions and perused the orders of the authorities below. A reading of the order of the Id. Commissioner of Income Tax (Appeals) show that Id. Assessing Officer himself had mentioned the business of the assessee as that of investment and finance in the assessments done for earlier years. Assessee had filed audit report in form No.3CD, after conducting the Audit u/s.44AB of the Act, and also his profit and loss account as well as Balance sheet alongwith the return of income. In his computation of income filed along the return, assessee had made suo-motu disallowance of the following expenditure:-

<i>Advertisement Exp</i>	<i>1,179</i>
<i>Conveyance</i>	<i>545</i>
<i>Demat Charges</i>	<i>331</i>
<i>Depreciation</i>	<i>4,101</i>
<i>Donation Paid</i>	<i>10,00,000</i>
<i>Foreign Tour expenses</i>	<i>14,060</i>
<i>Insurance paid</i>	<i>1,079</i>
<i>Meeting Expenses</i>	<i>8,000</i>

<i>Miscellaneous Expenses</i>	<i>17,016</i>
<i>Membership fee paid</i>	<i>25,403</i>
<i>Maintenance charges</i>	<i>14,500</i>
<i>Provided Fund</i>	<i>86,400</i>
<i>Professional tax</i>	<i>2,190</i>
<i>Professional fees</i>	<i>600</i>
<i>Property Tax</i>	<i>71,954</i>
<i>Security Services Charges</i>	<i>12,060</i>
<i>Share Trading Exp.</i>	<i>523</i>
<i>Travelling Exp</i>	<i>2,15,901</i>
<i>Water Charges</i>	<i>600</i>
<i>Water Tax</i>	<i>7,276</i>

The following items were considered separately :-

<i>Rent Received</i>	<i>53,44,193</i>
<i>PPF Interest</i>	<i>1,99,853</i>
<i>Salary received</i>	<i>3,96,00,000</i>
<i>Profit on sale of shares – LTCG</i>	<i>69,900</i>
<i>Profit on sale of shares fo company</i>	<i>1,18,259</i>
<i>Miscellaneous Income</i>	<i>1,670</i>
<i>Dividend received.</i>	<i>7,07,421</i>

In our opinion non charging of interest from few persons to whom assessee had advanced loans would not be a sufficient enough a reason to hold that assessee was not doing a finance and investments business. Assessment order for assessment year 2009-2010 placed by the assessee at paper book pages 21 to 23 clearly show that Id.

Assessing Officer had accepted the business of the assessee as one of finance and investment. Ld. Departmental Representative could not point out any difference in facts or any change of facts from what existed for assessment year 2009-2010, vis-a-vis the impugned assessment year. In these circumstances, we are of the opinion that Id. Commissioner of Income Tax (Appeals) was justified in taking a view that interest income of the assessee had to be considered under the head business income and allowing the expenditure exclusively incurred for earning such income. As for the reliance placed by the Revenue on the judgments of Hon'ble Apex Court in the case of *Narain Swadeshi Weaving Mills Ltd. (supra)* and *M/s. Vijaya Laxmi Sugar Mills Limited (supra)* the facts in these case were entirely different. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). Ground No.2 of the Revenue stands dismissed.

7. Vide its ground No.3, grievance raised by the Revenue is that dividend income received by Minor V. Prateek and Minor V.Palak were allowed exemption u/s.10(34) r.w.s. 1150 of the Act, by the Id. Commissioner of Income Tax (Appeals).

8. Ld. Departmental Representative fairly admitted that assessee had produced records which demonstrated payment of

dividend distribution tax by the concerned companies from which dividends were received by Minor V. Prateek and Minor V.Palak. In our opinion, dividend distribution tax under Section 115O of the Act, having been paid by the companies concerned, Id. Commissioner of Income Tax (Appeals) was justified in holding that dividend income received by Minor V. Prateek and Minor V.Palak were exempt u/s.10(34) of the Act. Ground No.3 of the Revenue stands dismissed.

9. Vide its ground No.4, grievance raised by the Revenue is that addition claimed by the assessee u/s.35AC of the Act was allowed to it.

Relevant ground is reproduced hereunder:-

'The Id. Commissioner of Income Tax (Appeals) decision on deletion of disallowance of deduction claimed by the assessee u/s.35AC is only corollary to the decision on ground no.1 above and hence, the assessee's claim of deduction u/s.35AC is not an allowable expenditure as the assessee has no business income'.

A reading of the above ground clearly show that it is raised as corollary to ground No.2 regarding treatment of the interest income earned by the assessee. We have already upheld the order of the Id. Commissioner of Income Tax (Appeals) that interest received by the assessee was rightly treated as business income of the assessee. Accordingly, ground No.4 becomes infructuous and is dismissed.

10. Now, we take up the Cross Objection of the assessee. Grievance raised by the assessee is that Id. Commissioner of Income Tax (Appeals) disallowed unrealized rent of ₹32,27,156/- while computing its income from house property, for a warehouse premise at Puzhal, Chennai owned by Minor V. Palak.

11. Ld. Counsel for the assessee submitted that the manner in which fair market value was to be computed was set out in Sub Section (1) of Section 23 of the Act. As per the Id. Authorised Representative actual rent received or receivable cannot include unrealized rent as computed under Rule 4 of the Income Tax Rules, 1962 (in short "the Rules"). Contention of the Id. Authorised Representative was that lower authorities had denied the deduction for unrealized rent, just for a reason that assessee could not substantiate how the amount remained unrealized.

12. Per contra, Id. Departmental Representative strongly supported the order of the Id. Commissioner of Income Tax (Appeals).

13. We have considered the rival contentions and perused the orders of the authorities below. Assessee had clubbed income from house property earned by Minor V. Palak with his income in accordance with Section 64 of the Act. Against the rental income of ₹54,68,000/-, assessee had claimed deduction of ₹32,27,156/- as

unrealized dues from one Shree Krishna Corpn Limited. Ld. Assessing Officer had denied the claim for a reason that assessee could not demonstrate how the amount remained unrealized. Ld. CIT (A) was of the opinion that assessee was maintaining accounts on accrual basis and hence such claim for unrealized amount could not be allowed. Section 23 of the Act is apposite here and is reproduced hereunder:-

1) For the purposes of section 22, the annual value of any property shall be deemed to be?

(a) the sum for which the property might reasonably be expected to let from year to year ; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable ; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

Explanation clearly say that amount of actual rent shall not include the amount of rent which a owner cannot realize. The method of computing unrealized rent is set out in Rule 4 of the Income Tax Rules, 1962 and thus is reproduced hereunder:-

4. For the purposes of the Explanation below sub section (1) of section 23, the amount of rent which owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where--

(a) the tenancy is bona fide;

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless;

We find that none of the lower authorities had examined the issue based on the Section and Rule mentioned supra. Issue in our opinion requires a revisit by the Id. Assessing Officer. We therefore set aside the orders of the lower authorities and remit this issue back to the file of the Id. Assessing Officer for consideration afresh.

14. In the result, the appeal of the Revenue is dismissed whereas Cross Objection of the assessee is allowed for statistical

purpose.

Order pronounced on Thursday, the 5th day of April, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 5th April, 2018

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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