

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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. Nos.689 & 690/CHNY/2018
निर्धारण वर्ष /Assessment year : 2013-14 & 2014-15.

Ambattur Infra Developers,
No.86, E-2, Industrial Estate,
Ambattur,
Chennai 600 058.

Vs. The Assistant Commissioner
of Income Tax,
Non Corporate Circle 7(1),
Chennai.

[**PAN AANFA 6447L**]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Ms. B. Jaisheila, C.A.
: Shri. Sailendra Mamidi, PCIT

सुनवाई की तारीख/Date of Hearing : 26-07-2018
घोषणा की तारीख /Date of Pronouncement. : 01-08-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These are appeals of the assessee for the impugned assessment years, assailing the treatment of its income under the head "income from house property" instead of "business".

2. Facts apropos are that assessee engaged in the business of building, selling and leasing out Information Technology parks

had given out on rent an IT Park called "Ambit IT Park" to various parties like CSS Corporation, Akshya Foods and Services Pvt. Ltd, Prizm payment services pvt. Ltd and Lopex Technologies. From the agreements with these parties, it was noted by the Id. Assessing Officer that assessee had received rental receipts as well as maintenance charges from lessees. Assessee had shown its income under the head "income from business/profession". However, Id. Assessing Officer noted that lessees had deducted tax u/s.194I of the Income Tax Act, 1961 (in short "the Act") on the payments made to the assessee and hence as per the Id. Assessing Officer, the income had to be classified under the head "income from house property". Assessee did submit before the Id. Assessing Officer that the IT park was taken on lease by the companies not only for the space but also due to the host of supporting features like uninterrupted power supply, Air Conditioning, Voice and data communication network etc. However Id. Assessing Officer took a view that the services provided by the assessee to the lessees, though it was on separate agreements, provision for such services were inseparable from the activity of renting out the property. As per the Id. Assessing Officer these services were rendered for getting higher rent from the lessees. Thus the whole of the amounts received by

the assessee from the lessees, including the maintenance charge were brought to tax by the Id. Assessing Officer under the head "income from house property", for all the impugned assessment years.

3. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that though there were two separate agreements, one for renting out the premises and one for providing services object of the assessee was renting out the IT park alongwith various services. As per the assessee, "Ambit IT park" was approved by the Ministry of Communications and Information Technology through its order dated 30.06.2009. Contention of the assessee was that it was engaged in the development of IT park and providing services alongside leasing out the infrastructural facility so as to exploit the property commercially. Thus, as per the assessee its income had to be considered under the head business/profession. Assessee also placed reliance on a judgment of Hon'ble Jurisdictional High Court in the case of *CIT vs. Elnet Technologies Ltd, (2013) 89 DTR 442* and that of Hon'ble Apex Court in the case of *Rayala Corporation Pvt. Ltd vs. ACIT, (2016) 386 ITR 500*.

4. However, Id.CIT(A) was not appreciative of the above contentions. According to him, by virtue of the judgment of Hon'ble Apex Court in the case of *Sultan Brothers Pvt. Ltd vs. CIT (1964) 51 ITR 353*, *East India Housing & Land Development Trust Limited, (1961) 42 ITR 49*, *Karnani Properties Limited vs. CIT, (1971) 82 ITR 547* and *S.G. Mercantile Corporation Private Limited vs. CIT, (1972) 83 ITR 700*, even if the object of an assessee was to promote and develop a market on his landed property, income therefrom would be assessable under the head "income from house property". Reliance was also placed on the judgment of Hon'ble Apex Court in the case of *Shambhu Investments P. Ltd vs. CIT, (2003) 263 ITR 143*. Ld. Commissioner of Income Tax (Appeals) distinguished the judgment of Hon'ble Jurisdictional High Court in the case of *Elnet Technologies Ltd.(supra)* and that of Hon'ble Apex Court in the case of *Rayala Corporation Pvt. Ltd (supra)* observing that circumstance of each case had to be considered on its own facts before reaching a conclusion whether income should be considered under the head income from house property or business. Further according to him, judgment of Hon'ble Apex Court in the case of *Sultan Brothers Pvt. Ltd (supra)* was by a five judge Bench and had to be given preference over the later judgments by two judge Benches of the same court. With

this view, he upheld the order of the Id. Assessing Officer. Ld. Commissioner of Income Tax (Appeals) also relied on a judgment of Hon'ble Apex Court in the case of *Raj Dadarkar and Associates vs. ACIT (2017) 394 ITR 592*.

5. Ld. Counsel for the assessee, strongly assailing the order of Id. Commissioner of Income Tax (Appeals) submitted that the partnership deed of the assessee firm gave its object as purchasing, selling, consolidating any land and plots, constructing, promoting, developing, industrial parks, information technology buildings, commercial buildings for sale, rent, lease or both. As per the Id. Authorised Representative, though there were two agreements with the clients, one for leasing out IT park and the other for maintaining and providing services relating to the infrastructure facility both these were contemporaneously entered into. According to the Id. Authorised Representative these agreements had to be construed together. Relying on a judgment of Hon'ble Karnataka High Court in the case of *CIT vs. Velankani Information Systems (P) Ltd, (2014) 265 CTR 250*, Id. Authorised Representative submitted that in a similar situation where an information technology park had rent out its premises through two separate agreements, their lordships held income to be assessable

under the head income from business. Reliance was also placed on the judgments of Hon'ble Apex Court in the case of *Chennai Properties & Investments Ltd vs. CIT, (2015) 373 ITR 673*.

6. Per contra, Id. Departmental Representative submitted that by virtue of the judgments of Hon'ble Apex Court in the case of *Sultan Brothers Pvt Ltd (supra), East India Housing & Land Development Trust Limited, (supra), Karnani Properties Limited (supra), and S.G. Mercantile Corporation Private Limited (supra)*, even if main object of the assessee was running a technology park or leasing out a technology park, rental received had to be considered only under the head income from house property.

7. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee was a recognized IT park and had rented it out to various software companies. It is also not disputed that assessee had entered into two agreements with its lessees, one for renting out the space and other for providing services and maintenance. The question before us is whether the payments received by the assessee through these two agreements are to be considered under the head income from house property or income from other sources or income from business. Ld. Assessing Officer himself had

observed that assessee had leased out the space alongwith a host of supporting features which helped its business. Assessee had obtained approval from Department of Information Technology, Ministry of Communications and Information Technology, Government of India through a letter dated 30.06.2009 which has been placed at paper book page 16 & 17.

What was mentioned in the above letter is reproduced hereunder:-

'Your application was considered by the Inter-Ministerial Standing Committee (IMSC) for Software Technology Park (STP) and Electronics Hardware Technology Park (EHTP) Scheme in its meeting held on 27.08.2007 and I am directed to convey the approval of the Government for setting up of infrastructure facility for STP units under the STP Scheme namely "Ambit" located at Plot No.32A & 32B, Industrial Estate, Ambattur, Chennai 600 058".'

Hon'ble Karnataka High Court in the case of *Velankani Information Systems (P) Ltd (supra)* where also space was let out by a software technology park, through different agreements, one for renting out the space and other for providing spaces, had held as under:-

'25. *We have to find out in that context what was the intention of the parties in entering into the lease transaction. It is not the number of agreements, which are entered into between the parties which is decisive in determining the nature of transaction. What is the object of entering into more than one said transactions is to be looked into. However, if for enjoyment of lease, the subject matter of all the*

agreements is necessary, then notwithstanding the fact that there are more than one agreement or one lease deed, the transaction is one. As all the agreements are entered into contemporaneously and the object is to enjoy the entire property viz: building, furniture and the accessories as a whole which is necessary for carrying on the business, then the income derived there from cannot be separated based on the separate agreement entered into between the parties. What has to be seen is, what was the primary object of the assessee while exploiting the property. If it is found applying such principle that the intention is for letting out the property or any portion thereof, the same may be considered as rental income or income from properties. In case, if it is found that the main intention is to exploit immovable property by way of complex commercial activities, in that event it must be held as business income".

Thus, what is to be looked into is intention of the parties while entering into the lease. Admittedly, the agreements entered by the assessee with the lessees were contemporaneous. Objects of the lease was to allow enjoyment of the entire property with all services related to its use as technology centers. Main object of the assessee firm as it appears in its partnership deed is reproduced hereunder:-

'The business of the firm shall be to purchase, sell, sub-divide, consolidate any land and plots, construct, promote, develop, industrial parks, information technology buildings, commercial buildings for sale, rent, lease or both on installment or otherwise".

Contemporaneous nature of the agreements entered by the assessee with its lessees, nature of the premises rented out and object of the assessee firm all, in our opinion, demonstrate its intention to provide the space on lease, as a part and parcel of its business. Hon'ble Apex Court in the case of Rayala Corporation Pvt. Ltd (supra), relying on its own earlier judgment in the case of Chennai Properties & Investments Ltd (supra) held as under at para 10 & 11 of the judgment.

'10. Submissions made by the learned counsel appearing for the Revenue is to the effect that the rent should be the main source of income or the purpose for which the company is incorporated should be to earn income from rent, so as to make the rental income to be the income taxable under the head "Profits and gains of business or profession". It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.

11. The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income".

It is to be noted that Hon'ble Apex Court in the case of Chennai Properties & Investments Ltd (supra) had considered all the judgments relied on by the Id. Commissioner of Income Tax (Appeals) including that of the five judge Bench in the case of Sultan Brothers Pvt. Ltd (supra), before holding in favour of the assessee. We are therefore of the opinion that Id. Commissioner of Income Tax (Appeals) erred in trying to distinguish the judgment of Hon'ble Apex Court in the case of Rayala Corporation (supra), which had placed specific reliance on the judgment of Chennai Properties & Investments Ltd (supra). As to the case of *Raj Dadarkar and Associates (supra)*, of Hon'ble Apex Court in the said case, concerned assessee had income apart from leasing out of the property. Here there is no case for the Revenue that assessee had any different type of income. In the circumstances, we are of the opinion that the income of the assessee both from leasing the space as well as providing maintenance services had to be considered only under the head income from business. Id. Assessing Officer fell in error in treating such amounts under the head income from house property. We are of the opinion that assessee's income has to be considered only under the head "income from business". Ordered accordingly,

8. In the result, the appeals of the assessee are allowed.

Order pronounced on Wednesday, the 1st day of August, 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: 1st August, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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