

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1387/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Shrinath Warehousing Co.,
S/No. 139, Fursungi,
Tal. Haveli,
Dist. Pune-412308
PAN : AA EFS2598H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-4, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 30.10.2018
घोषणा की तारीख / Date of Pronouncement : 30.10.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Pune dated 09.02.2016 for the assessment year 2011-12.

2. None has appeared on behalf of the assessee despite issuance of notice through RPAD. A perusal of the case file shows that the appeal was first listed for hearing on 17.04.2018. Notice of hearing of appeal was sent to the assessee through RPAD on 28.02.2018. Since the Bench did not function on 17.04.2018, the appeal was adjourned to 21.06.2018. On 21.06.2018, none appeared on behalf of the assessee. Fresh notice of hearing of appeal was sent to the assessee for 21.08.2018. On 21.08.2018, the appeal was adjourned to 30.10.2018. Despite notice, again none appeared to represent the assessee today. It appears that the assessee is not keen to pursue his appeal before the Tribunal. In such circumstances, we are constrained to take up the appeal for hearing in ex-parte proceedings qua assessee/appellant, with the assistance of ld. DR and the material available on record.

3. The assessee in appeal has primarily assailed the order of Commissioner of Income Tax (Appeals) in holding the income earned by the assessee from renting of warehouse under the head "Income from House Property" as against the said income declared by assessee under the head "Business Income".

4. The brief facts of the case as emanating from records are: The assessee is a partnership firm and owns number of warehouses. The assessee rented part of warehouses to various individuals and entities. During the period relevant to assessment year under appeal, the assessee received Rs.1,68,07,517/- as rental income from letting out of the warehouse. The assessee offered the said income after claiming expenditure under the head "Business Income". The Assessing Officer

did not concur with the view of assessee and held the income received by assessee from letting out of warehouse as “Income from House Property” and made addition of Rs.43,99,964/- after allowing statutory deduction.

5. Aggrieved by the assessment order dated 03.03.2014 passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after placing reliance on the various decisions confirmed the findings of Assessing Officer and dismissed the appeal of assessee.

6. Shri Pankaj Garg representing the Department vehemently supported the order of Commissioner of Income Tax (Appeals). The Id. DR submitted that rental income received by assessee from letting out of warehouse has rightly been assessed under the head “Income from House Property” by the Authorities below.

7. We have heard the submissions made by Id. DR and have perused the orders of Authorities below. The solitary issue raised in ground Nos. 1, 2 and 3 of the appeal is against holding rental income from letting out of warehouses by assessee under the head “Income from House Property” as against “Business Income” declared by the assessee. On the facts of the case as narrated above, the Commissioner of Income Tax (Appeals) has confirmed the findings of Assessing Officer by observing as under:

“6.6. I have carefully considered the facts of the case and law apparent from the records. There is no change in the facts of the case from A.Y.2000-01 to A.Y.2010-11 and activity of the appellant remained same i.e. letting out of the godowns. The CIT(A)-II in A.Y.2003-04, 2005-06, 2006-07 and 2007-08 has held that rent received from godowns are to be assessed as income from house property. The contention of the appellant is that appellant has constructed a warehouse as a commercial complex and conducted continuous commercial systematic business activity by providing more than 100 no. of occupants in warehouse on specific terms. The appellant is providing space to tenants and not doing any business activity as such and the case of the appellant is similar to case of Keyaram Hotels (P.) Ltd (Supra) wherein it has been held that letting out of the commercial complex would be assessed as income from house property and not as business income. The decision of the jurisdictional High Court in case of Parekh Traders Vs. CIT (1984) 150 ITR 310 (Bom.) & Maharashtra Fertilizers & Chemicals vs. CIT (1984) 150 ITR 317 (Bom) makes it clear that letting out of the godowns will be income from house property. The Supreme Court in case of East India Housing & Land Development Trust Ltd Vs. CIT (1961) 42 ITR 49 (SC) further, clarifies that income from letting out of godowns will be income from house property. The appellant is also providing services like security guard, electricity in common areas, maintenance of internal road and maintenance of parking facilities etc. On this issue Madras High Court in case of A. R. Complex (Supra) has held that letting of the commercial complex would be income from house property and in respect of services held that authorities should bifurcate receipts which also included service charges and quantified portion of receipts for rendering services and such apportioned amount should be assessed under head 'Income from business' or 'Income from other sources'.

*6.7 in view of the above, income from letting out of godowns has to be assessed as income from house property. The income from services provided has to be assessed as income from business or income from other sources. Therefore, **Ground No.1 to 4 of the appeal is dismissed.***

There is no material available on record contrary to the findings of Commissioner of Income Tax (Appeals). Therefore, we do not find any reason to interfere with the impugned order. Accordingly, the grounds Nos.1 to 3 of the appeal are dismissed.

8. There is no ground No. 4 in the appeal. The ground No. 5 and 6 are general in nature, hence, requires no adjudication.

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

Order pronounced in the open Court after hearing of the appeal on the 30th day of October, 2018.

Sd/-
R. S. SYAL
VICE-PRESIDENT

Sd/-
VIKAS AWASTHY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th October, 2018
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-7, Pune.
4. The CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.