

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member)**

**ITA No. 1361/Kol/2018**  
Assessment Year: 2012-13

***M/s. Asia Insulated Wires Pvt. Ltd.....Appellant***  
***No.6A, "Basera Enclave"***  
***6<sup>th</sup> Floor***  
***Wing 2 of Orbit City***  
***82, Raja S.C. Mullick Road***  
***Kolkata -700 084***  
***[PAN : AADCA 9496 L]***

***Vs.***

***Income Tax Officer, Ward-11(2), Kolkata.....Respondent***

**Appearances by:**

*Shri Manoj Kataruka, Advocate, appeared on behalf of the assessee.*

*Shri Saurav Kumar, Addl. CIT, Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : September 25<sup>th</sup>, 2018

Date of pronouncing the order : November 9<sup>th</sup>, 2018

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter the 'Ld. CIT(A)'), passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), dt. 23/05/2018, relating to Assessment Year 2012-13.

2. The assessee is a company and filed its return of income on 05/12/2012, declaring total income of Rs.2,82,520/-. The Assessing Officer passed an order u/s 144 of the Act on 28/03/2015, determining the total income of the assessee at Rs.9,17,960/-. The Assessing Officer had treated the rental income of Rs.9,70,200/-, earned by the assessee as income assessable under the head "income from house property". The assessee had computed the income in question under the head "income from other sources". Consequent to changing the head of "income from other sources" to "income from house property, the expenditure claimed by the assessee on account of electricity

charges, repairs and maintenance etc. was disallowed. The rent in question was earned by the assessee from renting out its factory premises on temporary basis.

3. The Id. Counsel for the assessee submitted that its business operations had slowed down and, therefore, the factory shed as well as plant and machinery was let out on temporary basis to M/s. Diageo India Pvt. Ltd. and M/s. Carlsberg India Pvt. Ltd. He submitted that in such a situation the income in question should be assessed under the head "Income from other sources" and not under the head "income from business". He relied on certain case-law, in support of its contentions.

3.1. The Id. D/R submits that the rental income has to be assessed under the head "income from house property". He relied on the order of the Id. CIT(A) and submitted that the assessee is not providing any other services nor has he given plant and machinery to the tenants on lease. He pointed out that the assessee factory was closed in the year 2010 and rental income started during the year 2010-11.

4. On careful consideration of the rival contentions, I am of the considered opinion that the income in question should be assessee under the head "income from other sources", for the following reasons:-

- a) The assessee has temporarily let out its factory on rent. The factory building is classified as plant and machinery.
- b) The Jurisdictional High Court in the case of *CIT vs. Ajmira Industries Pvt. Ltd. (1976) 103 ITR 245* held that the if an assessee derives any income by exploitation of commercial assets whether itself or through other agencies, such income should be assessed under the head "business income".

4.1. Further in the case of *Commissioner of Excess Profit Tax vs. Sree Lakshmi Silk Mills Ltd. in 20 ITR 451*, it was held as follows:-

*"If a commercial asset is not capable of being used as such, then its being let out to others does not result in an income which is the income of the business. But an asset which was acquired and used for the purpose of the business does not cease to be a commercial asset of that business as soon as it was temporarily put out of use or let out to another person for use in his business or trade. The yield of income by a commercial asset is the profit of the business irrespective of the manner in which that*

*asset is exploited by the owner of the business. He is entitled to exploit it to his best advantage and he may do so either by using it himself personally or by letting it out to somebody else. Suppose, for instance, in a manufacturing concern the use of its plant and machinery can advantageously be made owing to paucity of raw materials only for six hours in a working day, and in order to get the best yield out of it, another person who has got the requisite raw materials is allowed to use it as a licensee on payment of certain consideration for three hours; can it be said in such a situation with any justification that the amount realized from the licensee is not a part of the business income of the licensor. In this case the company was incorporated purely as a manufacturing concern with the object of making profit. It installed plant and machinery for the purpose of its business, and it was open to it if at any time it found that any part of its plant "for the time being" could not be advantageously employed for earning profit by the company itself, to earn profit by leasing it to somebody else. It is difficult to hold that the income thus earned by the commercial asset is not income from the business of the company that has been solely incorporated for the purpose of doing business and earning profits. There is no material whatever for taking the view that the assessee-company was incorporated with any other object than of carrying on business or trade. Owning properties and letting them was not a purpose for which it was formed and that being so, the disputed income cannot be said to fall under any section of the Indian IT Act other than s. 10. Therefore, it is clear that it was part of the normal activities of the assessee's business to earn money by making use of its machinery by either employing it as its own manufacturing concern or temporarily letting it to others for making profit for that business when for the time being it could not itself run it. The High Court was in error in holding that the dyeing plant had ceased to be a commercial asset of the assessee and the income earned by it by letting it out was not chargeable to excess profits tax"*

4.2. Applying the propositions of law laid down in the above case-law to the facts of the case on hand, the income in question is directed to be assessed under the head "income from other sources".

5. In the result, appeal of the assessee is allowed.

**Kolkata, the 9<sup>th</sup> day of November, 2018.**

Sd/-

**[J. Sudhakar Reddy]**  
Accountant Member

Dated : 09.11.2018  
{SC SPS}

*Copy of the order forwarded to:*

**1. M/s. Asia Insulated Wires Pvt. Ltd**

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Kolkata -700 084**

**2. Income Tax Officer, Ward-11(2), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches