

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. No. 571/HYD/2018

Assessment Year: 2014-15

Cache Properties Private Limited,
HYDERABAD
[PAN: AABCC8341C]

Deputy Commissioner
Vs of Income Tax,
Circle-1(2),
HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri P. Murali Mohana Rao, AR
For Revenue : Smt. Neeju Gupta, DR

Date of Hearing : 26-02-2019
Date of Pronouncement : 27-05-2019

ORDER

PER Smt. P. MADHAVI DEVI, J.M. :

This is assessee's appeal for the AY. 2014-15, against the order of the Commissioner of Income Tax (Appeals)-1, Hyderabad, dated 26-02-2018.

2. Brief facts of the case are that, the assessee-company, engaged in the business of infrastructure development & leasing out of commercial spaces, e-filed its return of income, declaring a total income of Rs. 10,03,65,180/- under the normal provisions of Income Tax Act and book profit of Rs. 11,82,25,849/- u/s. 115JB of the Income Tax Act [Act]. The

case was selected for scrutiny through CASS and accordingly, notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee.

3. During the assessment proceedings, the assessee was required to furnish certain information and the assessee complied with the same. After perusal of the relevant information, the Assessing Officer observed that the assessee is engaged in the business of development of commercial property and letting them out on rental basis and that during the year, assessee has earned rental income of Rs. 17,85,27,914/- from such properties. He observed that assessee has offered this income as 'income from house property' and has claimed the benefit of deduction u/s. 24(a) of the Act. He also observed that apart from the income from house property, the assessee also claimed business loss of Rs. 1,51,03,227/-. The assessee was therefore asked to explain as to why the rental income should not be treated as 'Income from business' as assessee was carrying on the business of leasing of premises during the relevant assessment year. Vide reply dt. 07-11-2016, the assessee stated that the their company is engaged in the business of construction of residential and commercial complexes and letting out of the same on rentals and that during the year, assessee has received income from house property, income from business, income from capital gains and income from other sources.

3.1. With regard to the rental income, it was explained that the rent received from the properties was shown under the head 'income from house property' and that assessee has disallowed the relevant expenses like depreciation on buildings, security charges and municipal taxes to buildings etc., which are allowable expenses under the head 'Income from business' and that the same was offered to tax. The Assessing Officer, however, was not convinced with the contentions of assessee and held that the assessee's main intention is to commercially exploit its properties by letting them out on rent and that the property has been given on rent along with car parking place and electricity supply amenities and the rent has been received inclusive of all the facilities. He relied upon the judgement of the Hon'ble Apex Court in the case of Sultan Brothers (P.) Ltd., Vs. CIT [51 ITR 353] (SC), Rayala Corporation (P.) Ltd., Vs. ACIT [386 ITR 500] (SC) and Chennai Properties and Investments Ltd., Vs. CIT [373 ITR 673] (SC) to hold that where the intention of assessee is to commercially exploit the property and the business of the assessee is to let out the properties, the income has to be treated as business income of the assessee. Accordingly, he brought the income declared by the assessee as income from the house property, to tax as 'business income'.

3.2. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the order of Assessing Officer, and the assessee is in second appeal before us, by raising the following grounds of appeal:

“1. The order of the Commissioner of Income Tax [Appeals] - 1, Hyderabad is erroneous both on facts and in law.

2. The Ld. CIT (A) ought to have allowed the appeal in full.

3. The Ld. CIT (A) erred in confirming the addition of Rs. 12,82,87,569 made by the AO by treating the income from house property as income from business.

4. The Ld. CIT (A) ought to have appreciated that the assessee company is not making any return or services on the portion/flats just let out, the income there from which is treated as Income from House Property to be treated as Income from Business.

5. The Ld. CIT (A) ought to have appreciated that rental income earned is chargeable to tax under the specific head income from house property irrespective of nature of asset as well as nature of business.

6. The Ld. CIT(A) ought to have appreciated the fact that the assessee company just letting out the constructed space area and as there is no venture or business activity involved in the same, the rent derived from letting out of property held is to be assessable as income from house property.

7. The Ld. CIT (A) erred in not appreciating the provisions laid down u/s 22 of the Income Tax Act, 1961. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income- tax, shall be chargeable to income- tax under the head Income from house property.

8. The Ld.CIT(A) ought to have appreciated that it was a case where assessee had earned rental income by exploiting property as a capital asset and it was not a case where letting out was to be perceived as an adventure in nature of trade or business; therefore, such rental income was liable to be assessed as income from house property.

9. The Ld. CIT (A) ought to have appreciated that income derived by assessee company from tenants was income received from property and character of that income could not be altered merely because

assessee company had been formed with object that the company is engaged in the business of construction of residential & commercial complexes & letting out of the property on lease/rent.

10. The Ld. CIT (A) erred in not appreciating the fact that the case of the Appellant is covered u/s 44AB of the Act and got his books of accounts audited by Certified Chartered Accountants and no discrepancies were identified in the Books of accounts.

11. The Ld. CIT (A) ought to have appreciated the fact that there was no change in the accounting policies or method of accounting followed by the assessee during the year under consideration when compared to earlier years.

12. The Ld. CIT (A) erred in not appreciating the fact that without there being any mistake or discrepancy noticed in the books of account, the AO has changed the head of rental income from "Income from House Property" to "Income from Business",

13. The Assessee may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the case”.

4. Both the Ld. Counsel for the assessee and the Ld.DR filed detailed written submissions in support of their contentions and have placed reliance upon the relevant case law.

5. Ld. Counsel for the assessee submitted the following points in brief:

- i. Main object clause of Memorandum of Association: It is stated that the primary object of the assessee is to construct and develop the property but not to lease them out for earning rental income and therefore, the business of assessee is not letting out of the properties for earning rental income. He submitted that in the case of Chennai

Properties and Investments Ltd., Vs. CIT (supra) the Hon'ble Supreme Court held that *the income derived from letting out of the property is business income only because the building was constructed for earning rental income as per the object clause derived from the MoA of the company*. He placed reliance upon the decision of the Hon'ble Apex Court in the case of CIT Vs. Sane & Doshi Enterprises [77 taxmann.com 288] (SC), dt. 03-01-2017 and also the decision of the ITAT, Mumbai in the case of DCIT Vs. M/s. Magnus Properties Pvt. Ltd., in ITA No. 5944/Mum/2012 and others, dt. 30-10-2018 in support of his contentions that since the assessee does not carry on business of letting out of property, Section 28 cannot be invoked and the income received cannot be treated as profits of business. He also placed reliance upon the decision of the Hon'ble Apex Court in the case of Raj Dadarkar & Associates Vs. ACIT [394 ITR 592] (SC), wherein it was held that – *The assessee acquired leasehold rights in a property, constructed various shops and stalls on the said property and gave same to various persons on sub-licensing basis* – He submitted that in the case before us, since the assessee was not engaged in the systematic activity of providing service to tenants, it was to be brought to tax as ‘income from house property’ and not as ‘business income’.

- ii. Intention to rent property is not for temporary basis and thus cannot be taxed under the head ‘income from

business' or 'profession': Ld. Counsel for the assessee submitted that as per various rental agreements entered into by the assessee with its lessees, the lease period is nearly for nine years. He placed reliance on the decision of Hon'ble High Court of Punjab & Haryana in the case of *Batra Palace (P.) Ltd., Vs. CIT* [385 ITR 144] (Punjab & Haryana) / [79 taxmann.com 324] (Punjab & Haryana), wherein it was held that –

“The claim of the assessee is that such renting was done for a temporary period as the premises were vacated after two years and therefore, such letting out of the asset has to be viewed as commercial exploitation of the assets. In this regard, we have attempted to cull the intention of the assessee while letting out the property in question.

It is evident from perusal of the same that the property in question was given over for use for a period of 12 years which was renewable for a further period of 12 years as mutually agreed upon by both the parties. From such an arrangement, it does not show that the intention to let out was only for a temporary period. No doubt, the property has been put to use by the lessee also for running a restaurant business as done by the assessee, so however, the lease cannot be termed to be for a short period or temporary.

What is of relevance is to cull out the intention of the assessee at the time of letting out of the property which clearly does not show that the letting out was for a temporary period. Thus, in our view, having regard to the

facts and circumstances of the case, the CIT(A) was not justified in inferring that the letting out in this case was to be taken as commercial exploitation of the property. The intention was clearly to enjoy income from the letting out of the property which in our considered opinion, was rightly brought to tax under the head 'income from house property' in the assessment order."

iii. Ld. Counsel also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of Raj Dadarkar & Associates Vs. ACIT, wherein the judgment in the cases of Chennai Properties & Investments Ltd., and Rayala Corporation (P) Ltd., were considered and it was held as under:

"19. Reliance placed by the appellant on the judgments of this court in Chennai Properties & Investments Ltd., (supra) and Rayala Corporation (P) Ltd., (supra) would be of no avail. In Chennai Properties & Investments Ltd., (supra) where one of us (Sikri,J.) was part of the Bench found that the entire income of the appellant was through letting out of the two properties it owned and there was no other income of the assessee except the income from letting out of the said properties, which was the business of the assessee. On those facts, this Court came to the conclusion that judgment of this Court in Karanpura Development Co. Ltd. V. CIT [1962] 44 ITR 362(SC) was applicable and the judgment of this Court in East India Housing & Land development Trust Ltd., Vs. CIT [1961] 42 ITR 49 (SC) was held to be distinguishable. In the present case, we find that situation is just the reverse. The judgment in east India Housing and Land Development Trust Ltd. (supra) which would be applicable which is discussed in para 8 of Chennai properties & investment Ltd., (supra) and the reproduction thereof would bring home the point we are canvassing;

8. *With this background, we first refer to the judgement of this Court East India Housing and Land Development Trust Ltd., (supra) which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question which arose for consideration was; whether the rental income that is received was to be treated as income from the house property or the income from the business? This Court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The Court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties”.*

5.1 Thus, according to the Ld. Counsel for the assessee, the judgment of the Apex Court in the case of East India Housing and Dev Trust Ltd., Vs. CIT (supra) would apply to the assessee's case as facts are similar. He also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Keyaram Hotels (P.) Ltd., Vs. DCIT [63 taxmann.com 301] (SC), wherein it was held that – *Where assessee was not engaged in any business activity, rental income earned from letting out of commercial complex would be assessed as income from house property and not as business income*’. He also placed reliance on the decision of the Hon'ble Bombay High

Court in the case of CIT Vs. Gundecha Builders [102 taxmann.com 27] (Bombay), wherein the decisions of the Apex Court in the cases of Chennai Properties (supra) and Royala Corporation (supra) were distinguished and it was held that income therein shall be taxable under the Head “Income from House Property” and not as business income.

iii. Principle of consistency and uniformity: Ld. Counsel for the assessee submitted that the assessee was formed in the year 2009 and since then, the assessee has been offering rental income as ‘income from house property’, which has been accepted by the department. It is submitted that it is only in the AY. 2012-13, where pursuant to the order u/s. 263 of the Act, Assessing Officer has treated the ‘income from house property’ as ‘income from business’. He submitted that the order u/s. 263 of the Act was challenged by the assessee before the ITAT, wherein the ITAT vide order dt 31.10.2017 in ITA No. 689/Hyd/2017 had modified the directions and had directed the Assessing Officer to determine the nature of income by having regard to case law on the issue. It is submitted that the order consequent to the directions of ITAT is yet to be passed by the Assessing Officer. However, according to him, the *Principles of Consistency and Uniformity* requires that the head of income under which the assessee has been offering rental income should not be changed in the subsequent assessment years. The Ld. Counsel for the assessee relied on the

following case law in support of his argument that where the tribunal had accepted income from letting out as 'income from house property' in the earlier assessment years, it is not open for the A.O to treat it as business income in the subsequent years:- 1) CIT Vs. Haryana Tourism Corporation, reported in 327 ITR 26 (P&H); and 2) CIT Vs. Neo Poly Pack (P.) Ltd., reported in 112 taxman 363 (Delhi). Therefore, he prayed that the income from house property as offered by the assessee be accepted.

6. Ld.DR, on the other hand, reiterated the submissions made by him in his written submissions and has relied upon the case laws, which have been referred to by the Assessing Officer and CIT(A). He referred to the assessee's submissions in its letters to the Assessing Officer, that its business was in infrastructure development and leasing out of residential and commercial properties. Therefore, according to him, the rental income has to be treated as 'business income of the assessee'. Ld.DR also placed reliance on the following judgments in support of his contentions:

i. Rayala Corporation (P.) Ltd., Vs. ACIT [386 ITR 500] (SC), wherein it was held that – *the assessee-company was engaged in the business of leasing out its house properties to earn rent, income so earned should be treated as 'business income' and not as 'income from house property'*;

ii. Chennai Properties and Investments Ltd., Vs. CIT [373 ITR 673] (SC), wherein it was held that – *in terms of MOA, main object of the assessee-company was to acquire properties and earn income by letting out of the same, said income was to be brought to tax as business income and not as income from house property;*

6.1. Ld.DR also submitted that assessee's reliance on the decision of the Hon'ble Supreme Court in the case of Raj Dadarkar & Associates Vs. ACIT, (cited supra) is misplaced. According to him this deletion is not squarely applicable to the facts of the present case, since in the said case, the assessee has given only some properties on sub-licensing basis. On the issue of uniformity and consistency in the approach of the Revenue, it is submitted that since AY. 2011-12 onwards in assessee's own cases, the Revenue is consistently treating the income from such rentals as 'business income' and therefore, the said principle is being applied consistently.

6.2. Ld.DR also filed copies of the letters filed by the assessee before the Assessing Officer explaining the nature of its business as business of construction of residential / commercial complex and letting out on lease/rent.

7. Having regard to the rival contentions and material on record, we find that the assessee has filed copies of its returns of income and computation of income from the AY. 2010-11 onwards upto 2016-17, wherein the assessee has offered rental income as 'income from house property' and the Assessing Officer has accepted the same till the AY. 2011-12

and it was for the first time in AY. 2012-13 that there is a change of stand by the Revenue that too pursuant to the order passed by the CIT u/s. 263 of the Act. It is seen that the ITAT has upheld the initiation of proceedings u/s. 263 of the Act, and has directed the Assessing Officer to consider the nature of transaction in line with the case laws on the subject. Thus, it cannot be said that the stand of the Revenue that the income is to be treated as 'business income' has been upheld by the ITAT. Thus, the case laws relied upon by the assessee are not applicable to the case before us.

7.1 The main reason for treating rental income as 'business income of the assessee' by the A.O, is the admission of the assessee itself in its letters addressed to the A.O that its business was also of leasing or letting out of its properties. The Assessing Officer had relied upon the judgment of the Hon'ble Supreme Court in the case of Sultan Brothers (P.) Ltd., Vs. CIT (supra), wherein it was held that 'the intention or the primary object of the assessee while exploiting the property forms the nucleus of the issue'. He held that in the case before us, the primary intention was to commercially exploit the commercial properties developed by it, and hence such an intention leads to business activity. Therefore to ascertain the intentions of the assessee, the objects clauses in the Memorandum of association needs to be looked into. In compliance with our directions, the Ld. Counsel for the assessee has filed a copy of the memorandum of association of the assessee and has also filed the copy of memorandum of association of Chennai

properties Ltd to distinguish the said case from the case of the assessee. The main objects of the assessee company as per memorandum of association are as under:

“1. To carry on the business of builders, developers, real estate agents and constructors for construction or demolition work of any kind; and to purchase or otherwise acquire lands, houses, offices, workshops, buildings and premises for the purpose of that business.

2. To erect and construction roads, sewers, houses, buildings or works of every description on any land whether or not owned by the company and to demolish rebuild, enlarge, alter and improve existing plots, houses, buildings or works, to convert and appropriate any such land into and for roads and other facilities, and generally to deal with the develop the property of the company.

3. To purchase or otherwise acquire and to manufacture and deal in bricks, stone and other building materials of any kind and all implements, machinery, vehicles scaffolding and other equipment and articles used by builders and contractors.

4. To purchase, sell, develop, take in exchange, or on lease, hire or otherwise acquire, whether for investment or sale, or working the same, and real or personal estate including lands, mines, business building, factories, mill, houses, cottages, shops, depots, warehouses, machinery, plant, stock in trade, mineral rights concessions, privileges, licenses, easement or interest in or with respect to any property whatsoever for the purpose of the company in consideration for a gross sum or rent or partly in one way and partly in the other or for any other consideration and to carry on business as proprietors of flats and buildings and to let on lease or otherwise apartments

therein and to provide for the conveniences commonly provided in flats, suites and residential and business quarters.

5. To carry on the business of builders, developers, real estate agents and constrictors for construction or demolition work of any kind, and to purchase or otherwise acquire lands, houses, offices, workshops, buildings and premises for the purpose of that business.

7.2 Thus, from a literal reading of clause (4) of para III, it is clear that the assessee's business is to purchase, sell, develop, take in exchange or on lease, hire or otherwise acquire the properties and to carry on business as proprietors of lands and buildings and **to-let on lease** (emphasis given by us) or otherwise apartments therein and to provide for the conveniences commonly provided in flats, suits and residential business quarters. Therefore, the main business of the assessee is to develop the properties and also to let out the properties on lease. In the case of Chennai properties, the said company had two properties known as 'Chennai House Esplanade' Madras and 'Fishayen Estate' at South beach road, Madras which were let out. We find that the objects of 'Chennai properties' was only to develop and let out those two to enjoy the rental income while in the case of the assessee, it is to develop the properties and also let out the properties on rent. Therefore, we are of the opinion that the objects of the assessee company are not exactly similar to the objects of the Chennai properties. In the case before us, it is seen from the computation of income for the assessment year 2014-15, that the assessee has derived rental income from only one property

i.e Gumidelli Towers during the relevant previous year. We have verified the assessee's computation of income for the A.Ys 2010-11 to 2016-17 (filed by the assessee) and we found that the assessee has derived rental income only and there is no other source from which business income has been earned. There is 'income from other sources' such as interest income etc. Therefore, it is clear that in all the above years the assessee has not derived income from any other source except the rental income from the properties let out by the assessee. It is also noticed that from the A.Y 2010-11 onwards, the assessee has been deriving only rental income from the properties at Hyderabad, Mumbai, Delhi etc., and a perusal of lease deeds also shows that the assessee has been letting out the properties to the lessees for long period along with the furniture and fittings including the power back up and AC facility. Thus, there appears to be no other activity carried on by the assessee after initial set up of infrastructure required by the lessee. The annexure – A to the lease deeds lists out the facilities to be provided by the assessee to the tenant and for the sake of convenience and ready reference, the annexure – A to the lease deed between the assessee and TATA Motors Ltd., in respect of the Commercial Space situated on the Forth Floor of Gumidelli Towers, Begumpet, Hyderabad, is reproduced hereunder:

- a. 20 workstations*
- b. Electrical Works*
- c. Light fittings*
- d. A/C low side works*

- e. *Data & Voice networking*
- f. *Smoke detectors & provisions for keeping fire extinguishers at prominent places.*
- g. *Sprinklers*
- h. *UPS cabling*
- i. *Storage units in the open areas, cubicles & cabins*
- j. *False ceiling*
- k. *Painting*
- l. *Flooring – tiles / carpets*
- m. *Roller blinds*

Lessor confirms that it shall provide good quality materials for the interiors and warrants that any defect in the interiors would be rectified, repaired and made good at its own cost, to the satisfaction of the lessee, during the first 6 months from the date such interior, fitting and fixture work is completed and certified by the Lessor.

7.3 We have also noticed that the lease rental is to be paid to the lessor only after the lessor i.e assessee herein, completes all the interior, fittings and furniture works and has provided the infrastructural facilities and materials to the lessees as per Annexure – A to the agreement. Therefore, it is not mere bare structure that is provided by the assessee to the tenant on rent but it is with furniture and fixtures along with power back up and AC facility. The Ld. Counsel for the assessee has relied upon various decisions in favour of his arguments let us therefore examine the applicability of the said decisions to facts of the case before us.

i) The judgement of the Hon'ble Supreme Court in the case of Raj Dadarkar and associates (supra); In this case, we find that the Hon'ble Supreme Court was dealing with an assessee who was allotted, premises which was a bare structure i.e

pillar / column, Sans even four walls. In terms of the allotment the assessee had to make entire premises fit to be used as market including construction of walls, construction of entire common amenities like toilet block etc. The assessee therein had filed the return offering the income to tax under the head 'profits and gains of business or profession' whereas the A.O computed the income from shops and stalls under the head 'income from house property'. The Tribunal had held that the assessee's income was to be treated as income from house property which was confirmed by the Hon'ble High Court and the Hon'ble Supreme Court confirmed the order of the Tribunal holding it to be income from house property. For coming to this conclusion, the Hon'ble Supreme Court has considered the factual findings of the ITAT that the assessee there in had let out the shops / stalls to various occupants on a monthly rent and collected charges for minor repairs, maintenance, water and electricity and as per the allotment letter, the assessee was bound to incur all these expenses and the assessee had collected extra money from the lessees. The ITAT also held that the assessee collected 20% of monthly rent as service charges which were used for services like providing electricity, water etc. which was inseparable from basic charges on rent. The Tribunal had held that the assessee has not established that he was engaged in any systematic or organized activities of providing services to the occupiers of the shops / stalls so as to construe the receipts from them as business income and it was held to be 'income from house property'.

ii) In the case of Keyaram Hotels Private Limited, (2015) 63 taxmann. com 301(SC), the Hon'ble Supreme Court has held that where the assessee was not engaged in any business activity, rental income earned from letting out of commercial complex would be assessed as income from house property and not as business income.

iii) The Hon'ble Bombay High Court, in the case of Gundecha Builders, reported in (2019), 102 taxmann.com 27 (Bombay), has held that where the assessee was engaged in the business of development of real estate project, rental income received from unsold portion of the property constructed by it was assessable to tax as income from house property. For coming to this conclusion, the Hon'ble High Court followed its earlier decision in the case of CIT Vs. Sane & Doshi Enterprises, (2015) 377 ITR 165/232 Taxman 452/58, we find that SLP against the said decision has been admitted by the Apex Court as reported in [2017] 77 taxmann.com 288(SC).

iv) The Hon'ble Punjab & Haryana High Court in the case of Batra Palace (P.) Ltd. Vs. CIT, reported in [2017] 79 taxmann.com 324 (P&H), held that where it is not shown that the intention was to let out the properties for a temporary period, it was the intention of the assessee to enjoy the rental income from the letting out the property and hence it was to be treated as income from house property.

v) The Hon'ble Apex Court in the case of Sultan Brothers (P) Ltd., reported in [1964] 51 ITR 353 (SC) has held that where property has been let out fully equipped and furnished for

running a hotel, it could not be said that letting of building amounts to doing business and rental income could not be assessed as business income u/s 10 of 1922 Act.

7.4 By applying the rationale of the above decisions, we find that the fact that the property let out is a commercial complex is not sufficient to treat the rental income therefrom as 'Business Income'. The tests to be applied are; 1) the tenure of the lease, 2) the objects of the company; 3) the intention of the company; and 4) the services provided or activities carried on by the assessee after letting out of the property. Though one of the objects of the company is to let out the properties on lease / rent, it is not clear whether the intention is to earn rental income only from the properties constructed / developed by it. On perusal of the returns of income for earlier assessment years, we find that the assessee had let out properties at Hyderabad, Mumbai & Delhi, but the income from said properties is not offered during the relevant assessment year. So, whether such properties were let out since they were unsold during the relevant period and whether they were sold subsequently to which, there is no rental income during the relevant assessment year is not clear from the details filed before us. As held by the Hon'ble Bombay High Court in the case of Gundecha Builders (supra), rental income from unsold flats is to be assessed on 'income from house property'. Further, as held by the Hon'ble Courts in cases cited supra, unless the assessee is carrying on a systematic and organized activity to exploit the property commercially, it cannot be taxed

as business income. We find that except for creating the infrastructure as per the requirement of the lessee, the assessee is not providing any other service during the year as is evident from the profit and loss account of the assessee for the relevant assessment year. The only expenses claimed by the assessee are interest, salaries & administrative expenses. Therefore, it is clear that the assessee's intention is to enjoy the rental income on a long term basis by leasing out the premises and not to exploit the same commercially on short term basis.

7.5 In view of the same, we are inclined to accept the contentions of the assessee that the rental income is to be assessed as 'income from house property' as offered by the assessee and as accepted by the Revenue in the earlier years up to A.Y 2011-12. Accordingly, assessee's appeal is allowed.

8 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27th May, 2019

Sd
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated 27th May, 2019

Copy to :

- 1. M/s. Cache Properties Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad.*
- 2. Deputy Commissioner of Income Tax, Circle-1(2), Hyderabad.*
- 3. CIT(Appeals)-1, Hyderabad.*
- 4. Pr.CIT-1, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*