

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.5764/Del/2019
Assessment Year: 2015-16

M/s. Basics IT Solutions Pvt. Ltd. G-2, Nizamuddin West, New Delhi-110013 PAN No.AACCB5118K (APPELLANT)	Vs	ACIT Circle – 4 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Rajiv Saxena, Advocate Sh. Shyam Sunder, AR
Respondent by	Sh. P. S. Thuingaleng, SR. DR

Date of hearing:	09/09/2019
Date of Pronouncement:	13/09/2019

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-2, New Delhi dated 30.04.2019 pertaining to A. Y. 2015-16.

2. The sole issue in the present case to be decided is whether on the facts and circumstances of the case, income from renting out property is to be assessed under the head 'Income from Business' or 'Income from House Property'.

3. Briefly stated that the facts of the case are that the assessee company was formed and registered with ROC, NCT of Delhi and Haryana on 25th day of November, 2004 with one of the main objects 'to carry on all kind of business, buy, sell, let out, hire and repair in relation to any immovable property and its maintenance services.

4. Apart from this, in the objects incidental or ancillary to the attainment of the main objects. There was specific object at S. No.22 as under :

'to lease', let out on hire, pledge, hypotheciate, or otherwise dispose off the whole or any part or parts of the undertaking of the company or any land, business property, rights or assets or any kind of the company or any share of interest bearing respectively, in such manner and in such consideration as the company may think fit.

5. During the year the assessee has leased out following premises :-

Chart Giving Details of Premises along-with Facilities to Various Software/Business Concerns

Sr. No.	Name of the Tenant	Premises & Facilities leased
1.	<i>M/s MetaOption Software Pvt. Ltd.</i>	1. <i>Furnished office to computer software with furniture & fixture of company (Super Area 7000 sq. ft. & carpet area 5500 sq flat 6th Floor.</i> 2. <i>24-hour power supply.</i> 3. <i>Centrally air conditioning.</i> 4. <i>Managing parking facilities</i> 5. <i>Drinking water supply and 24-hour water supply.</i> 6. <i>24-hour Internet facilities.</i>
2.	<i>DA Vision Global Enterprises Limited</i>	1. <i>Furnished office to computer software with furniture &</i>
3.	<i>M/s Arkadin Conferindia Pvt. Ltd.</i>	1. <i>Furnished office to computer software with furniture & fixture of company (Super Area 7,500 sq. ft. & carpet area - at 4th Floor.</i> 2. <i>Power Backup</i> 3. <i>Managing parking facilities</i>
4.	<i>M/s Sharp Business Systems (India) Pvt. Ltd.</i>	1. <i>Furnished office to computer software with furniture & fixture of company (Super Area 7,500 sq. ft. & carpet area - at 63rd Floor.</i> 2. <i>Power Backup</i> 3. <i>Power Load</i> 4. <i>Centrally air conditioning.</i> 5. <i>Managing parking facilities</i>

6. The income of the assessee was shown in its profit and loss account as under :-

OTHER INCOMES :

Electricity & DG Charges	1,90,700.00	569,417.00
Maintenance Charges	3,537,295.00	2,555,000.00
Interest of Income Tax	36,094.00	
Refund		

Rental Income	<u>9,102,000.00</u>	<u>5,810,000.00</u>
	<u>13,766,089.00</u>	<u>8,934,417.00</u>

7. During the course of the assessment proceedings the Assessing Officer was of the opinion that the income of the assessee from rent has to be treated as income from house property. After discussing certain judicial decisions the Assessing Officer completed the assessment by treating the rent of Rs.9,102,000/- as income from house property and after allowing standard deduction, addition of Rs.63,71,400/- was made.

8. The assessee carried the matter before the CIT(A) but without any success. The CIT(A) dismissed the appeal by observing as under :-

“6.5 Apart from this, there is no mention of renting of immovable property or maintenance services in any other objects throughout the memorandum and articles of association. Reference about renting added to an entirely different clause of system design and information technology appears ambiguous. How and when this short reference has been added to an entirely different clause dealing with entirely different object, is not clear as the same was not available before the AO. Even the intention of adding a short reference to a different clause is not clear. In fact, the appellant has done no business in systems or information technology which is mentioned throughout its memorandum and articles of association.

6.6 Therefore, the appellant’s ground suffers from ambiguity. I do not see any reason to interfere with the decision of the AO. Even the inclusion of interest on IT refund of Rs. 36,095/- as business income is not allowable. These grounds are, therefore, dismissed as devoid of merit.”

9. Before us the Ld. Counsel for the assessee drew our attention to the memorandum of association of the company and pointed out that the main object read with other objects clearly shows that the business of the assessee was to let out and lease the property. On such objects strong reliance was placed on the decision of Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. 373 ITR 673.

10. Per contra the DR strongly supported the findings of the CIT(A).

11. We have given a thoughtful consideration to the orders of the authorities below. The main objects and other object of the company have been mentioned elsewhere. In the light of the main object and the other object we do not find any merit in the observations of the CIT(A). We fail to understand the apprehension shown by the CIT(A) in respect of clause 22 for which he observed that "short reference has been added to entirely different clause dealing with entirely different object, is not clear as the same was not available before the AO" when the Assessing Officer himself has categorically mentioned that he has examined the memorandum of association of the assessee company.

12. Reliance on the decision of Hon'ble Supreme Court in the case of Chennai Properties and Investment (supra) is well taken.

13. The relevant findings of the Hon'ble Supreme Court read as under :-

6. Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P.) Ltd. (supra), we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. CIT [1962] 44 ITR 362 (SC). That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a j sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company

must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: —

"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The dividing line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."

9. *After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in Karanpura Development Co. Ltd's case (supra) squarely applies to the facts of the present case.*

No doubt in Sultan Brothers (P.) Ltd.'s case (supra), Constitution Bench judgment of his Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: —

"We think each case has to be looked at from a

businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."

11. *We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs.*

14. Finding parity in the facts of the case in hand with the facts of the case decided by the Hon'ble Supreme Court and respectfully following the same we direct the Assessing Officer to treat the rental income as income from business. However, income from interest on income tax refund is excluded from the business income. With these observations the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on 13.09.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:-13 .09.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.09.2019
Date on which the typed draft is placed before the dictating Member	12.09.2019
Date on which the typed draft is placed before the Other member	13.09.2019
Date on which the approved draft comes to the Sr.PS/PS	13.09.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	13.09.2019
Date on which the fair order comes back to the Sr. PS/ PS	13.09.2019
Date on which the final order is uploaded on the website of ITAT	13.09.2019
Date on which the file goes to the Bench Clerk	13.09.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	