

**IN THE INCOME TAX APPELLATE TRIBUNAL “G”  
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &  
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 1180/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2013-14)

JCIT CC 7(2) Room no. 655, 6 <sup>th</sup> floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	Shreeji Exhibitors, Old S. No. 677(7A), New S. No. 277, Near Temba Hospital, Shree Vallabhacharaji Marg, Bhayabnder (west), Thane – 401 101.
स्थायीलेखासं./जीआइआरसं./PAN No. ABCFS4464M		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vinod Kumar, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri V. Mohan, AR

सुनवाईकीतारीख/ Date of Hearing	:	21.11.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.01.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):**

The present appeal has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-49, Mumbai, in short ‘Ld. CIT(A)’ dated 12.12.17 for AY 2013-14.

2. The brief facts of the case are that assessee is engaged in the business of collection of income by exhibition of feature films at Multiplex and collecting income through letting out property for commercial exploitation. The return of income was filed by the assessee on 30.09.13 declaring total income at Rs. 1,09,90,200/-. The assessment was completed u/s 143(3) of the Act on 28.03.16 determining the total income at Rs. 3,66,15,730/-.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, partly allowed the appeal filed by the assessee.

4. Now before us, the revenue has preferred the appeal by raising the grounds of appeal as under:-

*1. Whether On the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding that the assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income amounting to Rs.4,30,44,648/- received by the assessee to be taxable*

*as income from business and not under the head income from House Property.*

*2. Whether On the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in ignoring the settled position of law that where the main intention is to simply let out property or any part of it, the resultant income must be assessed as income from house property and the amenities such a electricity, cooling towers, elevators and car parking provided by the assessee to its tenant were incidental to letting out of the property and could not be terms as complex commercial to justify the assessment of rental income as income from business."*

*The appellant prays that the order of CIT(A), Mumbai on the above grounds be set aside and that of the Assessing Officer be restored.*

*The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary.*

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds raised by the revenue are squarely covered by the order of Coordinate Bench of Hon'ble ITAT in

ITA No. 5511/Mum/2015 for AY 2011-12 in assessee's own case and the same was confirmed by the decision of Hon'ble Bombay High Court in ITA No. 1212 of 2017.

6. On the other hand, Ld. DR supported the orders passed by the revenue authorities.

7. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 640/Mum/2014 & MA No. 211/Mum/2015 and ITA No. 5511/Mum/2015 for AY 2011-12 in assessee's own case and the same was confirmed by the decision of Hon'ble Bombay High Court in ITA No. 807 of 2016, which is reproduced below:-

*2. The Revenue urges the following question of law for our consideration:*

*"1. Whether, on the facts and in the circumstances of the case and in law the Hon'ble*

*ITAT was justified in holding that the assessee had exploited its property commercially by way of complex commercial activities and hence the rental income received by the assessee to be taxable as income from business and not under the head Income from House Property?"*

*3. The basic issue which arises in this appeal is whether income from letting out shopping mall and Cinema Theatre alongwith multiplex centre is to be held "Income from house property" as contended by the Revenue or "business income" as contended by the assessee. Briefly, the facts are that the respondent- assessee is a partnership firm engaged into the business of construction and maintenance of mall, letting out premises on lease and providing amenities therein and exhibition of feature films at multiplex. In the subject assessment year the respondent offered its income on the above account under the head of income from business or profession. However, the Assessing Officer did not accept it and treated the income therefrom as "Income from house property".*

*4. Being aggrieved, the respondent filed an appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). However, appeal of the respondent was dismissed on 10<sup>th</sup> December, 2013*

5. Being aggrieved by the order dated 10<sup>th</sup> December, 2013 of the GIT (A), the respondent filed an appeal to the Tribunal. The impugned order of the Tribunal noted the fact that the assessee's activity of letting out building premises is its business activity. This, the Tribunal observed it is clear from objects of the respondent as set out in its partnership deed viz. to deal with properties i.e. to construct real estate, multiplex centre, entertainment complex etc. and operate and manage the same. On the basis of the above object clause the impugned order dated 14<sup>th</sup> August, 2015 placed reliance on **Chennai Properties & Investment Limited Vs. GIT<sup>1</sup>**, to hold that the objects clause of the respondent-assessee's partnership deed would be the determining factor to decide the nature of income. On the above basis, it concluded that it is business income. In case of **Chennai Properties & Investment Limited (supra)** the object of the Assessee therein was to acquire properties and let out the same. In above view the appeal of the respondent was allowed and held that the income from letting out of business premises was taxable under the head business income not income from the house property.

6. In view of the fact that the Tribunal has applied Apex Court decision in **Chennai Properties & Investment Limited (supra)**, on similar facts, the

*proposed question of law does not give rise to any substantial question of law. Therefore, not entertained.*

7. Accordingly, Appeal dismissed. No order as to costs.

8. Therefore, respectfully following the decision of Hon'ble Bombay High Court, which is applicable *mutatis mutandis* in the present case, we **dismiss** the grounds raised by the revenue.

9. In the net result, the appeal filed by the revenue stands **dismissed**.

*Order pronounced in the open court on 8<sup>th</sup> Jan 2020.*

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 08.01.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai

6. गार्डफाईल / Guard File  
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai