

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 758/Bang/2019		
Assessment Year : 2015 – 16		
M/s MLC Properties LLP, Tower – D, The Millennia, Murphy Road, Ulsoor, Bengaluru - 560008 PAN : BHKPM3338N	vs.	DCIT, Circle – 1 (2) (1), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shree V. Srinivasan, Advocate
Revenue by	:	Smt. R. Premi, JCIT DR
Date of Hearing	:	25.02.2020
Date of Pronouncement	:	06.03.2020

ORDER

PER SHRI A.K. GARODIA, AM:

This appeal is filed by the assessee. This appeal is directed against the order of CIT(A) – 1 Bengaluru dated 22.02.2019.

2. Although several grounds are raised by the assessee but the issue in dispute is only one as to whether the rental income earned by the assessee is taxable under the head “Income from House Property” as claimed by the assessee in the return of income or under the head “Income from Business” as held by the AO in the assessment order.

3. In course of hearing, learned AR of the assessee submitted that the AO and CIT (A) had proceeded on the basis of the objects Clause of the Partnership Deed. He pointed out that in Para 4.11 of the assessment order, the AO held that the provisions of the partnership deed clearly mention that the business objective of the

partnership firm is to rent or lease out buildings. The AO followed the judgment of Hon'ble apex court rendered in the case of Chennai Properties and Investment Limited vs. CIT as reported in 373 ITR 673. He submitted that the AO and CIT (A) has totally disregarded the activities of the assessee firm and the nature of services rendered by the assessee to the lessees. In this regard, he submitted that copies of various lease deeds is available in the paper book. He drawn our attention to lease deed dated 01.03.2010 between the assessee firm and M/s HID India Private Limited available on pages 24 to 44 of the paper book. He pointed out that in Para 13 of this Lease Deed is Lessor's i.e. the present assessee's Covenants and as per the lease deed, it is a letting out simplicitor and no additional service is to be provided by the assessee. He submitted that all other lease deeds are also similar. He placed reliance on the judgment of Hon'ble Apex Court rendered in the case of Raj Dadarkar & Associates vs. ACIT as reported in 99 CCH 444 ISCC, copy available on pages 263 to 287 of the paper book. He pointed out that in this case, Hon'ble Apex Court has duly considered its earlier judgment rendered in the case of Chennai Properties and Investment Limited vs. CIT (Supra) followed by the AO in the present case. He pointed out that in that case, Hon'ble apex court referred to the judgment of the Constitution Bench of Hon'ble Apex Court rendered in the case of Sultan Bros. Pvt. Ltd. as reported in 5 SCR 807 in which, it was held that 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 exploitation of his property by an owner. He pointed out this was also held in that case that 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. He pointed out that in Para 17 of this judgment of Hon'ble apex court rendered in the case of Raj Dadarkar & Associates vs. ACIT (Supra), it is noted that in that case also as in the present case, reliance was placed only on a clause of the partnership deed to show its objective and no other material was referred to. He submitted that Hon'ble apex court reproduced the finding of the tribunal in that case as per which, the assessee let out shops/stalls to various

occupants on a monthly rent as in the present case. He further pointed out that in that case, the assessee collected 20% of monthly rent as service charges because some services such as watch and ward electricity charges etc. were also rendered by the assessee in that case apart from letting out of the property and under these facts in that case, the AO held that the income is assessable as Income from House Property and not as business income and the tribunal confirmed the action of the AO in that case and Hon'ble apex court also dismissed the appeal of the assessee in that case and the action of the AO of holding rental income assessable under the head "Income from House Property" was approved by Hon'ble apex court also even after considering its earlier judgment rendered in the case of Chennai Properties and Investment Limited vs. CIT (Supra). He submitted that in the facts of the present case, in preference to the earlier judgment of Hon'ble Apex Court rendered in the case of Chennai Properties and Investment Limited vs. CIT (Supra), the later judgment of Hon'ble Apex Court rendered in the case of Raj Dadarkar & Associates vs. ACIT (Supra) should be followed because in this case, the earlier judgment of Hon'ble apex court by the Constitution Bench of Hon'ble Apex Court rendered in the case of Sultan Bros. Pvt. Ltd. (Supra) was followed and the facts of the present case are similar to the facts in that case i.e. Raj Dadarkar & Associates vs. ACIT (Supra). He also submitted that in next year i.e. in A. Y. 2016 – 17 also, the assessee declared the same income under the same head i.e. "Income from House Property" and he submitted a copy of Computation of Income for that year along with Assessment Order dated 24.12.2019 and submitted that in that year, as per the assessment order passed u/s 143 (3), the claim of the assessee stands accepted. He submitted that when the claim of the assessee is accepted by the AO in the later year under similar facts, in the present year also, it should be accepted. Learned DR of the revenue supported the order of CIT (A). He also placed reliance on the same judgment of Hon'ble Apex Court rendered in the case of Chennai Properties and Investment Limited vs. CIT (Supra).

4. We have considered the rival submission. We find that there is no other basis of the action of the AO that the rental income is assessable as business income apart from some clauses of the partnership Deed. In partnership deed of a firm and Memorandum of Association of a company, objects are generally very wide so that in course of business, the said firm or company can choose from those objects to conduct its activities and such object clause alone cannot be a basis to determine the head of income under which the income is to be assessed. In the facts of the present case, the judgment of Hon'ble Apex Court rendered in the case of Raj Dadarkar & Associates vs. ACIT (Supra) is required to be followed because the facts are similar and in this case, Hon'ble Apex Court has duly considered its earlier judgment rendered in the case of Chennai Properties and Investment Limited vs. CIT (Supra) followed by the AO in the present case and also because in this case, Hon'ble Apex Court referred to the judgment of the Constitution Bench of Hon'ble Apex Court rendered in the case of Sultan Bros. Pvt. Ltd. (Supra) in which, it was held that 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 exploitation of his property by an owner. When we examine the facts of the present case in the light of the lease deeds available in the paper book, we find that the assessee has simply let out the properties owned by it for exploitation of his property by an owner and it is not doing any such activity based on which, it can be said that the letting out of the properties was the doing of a business. In very next year, the AO has also accepted the claim of the assessee in the scrutiny assessment although without any discussion but because of this fact that in the immediately preceding year, the claim of the assessee was not accepted by the AO, it cannot be said that the claim of the assessee was not noticed by the AO particularly when as against loss of Rs. 337,86,184/- reported by the assessee under the head "Income from Business" and income of Rs. 25,57,556/- declared by the assessee under the head "Income from Other Sources", the assessee has declared much higher amount of income of Rs. 10,44,08,196/- under the head "Income from House Property", which was converted by the AO to "Income from Business" in the

preceding year i.e. the present year. In View of principle of consistency also, this action of the AO in the present year is not sustainable. In view of above discussion, we respectfully follow the judgment of Hon'ble Apex Court rendered in the case of Raj Dadarkar & Associates vs. ACIT (Supra) and in turn follow the earlier judgment of the Constitution Bench of Hon'ble Apex Court rendered in the case of Sultan Bros. Pvt. Ltd. (Supra) and decide the issue in favour of the assessee and hold that the rental income is taxable under the head "Income from House Property" as claimed by the assessee in the return of income.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated, the 06th February, 2020.

/NS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT (A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

Sd/-

(ARUN KUMAR GARODIA)

Accountant Member

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.