

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 362 to 365/Rjt/2018

(निर्धारण वर्ष / Assessment Years : 2008-09 to 2011-12)

Income-tax Officer Ward-1(1)(3), Rajkot	बनाम/ Vs.	M/s. Tirupati Agencies Prasang Commercial Complex, Nr. Chitrlekha Apartment, 150 ft. Ring Road, Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFT0834H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Shramdeep Sinha, CIT. D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Mehul Ranpura, A.R.

सुनवाई की तारीख / Date of Hearing	12/12/2022
घोषणा की तारीख /Date of Pronouncement	22/02/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

All four appeals at the instance of the Revenue are directed against the orders all dated 05.07.2018 passed by the passed by the Commissioner of Income Tax (Appeals) – 1, Rajkot (the CIT(A)), arising out of the assessment orders all dated 29.03.2016 passed by the Learned ITO, Ward 1(1)(3), Rajkot under section

143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Years 2008-09, 2009-10, 2010-11 & 2011-12.

2. The short point involved in this particular matter is this as to whether the rental income from letting out a Mall can be treated as income from business and profession or income from house property in the present facts and circumstances of the case.

3. ITA No. 362/Rjt/2018 for A.Y. 2008-09 is taken as the lead case.

4. The assessee filed its return of income for A.Y. 2008-09 declaring loss of Rs.10,41,951/- on 31.07.2008 which was initially processed under Section 143(1) of the Act. Subsequently, a search under Section 132 of the Act was carried out at the premises of the assessee on 24.06.2010 and finally the assessment proceedings initiated thereon under Section 153A of the Act for A.Ys. 2005-06 to 2010-11 was completed on 25.10.2012. For the year under consideration, the relevant assessment has been completed determining total loss at Rs.10,41,951/-. Subsequently, the department came to know that the assessee has earned rent during the year under consideration and the income thereof was duly accounted for in the P&L account under the head 'Profit & Gain of business or Profession'. The assessee has claimed excessive expenses and offered loss for taxation as of the as of the view of the Revenue and therefore, the case was reopened under Section 147 of the Act. The assessment proceeding was concluded by treating the impugned income by letting out 'Prasang Hall' as 'income from house property'. The excess expenses restricted to the standard deduction @ 30% has also been disallowed. However, the same was rejected by the Ld. CIT(A). The income so earned by the assessee by letting out by the Prasang Hall has been treated as 'income from business income'. Hence, the instant appeal before us.

5. The facts of the case is this that the assessee firm is a builder / developer and owner of property (Prasang Hall) and earned rent on the same. The rent income was offered to tax under the head 'Profit & Gain of business or Profession' by the assessee. Before the Ld. AO, the assessee filed the following reply:

“1.0 We are engaged in the business of letting out hall to various parties. The assessments for the assessment years under consideration have been finalized u/s 1534 r.w.s. 143(3) of the Income tax Act, 1961 [herein after referred to as the "Act"] assessing returned loss as assessed loss. The ACIT, circle has considered the material placed on record and assessed income applying his mind.

2.0 It is to be submitted that we are engaged into the business of letting of hall which is apparent from the deed of partnership. However it appears that this aspect has not been considered in proper perspective.

3.0 As regards the reliance on the decision in the case of Commissioner of Income tax & ANR Vs Rinku Chakraborty 56 DTR (Kar) 227", It is to be mentioned that the Hon'ble High Court Karnataka clearly indicated the reopening be done only when there "oversight", "advertence" "mistake" the original assessment.

It is submitted that this case, there no question of "oversight", "advertence" "mistake" the assessing clearly indicated that "The assessee firm engaged business of letting hall rent" Hence, the issue raised already concluded earlier assessment proceedings. The AO has duly applied his mind and assessment done on the basis of all the material placed on record.

4.0 Thus, we have used the hall for carrying out business activity of letting out the property for various occasions or celebrations. Hence, this activity is purely business activity and income is properly considered as income from business and profession.

The CIT Vs. Kelvinator of India Limited, (2010) 320 ITR 561, the Supreme Court observed that post 01-04-1989, the power to reopen is much wider. However, one needs to give a schematic interpretation to the words 'reason to believe' failing which, Section 147 would give arbitrary powers to the Assessing Officer to reopen the assessments on the basis of 'mere change of opinion' which cannot be per se reason to reopen.

The conceptual difference between the power to review and power to reassess is to be kept in mind.

The Assessing Officer has no power to review; But reassessment has to be based on the fulfillment of certain pre conditions and if the concept of 'change of opinion' is removed, in the barb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check cause of power by the Assessing officer.

5.0 *In view of the above your proposal for treating rental income for a day or two per occasion in nothing but business income and cannot be taxed under the head income from house property. Your proposal is therefore strongly objected as it is against the principles of decision of Hon'ble Supreme Court and spirit of the provisions enacted in the statute."*

6. Invoking of provision of Section 22 of the Act, the rent income has been taxed under the head 'income from house property' by the Ld. AO. As the income has been treated as house property, the expenses claimed against that income was also not found to be allowable by the Ld. AO. According to him, the assessee derived rent from the property but did not carry out any business thereon. It is the case of the assessee before the First Appellate Authority and before us as well stated that the said 'Prasang Hall' has been let out to various customers from time-to-time and the assessee has received the rent income from the clients as and when they have hired Hall. Such rent out of the Hall is, therefore, business of the assessee and the same cannot be treated as 'income from house property'. Further that, in raising this income from rent the assessee has incurred expenses for staff, manager, telephone, electricity and maintenance etc., whereas, the Ld. AO has given a finding that the assessee has not done any business and has earned only rental income out of the said property. Moreso, the Ld. AO was of the view that the assessee would not require any staff for the maintenance and renting of the Hall. The Ld. CIT(A) considered the entire aspect of the matter and came to a finding that employing staff by the assessee leads to a logical inference that the Prasang Hall has been used to earn the business income for renting it out. Holding the change of head 'income from business income' to 'house property' and denying the expenses claimed by the assessee is not justified. The Ld. CIT(A) disposed of the appeal by allowing relief to the assessee.

7. Before us, the Learned Counsel while relying upon the order passed by the Ld. CIT(A) submitted that the issue is squarely covered by the judgment passed

the Hon'ble Supreme Court in case of M/s. Chennai Properties & Investments Ltd. vs. CIT, reported in (2015) 373 ITR 673] (SC). Such contention made by the assessee, however, has not been able to be controverted by the Ld. DR. A copy of the said judgment has also been submitted before us. The relevant paragraph whereof is reproduced herein below:

“We have heard the learned counsel for the parties on the aforesaid issue. Before we narrate the legal principle that needs to be applied to give the answer to the aforesaid question, we would like to recapitulate some seminal features of the present case.

The Memorandum of Association of the appellant-company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the appellant company is to acquire and hold the properties known as “Chennai House” and “Firhavin Estate” both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasise is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the assessing officer himself in his order.

It transpires that the return of a total income of Rs.244030 was filed for the assessment year in question that is assessment year 1983-1984 and the entire income was through letting out of the aforesaid two properties namely, “Chennai House” and “Firhavin Estate”. Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.

With this background, we first refer to the judgment of this Court in East India Housing and Land Development Trust Ltd.'s case 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. 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 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.

Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd., we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in '[Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal](#)' [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 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 diving 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.” 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 squarely applies to the facts of the present case.

No doubt in *Sultan Brothers (P) Ltd.*'s case, Constitution Bench judgment of this 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.” 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."

8. Keeping in mind the present facts and circumstances of the case before us, we have further considered the partnership deed dated 01.04.2005 which is also reproduced in the order passed by the Ld. CIT(A) wherein it appears that the property was acquired to earn income by letting out the same for the specific purpose i.e. marriage function, celebration, kitty party, business conference etc. by the clients who has taken it for the specific day. In fact, the assessee is carrying out the business of rental the part of the property being a Hall for the aforesaid purposes. The appellant is also providing the usage of the property with infrastructural facility for the event only and as such it is the business of the appellant to maximize the usage of stock-in-trade of the partnership firm. We find that the case before Hon'ble Supreme Court is identical to that of the matter before us wherein the Memorandum of Association of the assessee company mentions the main object of the company to acquire and hold the properties and to let out those properties as well as make advances upon the security of lands and building or other properties or any interest therein. The entire income which was accrued and was assessed in the return so filed by the assessee therein was from letting out of the properties. The ultimate finding of the Hon'ble Supreme Court is this that the letting of the properties is in fact a business of the assessee that has been rightly disclosed in the income under the head 'income from business'. The same cannot be treated as 'income from house property'. Thus, relying upon the ratio laid down by the Hon'ble Supreme Court in case of M/s. Chennai Properties & Investments Ltd. (supra) the order passed by the Ld. CIT(A) quashing the assessment order passed by the Ld. AO holding it unjustified in treating the business income shown by the assessee as 'income from house property' is found to be just and proper so as to warrant interference,

the same is, therefore, upheld. The Revenue's appeal is, therefore, found to be devoid of any merit, thus, dismissed.

ITA Nos. 363 to 365/Rjt/2018 For A.Ys. 2009-10 to 2011-12

9. The decision in ITA No. 362/Ind/2018 for A.Y. 2008-09 shall apply mutatis mutandis in all three ITA Nos. 363 to 365/Rjt/2018.

10. In the combined result, Revenue's all four appeals are dismissed.

This Order pronounced on 22/02/2023

Sd/-

(ANNAPURNA GUPTA)

ACCOUNTANT MEMBER

Ahmedabad; Dated 22/02/2023

S. K. SINHA

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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Sd/-

(MADHUMITA ROY)

JUDICIAL MEMBER

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot