

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री रवीश सूद , न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.25 & 26/VIZ/2022
(निर्धारण वर्ष/ Assessment Years: 2017-18 & 2013-14)

Gowtham Residential Junior College 1-87, Gudavalli Village Gudavalli, Vijayawada – 521104 Andhra Pradesh [PAN: AAIEFG4399L]	v.	Asst. CIT-Central Circle Vijayawada
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C.Subrahmanyam, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि / Date of Conclusion of Hearing	:	24.06.2025
घोषणा की तारीख / Date of Pronouncement	:	24.06.2025

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

Order giving effect to the order passed by the Third Member.

1. On account of difference of opinion arising between the Members in respect of the above said appeal, following question was referred to Hon'ble Third Member for his decision: -

“1. When the transfer of business as a whole for the period between 1/6/2007 and 31/5/2017 under the agreement dated 9/8/2007 was upheld by the learned CIT(A) in the assessment year 2009-10 and accepted by the Revenue without any challenge for that year and also for all the other Ays., is it open for the revenue to reagitate the same issue year after year, without any change of facts, for the Ays. 2013-14 and 2017-18.

2. When the agreement dated 9/8/2007 covers the period between 1/6/2007 and 31/5/2017, having accepted the position that the receipts derived under such agreement as “business income” for all the Ays except 2013-14 & 2017-18, is it open for the revenue to contend for the Ays.2013-14 & 2017-18 that such receipts are only income from house property.”

2. Hon'ble President has nominated Shri Vijay Pal Rao, Vice president, (Hyderabad Zone) as the Third Member for taking decision on the point of difference between the Members constituting Division Bench. The Third Member vide his order dated 23.05.2025 has agreed with the view taken by Hon'ble Accountant Member and held that the impugned addition treating the income as “income from house property” by the Ld. AO is valid, as against the claim made by the assessee as “income from business”.

3. In view of the majority opinion, we hold that the addition made by the revenue authorities treating the income as “income from house property” is decided in favor of the revenue and against the assessee.

4. In the result, appeals filed by the assessee are dismissed.

Order pronounced in the open court on conclusion of hearing on 24th June, 2025.

Sd/-
(रवीश सूद)
(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 24.06.2025
Giridhar, Sr.PS

Sd/-
(एसबालाकृष्णन)
(S. BALAKRISHNAN)
लेखासदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Gowtham Residential Junior College**
1-87, Gudavalli Village
Gudavalli, Vijayawada – 521104
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. CIT-Central Circle**
Vijayawada
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri VIJAY PAL RAO, VICE-PRESIDENT
(3rd Member)

आ.अपी.सं / **ITA Nos.25 & 26/Hyd/2022**
(निर्धारण वर्ष / Assessment Years: 2013-14 & 2017-18)

Gowtham Residential Junior College Vijayawada PAN:AAEFG4399L (Appellant)	Vs.	Asstt. Commissioner of Income Tax Central Circle Vijayawada (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri C. Subrahmanyam, CA
राजस्व द्वारा / Revenue by::		Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of hearing:		15/04/2025
घोषणा की तारीख / Pronouncement:		23/05/2025

आदेश/ORDER

These two appeals by the assessee are directed against the 2 separate orders of the learned CIT (A)-12, Hyderabad, both dated 26/10/2021 for the A.Ys.2013-14 and 2017-18 respectively. These appeals were heard by the Division Bench of ITAT Visakhapatnam but there was a difference of opinion between the Members of the Division bench. Consequently, the points of differences were formulated and forwarded to the Hon'ble President, ITAT u/s 255(4) of the I.T. Act, 1961 for referring the same to the 3rd Member to decide the same according to the opinion of majority. The Hon'ble President, ITAT vide order dated 05/03/2025 referred the points of differences to the undersigned

3rd Member for deciding the same. The points of differences referred for the decision of the 3rd Member are as under:

1. *When the transfer of business as a whole for the period between 1/6/2007 and 31/5/2017 under the agreement dated 9/8/2007 was upheld by the learned CIT(A) in the assessment year 2009-10 and accepted by the Revenue without any challenge for that year and also for all the other AYs, is it open for the Revenue to reagitate the same issue year after year, without any change of facts, for the AYs 2013-14 and 2017-18?*
2. *When the agreement dated 9/8/2007 covers the period between 1/6/2007 and 31/5/2017, having accepted the position that the receipts derived under such agreement as "business income" for all the AYs except 2013-14 & 2017-18, is it open for the revenue to contend for the AYs 2013-14 & 2017-18 that such receipts are only income from house property.*

2. The brief facts leading to the controversy are that the assessee is a Partnership Firm and was running educational institutions. In the year 2007, vide Memorandum of Understanding (MOU) dated 4/4/2007, the assessee transferred the said business of running educational institutions to Narayana Educational Society. The assessee also let out the college premises of the educational institutions on lease initially for a period of 10 years for an yearly rent of Rs.2.50 crores payable in monthly instalments with an increase in rent as per the terms of the lease agreement. Pursuant to the said MOU, dated 4/4/2007, a lease deed dated 9/8/2007 was also executed between the parties. The details of the property leased out by the assessee are given in schedule of property as part of the lease deed as under:

SCHEDULE OF PROPERTY

Krishna District Registry, Vijayawada sub - registry, Gudavalli Gram Panchayath survey No. 36/2, 31/1A, 37/1 and 37/3 comprising 9.63 acres of land, Survey No. 250/5 and 250/14 comprising 1.81 acres and survey No. 250/13 comprising 2227 sq.yards of land, RCC buildings and A.C. Sheet Sheds thereon as detailed hereunder.

BOYS CAMPUS

1.	S.G.P. - Krishna Hostel	4 Floors	21,691 Sft.
	Backside A.C. Sheets		4,792 Sft
	Toilets		574 Sft
2	Principal Quarters - Kaveri Hostel	3Floors	5,364 Sft.
	A.C. Sheets		2,880 Sft
	T.T.		793 Sft
3.	Office Block - Saraswathi	3 Floors	18,672 Sft
4.	East Block - Ganga Hostel	3 Floors	18,672 Sft
5.	New Block - Godavari Hostel	4 Floors	42,588 Sft
6.	Mess Block - Yamuna	3 Floors	25,352 Sft
7.	Generator Room	3 Floors	2,322 Sft
8.	Bath Rooms	3 Floors	2,346 Sft
9.	IIT Block	3 Floors	4,958 Sft
10.	Lab (A.C. Sheets)		1,519 Sft
11.	Class Rooms	2 Floors	25,472 Sft
12.	N.B. Guest Room - Godavari		726 Sft
13.	Parents Guest House		425 Sft
14.	Kitchen - A.C. Sheets		1,325 Sft
15.	Workers Shed - A.C. Sheets		603 Sft
16.	Vessels Cleaning Shed - A.C. Sheets		288 Sft
17.	Boilers Shed - A.C. Sheets		222 Sft
18.	Drinking Water Shed		110 Sft

For Gowtham Academy
Technical Education

GIRLS CAMPUS

1. Mess & Class Rooms	4 Floors	18,496 Sft
2. Junior Hostels	4 Floors	31,396 Sft
3. Senior Hostels	4 Floors	31,396 Sft
4. Porticos	2 Nos	780 Sft
5. Extensions	4 Nos	920 Sft
6. Generator		187 Sft
7. Vessels Cleaning Shed		160 Sft
8. Security Room		156 Sft
9. Out Side Toilets		100 Sft

Bounded by

EAST : Yarlagadda Sambasivarao's land partly, Pragathi Industries, Yenikepadu, land partly and Scoda Company, Hyderabad land partly.

SOUTH : Koneru Venkateswara Rao's land

WEST : Kosaraju Koteswara Rao's Land Partly and Yennamudi Venkata Subbarao's Land partly

NORTH : Approach Road connecting National Highway partly, Vacant land belong to the lessor lying on both sides of approach road partly and land belong to Navatha Transport Partly.

Within these boundaries Acres 11.44 cents and 2227 sq.yards of land, RCC buildings and A.C. Sheet Sheds etc., there on with all appurtances, electrical and sanitary fittings, motor pumps, generator, furniture and equipment etc., and all other easement rights. The vacant land lying outside the main gate on western side belonging to the Lessor may be utilised for parking purpose only without interrupting the activities of the Lessor.

3. The assessee in the return of income declared the lease rental income as business income and claimed the expenditure against the said income thereby reported the total income at loss. The Assessing Officer has treated the rental income as income from house property resulting the addition to the total income of the assessee. The assessee challenged the action of the Assessing Officer treating the rental income as income from house property instead of business income claimed by the assessee but could not succeed and the matter reached to this Tribunal. However, the Members of the Division Bench had difference of opinions on the

issue. The learned Judicial Member has decided this issue in para 7 to 10 of his order as under:

“7. We have gone through the record in the light of the submissions made on either side. It is an undisputed fact that there is no change in the facts and circumstances as obtained for the assessment year 2009-10 in the subsequent years and they are identical for the assessment years 2013-14 and 2017-18. The findings of fact returned by the learned CIT(A) for the assessment year 2009-10 are accepted by the Revenue, without filing any further appeal and they are relevant for the assessment years 2013-14 and 2017-18 also. For the sake of completeness, we deem it just and necessary to refer to such finding of facts returned by the learned CIT(A) for the assessment year 2009-10 and they read as under:

“25. As regards the issue of whether the discontinuance of the business by the assessee which led to the leasing out of the business assets is permanent or temporary in nature, the finding of the AO that the same is permanent in nature is based on factors such as the long period of lease of 10 years, the provision in the lease deed to extend the said period of lease for any further period from time to time, the nature of business of running educational institutions which does not facilitate resumption of the business after a gap of 10-20 years, the factual inaccuracy in the reason cited for temporary discontinuance of business and withdrawal of capital by the partners from the firm as evidenced by debit balances in the capital accounts. The contentions advanced by the assessee in the written submissions in respect of these factors have been carefully considered with reference to the MOU, the lease deed and other documents available on record.

26. With regard to the period of lease, the AO was of the view that since the said period is of 10 years and since there is a provision in the lease deed for extending the period of lease by any period from time to time, it has to be considered that the lease is permanent in nature and the assessee had no intention to resume its business, at the time of entering into the lease agreement. However, it is noticed that the AO has not taken into consideration all the relevant clauses in the lease deed which deal with the lease period while coming to such conclusion. On perusal of lease deed, it is seen that clause-8 at page 2 of the deed provides that the lease may be terminated before the expiry of the term of lease by either party by serving 6 months' notice. It is clear from the said clause that the period of lease of 10 years stated in the lease deed is not absolute and the same can be cut short at any time during the said period either by the assessee or by the lessee by giving 6 months' notice. The fact that such a clause is available in the lease deed shows that the assessee has retained the flexibility with itself to terminate the lease at any time before the expiry of the stated lease period and resume its business in the said premises, if the circumstances are favourable for such resumption,

Further, it is noticed that though clause-1 at page 2 of the lease deed provides that the lease period of 10 years is extendable for any period from time to time as pointed out by the AO, the same clause also provides that such extension shall be on mutual agreement. This also shows that the assessee has retained the flexibility with itself to decide whether to agree for further extension or not, depending on existence or otherwise of favourable conditions for resumption of business at the relevant point of time. Moreover, it is noticed that the intention of the assessee regarding temporary discontinuance of its business is duly reflected at para 5 of the preamble to the MOU at page 2 of the MOU, wherein it is stated that the party of the first part (i.e. the assessee) is desirous of temporarily discontinuing the activity of providing education and handing over the activity to any other educational institution which is in the same line and which can effectively fulfil its objectives.

27. Another factor taken into consideration by the AO for the purpose of drawing factual inference regarding the temporary or permanent nature of the lease is the nature of business of the assessee and the implausibility of resuming the business of an educational institution after a long gap of 10-20 years. The view of the AO that the brand name 'Gowtham' and goodwill garnered by the assessee over the years will be lost in the event of not running the educational institutions for a long period of 10 years or more, making it impossible for resumption of business at a later date cannot be regarded as an unimpeachable view. The brand name and goodwill do last for a long period depending on the degree to which they have been ingrained in the minds of the people. Moreover, since the assessee would carry on the educational activity from the same premises as and when the business is resumed, it becomes easier for the assessee to revive the memories of its brand name and goodwill among the people in the neighboring areas serviced by its educational institutions. It is therefore considered that this factor is not relevant for drawing inference regarding the temporary or permanent nature of the lease.

28. With regard to the observation of the AO that the reason cited for temporary discontinuance of the business by the assessee that a key partner of the assessee firm has retired is factually incorrect since there is no change in the constitution of the firm after 1.04.2003, it has been clarified by the assessee that the retirement of a key partner took place with effect from 01.04.2003 as evident from the copy of the partnership deed dated 17.09.2003 furnished to the AO during the course of the assessment proceedings and that the assessee suffered huge losses in the period subsequent to such retirement of key partner which led to the decision to temporarily discontinue the business till another key person is identified and inducted as a partner. On examination, this clarification of the assessee is found to be factually correct. On perusal of the partnership deed dated 17.03.2003 available on record, it is noticed that 3 partners retired from the firm with effect from 01.04.2003 and the firm was

reconstituted from the said date. One of the partners who retired w.e.f. 01.04.2003 was considered by the assessee to be a key partner, whose retirement at a crucial time caused downfall in the business and consequent losses. The fact that the assessee has taken keyman insurance policy in respect of a continuing partner Sri. M.V. Narayana in the subsequent period cannot be interpreted to mean that there was no other key partner prior to 01.04.2003. Hence, the observation of the AO regarding the factual incorrectness of the claim of temporary discontinuance of the business by the assessee on account of retirement of a key partner is considered to be incorrect.

29. In As regards the observation of the AO that the existence of huge debit balance the capital accounts of the partners as on the last day of the previous year indicates that the partners have started withdrawing funds from the firm in excess of their capital balance and that the same is due to the intention of the assessee firm to discontinue the business permanently, it has been clarified by the assessee that the assessee firm has been making continuous losses for the past few years resulting in debit balances in the capital accounts of the partners as evident from the account copies furnished to the AO during course of the assessment proceedings. On examination, this clarification of the assessee is found to be factually correct. It is noticed that the debit balances in the capital accounts of the partners have predominantly arisen on account of the losses incurred by the assessee during the earlier years and not due to withdrawal of funds by the partners. Hence, the observation of the AO in this regard is found to be factually incorrect.

30. In view of the discussion made in paragraphs 25 to 29 above, it is evident that all the factors taken into consideration by the AO for arriving at the factual inference that the discontinuance of the business which led to the leasing of the business assets of the assessee is permanent in nature are either factually incorrect or represent incorrect appreciation of the clauses of the lease deed and MOU. In view of this, it is considered that the said factual inference of the AO is not sustainable. Having regard to paras-4 & 5 of the preamble to the MOU at page-2 of the MOU wherein it was clearly stated that the assessee has decided to give on lease its premises at Gudavalli along with business thereon in view of its desire to temporarily discontinue the activity of providing education and handover the said activity to any other educational institution which is in the same line of business and the clause-8 at page-2 of the lease deed which provided for termination of the lease before the expiry of the specified lease period of 10 years by either side by serving 6 months' notice, it is required to be considered that the assessee has leased out its assets on account of temporary discontinuance of its business only."

8. In the absence of any compelling reasons or change in the facts and circumstances, questions of fact cannot be agitated and reagitated every year and public policy demands that there shall be an end to the determination of facts. In the year 2009-10, learned CIT(A) completely

reappraised the facts dealt with by the learned Assessing Officer and held that it is only for a temporary period, the assessee let out the entire business in contradiction to the building alone, the intention of the assessee to resume the business is evident from the clauses of MoU, financials and other circumstances. Revenue accepted the same without preferring any appeal and such findings of fact have become final. We, therefore, do not deem it just and proper to reopen the said findings of fact at this remote point of time.

9. To the factual findings returned by the learned CIT(A) in the assessment year 2009-10, the decisions of the Hon'ble Apex Court in the case of Sri Lakshmi Silk Mills (supra) and Vikram Cotton Mills (supra) are applicable on all fours. In view of our finding, that the factual findings of the learned CIT(A) for the assessment year 2009-10 cannot be permitted to be re-agitated year after year, that too having once accepted those facts, we find that the decisions relied upon by the learned CIT(A) have no application.

10. For the reasons stated in the preceding paragraphs, we accept the contention of the assessee for the assessment year 2013-14 and 2017-18 also and allow the grounds of appeal. “

4. Thus, the learned JM has taken a view that for the A.Y 2009-10, the learned CIT (A) has decided this issue in favour of the assessee and reversed the findings of the Assessing Officer by holding that the assessee has leased out of its assets on account of temporary discontinuation of its business only and in the absence of any compelling reason for change in the facts and circumstances, this issue cannot be agitated by the Revenue for these A.Ys. Thus, the learned JM has applied the doctrine of consistency.

5. The learned Accountant Member did not agree with the view of the learned JM and authored a separate order and expressed his opinion in para 13 to 23 as under:

“13. We have heard both the sides and perused the material available on record including case laws cited by both the parties and the written submissions made by both the parties. It is an undisputed fact that the assessee has let out its premises in its entirety along with the infrastructure to M/s. Narayana

Educational Society for a period of ten years i.e., from 01.06.2007 to 31.05.2017 which is extendable through mutual agreement. The only contention of the Ld.AR is that the assessee "temporarily" let out the properties with an intention to continue the business of running of educational institution. It was also submitted by the Ld.AR that in the A.Y.2009-10 in assessee's own case the Ld. CIT(A) assessed the income as business income. Ld.AR further contends that since the revenue did not file an appeal against order of the Ld.CIT(A) for the A.Y. 2009-10 the matter has reached finality and hence cannot be disputed in the subsequent years given the same circumstances. The assessee has also entered into Memorandum of Understanding dated 04.04.2007 with M/s. Narayana Educational Society and M/s. Gowtham Academy of General and Technical Education. The clause 6 of Memorandum of Understanding reads as follows:

"6. The partly of the first part would hand over the management of running the educational institutions from 01-06-2007 either to the party of the second part or part of the third part herein with a right to take possession of the same on termination of the lease."

14, Further the recitals of the Memorandum of Understanding stating that the entire management will be taken over by either the party of the second part or through its members or through its nominees, as extracted below:

"Whereas the party of the 3rd part also approached the party of the second part with a request that its management be taken over by either the party of the second part or through its members or through its nominees. The party of the second part agreed their proposal and also agreed to substitute their members in the management committee of the par' of the 3rd part on the condition that the entire present management retires from the society and gives way to the management as proposed by the party of the second part."

15. From the above recitals of Memorandum of Understanding it is clear that the assessee has let out the premises including the infrastructure for earning a rental income by giving away their right to take part in the management.

16. In schedule of the property as per the lease deed, it has been clearly indicated that immovable property as listed therein comprising of land, RCC Buildings and A.C. Sheet Sheds are being let out on lease by the assessee with all appurtenances and all other easement rights including the vacant land on the western side for parking purposes. From the recitals of the lease agreement, it is very clear that assessee has leased out the immovable property by discontinuing its business of imparting education.

17. Ld. DR also in her written submissions has stated that even after the expiry of lease on 31.5.2017 the assessee has not restarted its business but has continued the lease for the subsequent assessment years which is evident from the income tax returns filed by it. Further the argument of the Ld. AR that principles of consistency shall be followed, shall not be applied to Income Tax Proceedings as the principle of Res judicata does not apply on Income Tax Proceedings.

18. No precise test can be laid down to ascertain whether income received by an assessee from leasing or letting out of assets would fall under the head "profits and gains of business or profession" or "income from house property" which is a mixed question of law and fact and has to be decided on the facts and circumstances of each case. The Hon'ble Supreme Court in *Universal Plast Limited v. CIT* [234 ITR 454] has laid down this ratio.

19. Further in the case of *Keyaram Hotels (P.) Ltd., v. DCIT, Company Circle II(4), Chennai 2015*] 63 Taxmann.com 301 (SC), relied on by the Learned DR, the Hon'ble Supreme Court while dismissing the SLP held as follows:

"Section 22, read with section 28(i).Of the Income Tax Act, 1961- Income from house property-chargeable us (Business income v. Property Income) Assessment years 2004-05, 2005-06, 2007-08 and 2008-09 - High Court by impugned order held that where assessee was not engaged in any business activity, rental income earned from letting out commercial complex would be assessed as income from house property and not as business income - whether special leave petition filed against impugned order was to be dismissed Held, yes [In favour of revenue]."

20. From the plain reading of the above ratio laid down by the Hon'ble Supreme Court wherein the facts are identical to the instant case on hand, it is clear that where the assessee was not engaged in any business activity, rental income earned from letting out commercial complex would be assessed as income from house property and not as business income.

21. In the instant case, the assessee has discontinued his business and is also not participated in the management of the M/s. Narayana Educational Society who has taken out the premises on lease along with the infrastructure and hence it can be concluded that the assessee is not engaged in any business activity but has let out the immovable property only for the purpose of earning rental income.

22. Further there is merit in the argument of the Ld. DR that the assessee has not taken over the premises on the termination of lease on 31.05.2017 but has renewed the lease for subsequent periods. It clearly shows the intention of the assessee is not to temporarily lease out the business for commercial exploitation of

business assets, but to permanently discontinue from the business activities of imparting education. Hon'ble Supreme Court in the case of universal Plast Limited v. CIT (supra) held as follows:

"1. no precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease, amount, rents, license fee) received by an assessee from leasing or letting out of assets would fall under the head 'Profits and gains of business or profession,

(2) it a mixed question of law and fact and has to be determined is from the point of view of businessman in that business on the facts and in the circumstances of each case, including true interpretation of the agreement under which the assets are let out:

(3) where all the assets of the business are let out, the period for which the assets are let out is a relevant factor to find out whether the intention of the assessee is to go out of business altogether or to come back and restart the same.:

(4) if only a few of the business assets are let out temporarily, while the assessee is carrying out his other business activities, then it is a case of exploiting the business assets otherwise than employing them for his own use for making profit for that business; but if the business never started or has started but ceased with no intention to be resumed, the assets will cease to be business assets and the transaction will only be exploitation of property by owner thereof, but not exploitation of business assets."

23. The Hon'ble Supreme Court has clearly laid down that if the business never started or has started but ceased with no intention to be resumed, the assets will cease to be business assets and the transaction will only be exploitation of property by owner thereof, but not exploitation of business assets. These facts are similar in the instant case which clearly proves the intention of the assessee not to resume the business after completion of lease period and therefore the transactions entered by the assessee for letting out the business assets will only be exploitation of the property by owner thereof, but not exploitation of business assets. The case laws relied on by the Ld.AR regarding the principles of consistency cannot be applied to the instant case as the facts and circumstances are distinguishable in the instant case. We are hence, therefore are of considered opinion to uphold the order of the Learned CIT(A) as there is no infirmity and thus the grounds raised by the assessee are dismissed."

6. Before me, the learned AR of the assessee has submitted that the point of reference to be decided by the 3rd Member is

limited only that having accepted the order of the learned CIT (A) for the A.Y 2009-10, it is not open for the Revenue to reagitate the same year after year without any change of facts. The learned AR has submitted that the lease agreement in question is not a simple lease of property rather it is part of the broader commercial arrangement. He has further submitted that a reading of MOU and lease deed reveals the underlined intention of the assessee to continue operating the educational business post lease period. He has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Vikram Cotton Mills vs. CIT (36 Taxman 1) as well as the judgement of Hon'ble Madras High Court in the case of Keyaram Hotels (P) Ltd vs. DCIT (373 ITR 494) as relied upon by the learned JM. He has further submitted that the decisions relied upon by the learned AM are not applicable to the facts of the present case because in the case of Universal Plastic Ltd vs., CIT (234 ITR 454, the lesser was given the option to buy the property while leasing out, whereas in the case of Keyaram Hotels (P) Ltd vs. CIT (Supra), the intention of the assessee was to construct a hotel and give it on lease. In any case, when the issue has been considered and decided in the earlier years in a particular manner specifically for the A.Y 2009-10 on the same lease agreement, then such view cannot be looked into in a different manner. The learned AR has thus, submitted that in the absence of any change of facts and circumstances for the years under consideration in comparison to the A.Y 2009-10, the income from leasing out of the College Buildings ought to have been assessed as business income rather than treating it as income from house property. He has thus, contended that when the issue has been accepted by the Revenue in the earlier years cannot be deviated in the subsequent

year, unless facts are different. In support of his contention, he has relied upon the following judgements:

- i) 112 Taxman 363 (Del.)
- ii) 131 Taxman 297 (Del)
- iii) 151 Taxman 202 (Del.)
- iv) 164 Taxman 55 (P&H)
- v) (2023) 150 Taxman.com 428

7. The learned AR has submitted that though the principle of Res Judicata is not applicable to the Tax Matters Proceedings but the Assessing Officer cannot be permitted to take an inconsistent view on the basis of the same set of facts which were there before him in the earlier years. In support of his contention, he has relied upon the decisions in the case of Shibani S. Bhojwani vs. DCIT (166 ITD 488) (Mum.). The learned AR has also relied upon the judgment in the case of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (193 ITR 321) and contended that the principle of consistency must be followed as the rental income was accepted as business income in the earlier years when the Department cannot take a contrary view without any material change in facts or law.

8. The learned DR, on the other hand, has submitted that the assessee has closed his business and even after 10 years it has not restarted his business. Therefore, the business income claimed by the assessee has lost the very basis of temporary suspension or lull in the business of the assessee. It is a permanent closure of the business and transfer and the business asset on lease. He has submitted that the learned JM has considered the order of the learned CIT (A) for the A.Y 2009-10 whereas there is a substantial lapse of time thereafter and the assessee itself has accepted the fact that it is not going to restart

the business of running the educational institution. The learned DR has submitted that for the A.Y 2024-25, the assessee itself has offered the rental income as income from house property. The learned DR has further submitted that the principle of res judicata or rule of consistency were never part of the grounds of appeal either before the learned CIT (A) or before the Tribunal. Therefore, the applicability of principle of res judicate or rule of consistency cannot be a question and therefore, the same cannot be taken into consideration. He has further submitted that even in the Income Tax Proceedings, res judicata is not applicable as each A.Y is a separate unit and proceedings. In support of his contention, he has relied upon the following decisions:

- a. M.M. Ipoh & Ors. Vs CIT (SC) 67 ITR 106
- b. M.M. Ipoh & Ors. Vs CIT (SC) 67 ITR 106
- c. New Jehangir Vakil Mills Co. Ltd. Vs CIT (SC) 49 ITR 137
- d. Bharat Sanchar Nigam Ltd. & Anr. Vs Union of India & Ors. (SC) 282 ITR 273

9. Thus, the learned DR has contended that if the claim was not questioned in the earlier years does not entitle the assessee to contest that the correct law should not be applied during the current year as held by the Hon'ble Madras High Court in the case of CIT vs. Seshasayee Industries Ltd (Mad) 242 ITR 691. He has also relied upon the following decisions:

- a. Catholic Syrian Bank Ltd. Vs CIT (SC) 343 ITR 270 ; 206 Taxman 182
- b. C.K. Gangadharan Vs CIT (SC) 304 ITR 61 ; 172 Taxman 87

10. There is no hindrance in taking a decision as per correct law and facts and therefore, a wrong decision cannot be perpetuated as held by the Hon'ble Supreme Court in the case of Distributors

(Baroda) (P) Ltd vs. CIT (S.C) 155 ITR 120. Thus,, a patently wrong view taken in the past cannot be allowed to perpetuate on the basis of principle of consistency as held by the Hon'ble Delhi High Court in the case of Krishak Bharati Cooperative Ltd vs. DCIT (Del.) 350 ITR 24. The learned DR has thus, submitted that when the business of the assessee has come to a close, the property which at one time was commercial asset cease to be so and therefore, the income from letting out of the property would not be business income. He has also relied upon the judgment of the Hon'ble Punjab & Haryana High Court in the case of Metal Products of India vs. CIT (293 ITR 618) as well as the judgment of the Hon'ble Supreme Court in case of Bharat Sanchar Nigam Ltd & Anr. Vs. Union of India & Ors (282 ITR 273). The learned DR has supported the order of the learned AM.

11. I have considered the rival submissions and carefully gone through the orders of the Members of the Division Bench having dissenting view to each other. It appears from the record that up till the A.Y 2017-18, there were 3 scrutiny assessments i.e. 2009-10, 2013-14 and 2017-18. The Assessing Officer has taken a consistent view for all the 3 A.Ys treating the rental income for letting out the entire college building for 10 years as income from house property as against the claim of the assessee as business income. Out of 3 A.Ys, the learned CIT (A) has taken a view in favour of the assessee for the A.Y 2009-10 and for the A.Ys 2013-14 and 2017-18 has taken a view against the assessee and upheld the orders of the Assessing Officer. Therefore, at the level of the Assessing Officer, there is no inconsistency in treating the rental income as income from house property. It is a settled proposition of law that the principle of res judicata is not applicable in the tax

matters as each A.Y is a separate unit and proceedings. However, at the same time, it is also a settled proposition that the rule of consistency has to be followed until and unless there is a change of facts and circumstances from one A.Y to another A.Y. Therefore, the rule of consistency is not an absolute rule to disregard the change of facts as well as law subsequent to the earlier year. Hence, the rule of consistency cannot be pressed in service to perpetuate an illegality or absolutely impermissible claim. Further, the issue of classifying the income from letting out the asset/property is dependent upon the time factor as well as the law at relevant time, and thus the lapse of considerable time is a crucial and material factor to ascertain the intention of the assessee whether to continue, revive or restart its business or has permanently closed its business. Therefore, it is a mixed question of law and fact to be determined based on the facts and circumstances of each case including the interpretation of the agreement under which the assets has been let out. In the agreement, the assessee has expressed the reasons for letting out of the educational institution premises as the business of running these educational institutions by the assessee became economically unviable and therefore, the assessee transferred the business as well as business assets in favour of the lessee/transferee. Initially, the assets were leased out for a period of 10 years i.e. upto 31/05/2017 but even after the expiry of the term of the lease, the assets continued to be let out to the same lessee with no intention of the assessee to take back the same and restart its business. Therefore, it is not a case of a temporary use of the commercial assets through letting out and exploiting the same but it is a matter of fact that the assets let out by the assessee with the intention that the assessee is not going to

restart the business of running the educational institutions in a reasonable time period in future. The learned DR has pointed out that for the A.Y 2024-25, the assessee itself has declared the rental income as income from house property and therefore, the assessee itself is not following the rule of consistency but accepted the fact that the assets leased out has virtually brought the business of the assessee to a close. It is also not a case of either temporary let out or partial let out of the commercial/business asset but the assessee has let out the entire business assets which has resulted the closure of the business and no implicit or explicit intention to restart the business is reflected either from the agreement under which the assets were let out or the conduct of the assessee subsequent to the letting out of the assets. Therefore, the rule of consistency cannot be applied in the case where the orders of the Assessing Officer as well as the learned CIT (A) for these 2 A.Ys is based on correct analysis of facts and circumstances as well as law. In any case when the assessee itself has accepted the rental income as income from house property, then the question of rule of consistency no more subsists and accordingly, I concur with the view of the learned AM treating the rental income as income from house property. Accordingly, the points of difference referred for my decision is decided in concurrence with the learned AM. The appeal file along with this order be placed before the Division Bench for passing an order of deciding the appeal in accordance with the majority view.

Sd/-

(VIJAY PAL RAO)
VICE PRESIDENT

Hyderabad, dated 23rd MAY, 2025
Vinodan/sps

Copy to:

S.No	Addresses
1	Gowtham Residential Jt. College, 1-87 Gudavalli Village, Gudavalli 521104, Vijayawada A.P
2	Asstt. CIT Central Circle, Vijayawada
3	Pr. CIT – Central, Vijayawada and Hyderabad
4	DR, ITAT Visakhapatnam Benches
5	Guard File

By Order

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.25 & 26/VIZ/2022
(निर्धारण वर्ष/ Assessment Years: 2017-18 & 2013-14)

Gowtham Residential Junior College 1-87, Gudavalli Village Gudavalli, Vijayawada – 521104 Andhra Pradesh [PAN: AAEEFG4399L]	v.	Asst. CIT-Central Circle Vijayawada
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाताकाप्रतिनिधित्व/ Assessee Represented by	:	Shri C.Subrahmanyam, AR
राजस्वकाप्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	03.12.2024
घोषणाकीतारीख/Date of Pronouncement	:	.01.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against different orders Learned Commissioner of Income Tax (Appeals)-12, Hyderabad, [hereinafter in short "Ld.CIT(A)"] in Appeal Nos. 10473/2019-20 dated 26.10.2021 & Appeal No.

10061/2016-17 dated 26.10.2021 arising out of the order passed under section 143(3) of the Act for the A.Y. 2017-18 and 2013-14 respectively.

2. Since the issue raised by the assessee for both the appeals are identical in nature, these appeals are clubbed and a consolidated order being passed. We now take up the appeal in ITA No. 25/VIZ/2022 for the A.Y.2017-18, the facts are extracted from A.Y. 2017-18.

ITA No. 25/VIZ/2022 (A.Y. 2017-18)

3. The facts in the case are, assessee is a partnership firm and deriving rental income filed its return of income for the A.Y. 2017-18 on 16.02.2018 admitting a total income of Rs. 1,14,45,670/-. Assessee has received rental income during the impugned assessment year and has claimed it as income from profits and gains of business. The assessee was running an educational institution during the earlier assessment years but has leased out the premises along with furniture and fixtures and other amenities from the period of ten years i.e., from 01.06.2007 to 31.05.2017 which is extendable on mutual agreement from time to time. As per the lease deed assessee shall receive rental income of Rs.2,50,00,000/- per annum with an agreement to increase 10% of the rent every three years. Thereafter an amended lease deed was entered on 10.05.2011 for the same terms and conditions except for the reduction in lease amount to Rs.1,60,00,000/- per annum. The assessee has also entered into a

Memorandum of Understanding on 04.04.2007 with Narayana Educational Society. Subsequently, notice under section 142(1) of the Act dated 12.06.2019 was issued calling for certain information from the assessee. As there was no compliance from the assessee, Ld. AO issued a show-cause notice dated 24.09.2019 requesting the assessee to show cause why the rent received cannot be charged to tax as “Income from House Property”. The assessee responded belatedly on 20.11.2019 by making written submissions relying on various cases as detailed in the letter dated 20.11.2019. Ld. AO did not accept the submissions and proceeded to tax the rent received as “Income from House Property” while framing the assessment order.

4. Being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A), assessee claimed that during the A.Y.2009-10 revenue has accepted it as “Income from Business” where no further appeal was preferred by the revenue and hence the issue has been treated as finalised. The assessee also relied on various cases as detailed in the written submissions before Ld. CIT(A). However, Ld. CIT(A) by relying on various judicial pronouncements as detailed in his order dismissed the appeal of the assessee.

5. On being aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

“1. The learned Commissioner of Income Tax (Appeals) erred in appreciating the fact that the entire running business was leased out to the lessee along with movable, immovable properties, students and faculty & other staff and the income being derived is income from business & not income from property.

2. The learned Commissioner of Income Tax (Appeals) erred in appreciating the fact that business not only involve running the educational institution but also letting of the infrastructure along with the business which infrastructure cannot be used otherwise than for running educational institute.

3. The learned Commissioner of Income Tax (Appeals) erred in not taking consideration, the earlier order of the Commissioner of Income Tax (Appeals) which order was passed after obtaining remand reports and rejoinder and based on appreciation of correct facts.

4. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the assessing officer in assessing the income under the head house property at Rs.2,06,66,410/- without appreciation of correct facts and legal precedents.

5. The learned Commissioner of Income Tax (Appeals) with a wrong notion erred in holding that the income to be treated as business income, the income has to be derived from the activities of running of business or profession and the appellant has no role to play after leasing the business.

6. The learned Commissioner of Income Tax (Appeals) erred with a wrong notion and on pure presumption and surmises, in holding that income derived from letting out of the property is to be treated as Income from House Property.

7. The learned Commissioner of Income Tax (Appeals) erred in conforming the order of assessing officer in not allowing the expenditure and depreciation claimed in the Profit & Loss a/c. against the lease income received.”

6. The issue agitated by the assessee is treatment of rental income as “Income from House Property” instead of considering it as “Income from profits and gains of business”.

7. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that assessee has temporarily stopped running of the educational institution and has let-out its business premises to M/s. Narayana Educational Society and hence should be considered as business income. Ld.AR further submitted that the premises was given on lease along with its infrastructure as a going concern and shall be revived after a short period. Ld.AR also relied on the order of the Ld. CIT(A) for the A.Y. 2009-10 wherein the Ld. CIT(A) has considered the rental income as income arising from profits and gains of the business. He pleaded that since the revenue has not preferred any further appeal against order of Ld. CIT(A) in spite of the tax effect being more than Rs. One crore, the nature of income has attained its finality. He also prayed that the principle of consistency should be followed in the absence of any change in the material facts for the subsequent assessment years. Ld.AR further pleaded that it is only a temporary arrangement to lease out the institution due to financial crisis and the assessee intention is to continue the business by imparting education after a short period of time. Ld.AR further submitted that the intention of the assessee is to make good the losses incurred by commercially exploiting the assets of the institution and hence should be treated as income from business.

8. Ld.AR relied on the decision of the Hon’ble Supreme Court in the case of CIT v. Vikram Cotton Mills Ltd. [1988] 36 Taxman 1 (SC) wherein it was

held that, when the intention of the assessee is to continue the business after its revival, this amounts to exploitation of the business asset and therefore the same should be considered as income from business. Ld.AR also relied on the various clauses of the Memorandum of Understanding and the lease agreement as detailed in his written submissions which confirms that the assessee is temporarily letting out the premises on lease for commercial exploitation of the properties and hence should be treated as business income. He pleaded that the order of the Revenue Authorities be quashed.

9. Ld.AR also relied on the following cases wherein the principle of consistency followed by various Hon'ble High Courts and Hon'ble Apex Court.

- i. *Cit v. Neo Poly pack (P.) Ltd [2000] 112 taxman 363 (Delhi)*
- ii. *CIT v. A.R. J. Security Printers [2003] 131 taxman 297 (Delhi)*
- iii. *Berger Paints India Ltd v. CIT [2004] 135 Taxman 586 (SC)*
- iv. *CIT v. Dalmia Promoters Developers (P.) Ltd., [2006] 151 Taxman 202 (Delhi)*
- v. *CIT v. Sood Harvester [2007] 164 Taxman 55 (Punjab & Haryana)*
- vi. *ITO v. Indian Oil Corporation Ltd., [2023] 156 taxmann.com 576 (Patna)*

10. Per contra, Ld. Departmental Representative [hereinafter in short "Ld.DR"] in her written submissions reiterated that assessee has given lease of the buildings, furniture and fixtures and the income derived thereon shall be

treated as “Income from House Property”. Assessee was earlier receiving fees from students, application money, etc., but assessee received only rental income and interest during the impugned assessment year which clearly indicates that assessee is not carrying any business of imparting education. She also submitted that assessee is not into the business of running educational institution and as per MoU assessee is not part of the management and the day-to-day affairs of the educational institution taken over by the M/s.Narayana Educational society. Further, she also reiterated that assessee is also not in the business of letting out properties and hence lease rentals cannot be treated as income from business.

11. On the issue of closure of business on temporary basis, Ld. DR submitted that the assessee has not taken back the assets after the expiry of the lease on 31.05.2017 and still continue to lease out of its assets and therefore the contention of the assessee that it is a temporary closure would not be accepted. Further, on the issue of assessee to maintain the major repair works of the lease items, she submitted that it is a general agreement between the lessor and lessee that major repair works will be carried out by the owner/lessor whereas the day-to-day repairs and maintenance will be incurred by the lessee. It does not alter character of income received by the assessee from the lessee.

12. She also further submitted that the assessee is relying on his own case for the A.Y. 2009-10 wherein the Ld. CIT(A) has assessed it as business income. She submitted that principle of *Res judicata* does not apply to the Income Tax proceedings. She argued that the Ld. CIT(A) for the A.Y.2009-10 in assessee's own case has not appreciated the facts it being the initial year of the lease period. She also further submitted that since the intention of the assessee is to not to temporarily close the business and revive it after a certain period of time, this income should be treated as "Income from House Property" and cannot be considered as "Income from profits and gains of business". Ld.DR prayed that the order of the Revenue Authorities be upheld.

13. We have heard both the sides and perused the material available on record including case laws cited by both the parties and the written submissions made by both the parties. It is an undisputed fact that the assessee has let out its premises in its entirety along with the infrastructure to M/s. Narayana Educational Society for a period of ten years i.e., from 01.06.2007 to 31.05.2017 which is extendable through mutual agreement. The only contention of the Ld.AR is that the assessee "temporarily" let out the properties with an intention to continue the business of running of educational institution. It was also submitted by the Ld.AR that in the A.Y.2009-10 in assessee's own case the Ld. CIT(A) assessed the income as business income. Ld.AR further contends that since the revenue did not file an appeal against order of the

Ld.CIT(A) for the A.Y. 2009-10 the matter has reached finality and hence cannot be disputed in the subsequent years given the same circumstances. The assessee has also entered into Memorandum of Understanding dated 04.04.2007 with M/s. Narayana Educational Society and M/s. Gowtham Academy of General and Technical Education. The clause 6 of Memorandum of Understanding reads as follows:

“6. The party of the first part would hand over the management of running the educational institutions from 01-06-2007 either to the party of the second part or part of the third part herein with a right to take possession of the same on termination of the lease.”

14. Further the recitals of the Memorandum of Understanding stating that the entire management will be taken over by either the party of the second part or through its members or through its nominees, as extracted below: -

“Whereas the party of the 3rd part also approached the party of the second part with a request that its management be taken over by either the party of the second part or through its members or through its nominees. The party of the second part agreed their proposal and also agreed to substitute their members in the management committee of the party of the 3rd part on the condition that the entire present management retires from the society and gives way to the management as proposed by the party of the second part.”

15. From the above recitals of Memorandum of Understanding it is clear that the assessee has let out the premises including the infrastructure for earning a rental income by giving away their right to take part in the management.

16. In schedule of the property as per the lease deed, it has been clearly indicated that immovable property as listed therein comprising of land, RCC Buildings and A.C. Sheet Sheds are being let out on lease by the assessee with all appurtenances and all other easement rights including the vacant land on the western side for parking purposes. From the recitals of the lease agreement, it is very clear that assessee has leased out the immovable property by discontinuing its business of imparting education.

17. Ld. DR also in her written submissions has stated that even after the expiry of lease on 31.5.2017 the assessee has not restarted its business but has continued the lease for the subsequent assessment years which is evident from the income tax returns filed by it. Further the argument of the Ld. AR that principles of consistency shall be followed, shall not be applied to Income Tax Proceedings as the principle of *Res judicata* does not apply on Income Tax Proceedings.

18. No precise test can be laid down to ascertain whether income received by an assessee from leasing or letting out of assets would fall under the head “profits and gains of business or profession” or “income from house property” which is a mixed question of law and fact and has to be decided on the facts and circumstances of each case. The Hon’ble Supreme Court in *Universal Plast Limited v. CIT* [234 ITR 454] has laid down this ratio.

19. Further in the case of Keyaram Hotels (P.) Ltd., v. DCIT, Company Circle II(4), Chennai [2015] 63 taxmann.com 301 (SC), relied on by the Ld.DR, the Hon'ble Supreme Court while dismissing the SLP held as follows: -

“Section 22, read with section 28(i), of the Income – tax Act, 1961- Income from house property- chargeable as (Business income v. Property Income) – Assessment years 2004-05, 2005-06, 2007-08 and 2008-09 – High Court by impugned order held that where assessee was not engaged in any business activity, rental income earned from letting out commercial complex would be assessed as income from house property and not as business income – whether special leave petition filed against impugned order was to be dismissed – Held, yes [In favour of revenue].”

20. From the plain reading of the above ratio laid down by the Hon'ble Supreme Court wherein the facts are identical to the instant case on hand, it is clear that where the assessee was not engaged in any business activity, rental income earned from letting out commercial complex would be assessed as income from house property and not as business income.

21. In the instant case, the assessee has discontinued his business and is also not participated in the management of the M/s. Narayana Educational Society who has taken out the premises on lease along with the infrastructure and hence it can be concluded that the assessee is not engaged in any business activity but has let out the immovable property only for the purpose of earning rental income.

22. Further there is merit in the argument of the Ld. DR that the assessee has not taken over the premises on the termination of lease on 31.05.2017 but has

renewed the lease for subsequent periods. It clearly shows the intention of the assessee is not to temporarily lease out the business for commercial exploitation of business assets, but to permanently discontinue from the business activities of imparting education. Hon'ble Supreme Court in the case of universal Plast Limited v. CIT (supra) held as follows:

"1. no precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease, amount, rents, license fee) received by an assessee from leasing or letting out of assets would fall under the head 'Profits and gains of business or profession,

(2) it is a mixed question of law and fact and has to be determined from the point of view of a businessman in that business on the facts and in the circumstances of each case, including true interpretation of the agreement under which the assets are let out;

(3) where all the assets of the business are let out, the period for which the assets are let out is a relevant factor to find out whether the intention of the assessee is to go out of business altogether or to come back and restart the same.;

(4) if only a few of the business assets are let out temporarily, while the assessee is carrying out his other business activities, then it is a case of exploiting the business assets otherwise than employing them for his own use for making profit for that business; but if the business never started or has started but ceased with no intention to be resumed, the assets will cease to be business assets and the transaction will only be exploitation of property by owner thereof, but not exploitation of business assets."

23. The Hon'ble Supreme Court has clearly laid down that if the business never started or has started but ceased with no intention to be resumed, the assets will cease to be business assets and the transaction will only be exploitation of property by owner thereof, but not exploitation of business assets. These facts are similar in the instant case which clearly proves the intention of the assessee not to resume the business after completion of lease

period and therefore the transactions entered by the assessee for letting out the business assets will only be exploitation of the property by owner thereof, but not exploitation of business assets. The case laws relied on by the Ld.AR regarding the principles of consistency cannot be applied to the instant case as the facts and circumstances are distinguishable in the instant case. We are hence, therefore are of considered opinion to uphold the order of the Ld.CIT(A) as there is no infirmity and thus the grounds raised by the assessee are dismissed.

24. In the result, appeal of the assessee is dismissed.

ITA No. 26/VIZ/2022 (A.Y. 2013-14)

25. Coming to appeal relating to ITA No. 26/VIZ/2022, the assessee has raised identical grounds. Therefore, the decision taken in ITA No. 25/VIZ/2022 in the aforesaid paragraph shall apply mutatis mutandis to the appeal number in ITA No. 26/VIZ/2022. Accordingly, appeal filed by the assessee is dismissed.

26. To sum-up, appeals filed by the assessee are dismissed.

Order pronounced in the open court on January, 2025.

(के.नरसिम्हा चारी)

(K.NARASIMHA CHARY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated:30.01.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Gowtham Residential Junior College**
1-87, Gudavalli Village
Gudavalli, Vijayawada – 521104
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. CIT-Central Circle**
Vijayawada
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam

मे आयकर अपीलिय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM

BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI BALAKRISHNAN S., ACCOUNTANT MEMBER

आ.अपी.सं / ITA No.25/Viz/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

Gowtham Residential Junior College Vijayawada [PAN : AA EFG4399L]	Vs.	Asst.Commissioner of Income Tax Central Circle Vijayawada
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri C.Subrahmanyam, AR
राजस्व द्वारा/Revenue by: Dr.Aparna Villuri, DR

सुनवाई की तारीख/Date of hearing: 03/12/2024
घोषणा की तारीख/Pronouncement on: /01/2025

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 26/10/2021 passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), in the case of Gowtham Residential Junior College ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee derives income from running the educational institutions and for that purpose, constructed building and acquired requisite infrastructure about 14 years back, but, having realized the non-viability to run the same, due to cut-throat competition, assessee wanted to give recess to the same for a while temporarily and, therefore, leased out the building, furniture and all the other infrastructure on as is and where is basis for a period of 10 years initially. Assessee also attorned the staff and students also as a part of the scheme.

3. The income derived from such lease has consistently been shown as business income right from 2008-09 when an issue had arisen as to the nature of such receipt, in the assessment year 2009-10 learned Assessing Officer treated the same as income from house property, but, learned CIT(A) in appeal gave a finding that the same was business income. Such a finding of the learned CIT(A) has become final and though the tax effect exceeds the threshold limit, Revenue did not prefer any appeal and thereby, accepted the same.

4. Learned Assessing Officer again raised the same issue for the assessment years 2013-14 and 2017-18, which is the subject matter of these appeals and again treated the receipt as income from house property, and the learned CIT(A) upheld the same. Hence, these appeals.

5. Learned AR while drawing our attention to the lease agreement vide paragraph numbers 1,2,6,9,10 and 16, submitted that it could be seen from such clauses that the intention of the assessee is not to permanently stop the business, but it is only a temporary phase till they resume their regular conduct of business and therefore, the factual findings of the learned CIT(A) for the assessment year 2009-10 still holds good in the light of the decisions of the Hon'ble Apex court in the cases of Commissioner of Excess Profits Tax Vs.Sri Lakshmi Silk Mills (1951) 20 ITR 451 (SC), CIT Vs. Vikram Cotton (1988) 36 Taxmann 1(SC). He submitted that the decisions relied upon by the learned CIT(A) are not at all applicable to the facts of the case inasmuch as in the case of Universal Plast Ltd. VS.CIT (1999) 103 Taxmann 493 (SC), the assessee had no intention to continue the business; in East India Housing and Land Development 42 ITR 49, Shambhu Investments 263 ITR 143 and Keyman Hotels 63 Taxmann.com 301, the very intention of the assessee was to create the asset for the purpose of letting it out, whereas, the intention of the assessee in this case was to run the educational institute on its own, but only due to certain adverse circumstances, the letting of the entire business took place.

6. Per contra, learned DR placed reliance on the orders of the authorities below and submitted that it is only a few of the business are let out temporarily, while the assessee carries on the other activities, it could be inferred that it is a case of exploiting the business asset, lest, it would amount to cessation of business and the receipts derived from such letting out would amount to the receipts from the house property. She further submitted that a mere entry in the MoU to the effect that the assessee had to maintain and attend to the major repair works will not alter the nature of income. According to the learned DR, the assessee cannot plead res-judicata in tax matters, since such a doctrine has no application in the domain of tax, where, each year's assessment is to be tested on its own.

7. We have gone through the record in the light of the submissions made on either side. It is an undisputed fact that there is no change in the facts and circumstances as obtained for the assessment year 2009-10 in the subsequent years and they are identical for the assessment years 2013-14 and 2017-18. The findings of fact returned by the learned CIT(A) for the assessment year 2009-10 are accepted by the Revenue, without filing any further appeal and they are relevant for the assessment years 2013-14 and 2017-18 also. For the sake of completeness, we deem it just and necessary to refer to such finding of facts returned by the learned CIT(A) for the assessment year 2009-10 and they read as under:

"25. As regards the issue of whether the discontinuance of the business by the assessee which led to the leasing out of the business assets is permanent or temporary in nature, the finding of the AO that the same is permanent in nature is based on factors such as the long period of lease of 10 years, the provision in the lease deed to extend the said period of lease for any further period from time to time, the nature of business of running educational institutions which does not facilitate resumption of the business after a gap of 10-20 years, the factual inaccuracy in the reason cited for temporary discontinuance of business and withdrawal of capital by the partners from the firm as evidenced by debit balances in the capital accounts. The contentions advanced by the assessee in the written submissions in respect of these factors have been carefully considered with reference to the MOU, the lease deed and other documents available on record.

26. With regard to the period of lease, the AO was of the view that since the said period is of 10 years and since there is a provision in the lease deed for extending the period of lease by any period from time to time, it has to be considered that the lease is permanent in nature and the assessee had no intention to resume its business, at the time of entering into the lease agreement. However, it is noticed that the AO has not taken into consideration all the relevant clauses in the lease deed which deal with the lease period while coming to such conclusion. On perusal of lease deed, it is seen that clause-8 at page 2 of the deed provides that the lease may be terminated before the expiry of the term of lease by either party by serving 6 months' notice. It is clear from the said clause that the period of lease of 10 years stated in the lease deed is not absolute and the same can be cut short at any time during the said period either by the assessee or by the lessee by giving 6 months' notice. The fact that such a clause is available in the lease deed shows that the assessee has retained the flexibility with itself to terminate the lease at any time before the expiry of the stated lease period and resume its business in the said premises, if the circumstances are favourable for such resumption, Further, it is noticed that though clause-1 at page 2 of the lease deed provides that the lease period of 10 years is extendable for any period from time to time as pointed out by the AO, the same clause also provides that such extension shall be on mutual agreement. This also shows that the assessee has retained the flexibility with itself to decide whether to agree for further extension or not, depending on existence or otherwise of favourable conditions for resumption of business at the relevant point of time. Moreover, it is noticed that the intention of the assessee regarding temporary discontinuance of its business is duly reflected at para 5 of the preamble to the MOU at page 2 of the MOU, wherein it is stated that the party of the first part (i.e. the assessee) is desirous of temporarily discontinuing the activity of providing education and handing over the activity to any other educational institution which is in the same line and which can effectively fulfil its objectives.

27. Another factor taken into consideration by the AO for the purpose of drawing factual inference regarding the temporary or permanent nature of the lease is the nature of business of the assessee and the implausibility of resuming the business of an educational institution after a long gap of 10-20 years. The view of the AO that the brand name 'Gowtham' and goodwill garnered by the assessee over the years will be lost in the event of not running the educational institutions for a long period of 10 years or more, making it impossible for resumption of business at a later date cannot be regarded as an unimpeachable view. The brand name and goodwill do last for a long period depending on the degree to which they have been ingrained in the minds of the people. Moreover, since the assessee would carry on the educational activity from the same premises as and when the business is resumed, it becomes easier for the assessee to revive the memories of its brand name and goodwill among the people in the neighboring areas serviced by its educational institutions. It is therefore considered that this factor is not relevant for drawing inference regarding the temporary or permanent nature of the lease.

28. With regard to the observation of the AO that the reason cited for temporary discontinuance of the business by the assessee that a key partner of the assessee firm has retired is factually incorrect since there is no change in the constitution of the firm after 1.04.2003, it has been clarified by the assessee that the retirement of a key partner

took place with effect from 01.04.2003 as evident from the copy of the partnership deed dated 17.09.2003 furnished to the AO during the course of the assessment proceedings and that the assessee suffered huge losses in the period subsequent to such retirement of key partner which led to the decision to temporarily discontinue the business till another key person is identified and inducted as a partner. On examination, this clarification of the assessee is found to be factually correct. On perusal of the partnership deed dated 17.03.2003 available on record, it is noticed that 3 partners retired from the firm with effect from 01.04.2003 and the firm was reconstituted from the said date. One of the partners who retired w.e.f. 01.04.2003 was considered by the assessee to be a key partner, whose retirement at a crucial time caused downfall in the business and consequent losses. The fact that the assessee has taken keyman insurance policy in respect of a continuing partner Sri. M.V. Narayana in the subsequent period cannot be interpreted to mean that there was no other key partner prior to 01.04.2003. Hence, the observation of the AO regarding the factual incorrectness of the claim of temporary discontinuance of the business by the assessee on account of retirement of a key partner is considered to be incorrect.

29. In As regards the observation of the AO that the existence of huge debit balance the capital accounts of the partners as on the last day of the previous year indicates that the partners have started withdrawing funds from the firm in excess of their capital balance and that the same is due to the intention of the assessee firm to discontinue the business permanently, it has been clarified by the assessee that the assessee firm has been making continuous losses for the past few years resulting in debit balances in the capital accounts of the partners as evident from the account copies furnished to the AO during course of the assessment proceedings. On examination, this clarification of the assessee is found to be factually correct. It is noticed that the debit balances in the capital accounts of the partners have predominantly arisen on account of the losses incurred by the assessee during the earlier years and not due to withdrawal of funds by the partners. Hence, the observation of the AO in this regard is found to be factually incorrect.

30. In view of the discussion made in paragraphs 25 to 29 above, it is evident that all the factors taken into consideration by the AO for arriving at the factual inference that the discontinuance of the business which led to the leasing of the business assets of the assessee is permanent in nature are either factually incorrect or represent incorrect appreciation of the clauses of the lease deed and MOU. In view of this, it is considered that the said factual inference of the AO is not sustainable. Having regard to paras-4 & 5 of the preamble to the MOU at page-2 of the MOU wherein it was clearly stated that the assessee has decided to give on lease its premises at Gudavalli along with business thereon in view of its desire to temporarily discontinue the activity of providing education and handover the said activity to any other educational institution which is in the same line of business and the clause-8 at page-2 of the lease deed which provided for termination of the lease before the expiry of the specified lease period of 10 years by either side by serving 6 months' notice, it is required to be considered that the assessee has leased out its assets on account of temporary discontinuance of its business only."

8. In the absence of any compelling reasons or change in the facts and circumstances, questions of fact cannot be agitated and reagitated every year and public policy demands that there shall be an end to the determination of facts. In the year 2009-10, learned CIT(A) completely reappraised the facts dealt with by the learned Assessing Officer and held that it is only for a temporary period, the assessee let out the entire business in contradiction to the building alone, the intention of the assessee to resume the business is evident from the clauses of MoU, financials and other circumstances. Revenue accepted the same without preferring any appeal and such findings of fact have become final. We, therefore, do not deem it just and proper to reopen the said findings of fact at this remote point of time.

9. To the factual findings returned by the learned CIT(A) in the assessment year 2009-10, the decisions of the Hon'ble Apex Court in the case of Sri Lakshmi Silk Mills (supra) and Vikram Cotton Mills (supra) are applicable on all fours. In view of our finding, that the factual findings of the learned CIT(A) for the assessment year 2009-10 cannot be permitted to be reagitated year after year, that too having once accepted those facts, we find that the decisions relied upon by the learned CIT(A) have no application.

10. For the reasons stated in the preceding paragraphs, we accept the contention of the assessee for the assessment year 2013-14 and 2017-18 also and allow the grounds of appeal.

11. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on January, 2025.

(BALAKRISHNAN S.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 10/01/2025
L.Rama, SPS

Copy forwarded to:

1. M/s Gowtham Residential Junior College, D.No.1-87, Gudavalli Village, Gudavalli, Vijayawada
2. The Asst.Commissioner of Income Tax, Central Circle, Vijayawada
3. The Pr.CIT, Central Circle, Vijayawada
4. The DR, ITAT, Visakhapatnam
5. GUARD File

TRUE COPY

ASSISTANT REGISTRAR

ITAT, HYDERABAD