IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.12.2014

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THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NOS. 303 TO 305 & 812 OF 2013

Commissioner of Income Tax III
Chennai. .. Appellant in all the appeals

- Vs -

M/s.NDR Warehousing Pvt. Ltd.
Old No.5, New No., Errabalu Chetty Street
Chennai 600 001. .. Respondent in all the appeals

Appeals filed under Section 260-A of the Income Tax Act against the order dated 02.05.2013 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, in ITA No.182/Mds/2013 and ITA No.1039/Mds/2011 to ITA No.1041/Mds/2011.

For Appellant : Mr. T.R.Senthil Kumar

For Respondent : Ms. Pushya Sitaraman, SC, for
Ms. Sree Vidya

COMMON JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved against the order of the Income Tax Appellate Tribunal in dismissing the appeals filed by it, the Revenue is before this Court challenging the said order by filing the present appeals. This Court, vide order dated 13.8.13 admitted the appeals on the following substantial question of law :-

"Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income of the assessee from letting out its warehouse is chargeable under the head 'Income from Business' and not under the head 'Income from House Property'?

2. The brief facts of the case, as could be culled out from the pleadings and other documents is as under :-

The assessee is engaged in the business of warehousing, handling and transport business. The assessee filed return of income for the assessment years, viz., 2004-2005, 2005-2006, 2007-2008 and 2009-2010 showing the income earned from letting out of building and godown as income from business. The Assessing Officer, however, rejected the view of the assessee treating the income from letting out of building and godown as business income and treated the income as income from house property. Aggrieved against the said assessment order for all the four assessment years, the assessee preferred appeals to the CIT (Appeals), who allowed all the appeals holding that income from warehousing and letting out the godown and building will be income from business and not income from house property. For better clarity, the finding of the CIT (Appeals), is extracted hereunder :-

"11. In pursuance of its objects, the appellant carried on the business of warehousing in its own godowns and rented premises. The appellant derived income also from transporting business. The basic issue for adjudication in this appeal is whether income from warehousing is assessable as income from house property or business.

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13. The appellant's case is that the assessee's activity is not merely letting out of the warehouses, but storage of goods with provision of several auxiliary *services such as pest control, rodent control and preventive measures against decay of goods stored due to vagaries of moisture/temperature, fungus formation, etc., besides security/protection of the goods stored. There is therefore no dispute that the appellant carries on the activity in an organized business manner. These activities are more than mere letting out of the godown for tenancy. The Department itself has accepted in the past that the income from warehousing was asssessable as income from business. The appellant has cited several judgments in its favour."*

3. Aggrieved by the said order of the CIT (Appeals), the Department preferred appeal before the Tribunal. The Appellate Tribunal concurred with the findings of the CIT (Appeals) and more specifically in para-9 of its order, went into the Objects Clauses of the company and came to hold that the primary source of income of the assessee was letting out godowns and warehouses to the manufacturers, traders and other companies carrying on warehousing business. The Tribunal also distinguished the judgment in ***Keyaram Hotels (P) Ltd. - Vs – ACIT (173 Taxman 262 (Mad))*** on facts. The Tribunal further accepted the assessee's plea of business income based on the profit and loss account, Object Clauses of the Memorandum of Association and the nature of business activity undertaken. The said portion of the finding of the Tribunal is extracted hereunder for useful reference :-

"In the instant case, a perusal of the profit and loss account of the assessee company and the Object Clause of the Memorandum of Association of the company clearly sho that the assessee company was incorporated with an object of carrying on the business of warehousing and letting/renting of godowns and providing facilities for storage of articles or things and descriptions whatsoever. The profit and loss account of the assessee company shows that its main source of income is storage charges and maintenance or user charges. Even substantial part of the expenses also relate to the salaries of the employees engaged in the maintenance and upkeep of the godowns and

warehouses. Therefore, in our considered opinion, the income of the assessee from letting out of warehouses and godowns is chargeable under the head "Business Income" and not "Income from House Property". Accordingly, we uphold the findings of the CIT (A) and dismiss this ground of appeal of the Revenue."

4. Heard Mr.Senthil Kumar, learned standing counsel appearing for the appellant and Ms.Pushya Sitaraman, learned senior counsel appearing for the respondent/assessee.

5. From a perusal of the above orders of the CIT (Appeals) as well as the Tribunal, it is evident that the CIT (Appeals) and the Tribunal, on facts, have clearly come to the conclusion that it is a case of business income and not income from house property. This Court also finds that the Tribunal was justified in distinguishing the case of the Bombay High Court in ***Nutan Warehousing Company P. Ltd. - Vs – DCIT (326 ITR 94 (Bom))*** with regard to the nature of business conducted by the assessee in that case in relation to the nature of business conducted by the assessee in the present case. In the instant case, we find that the CIT (Appeals) as well as the Tribunal have not only gone into the Object Clauses of the Memorandum of Association of the Company, but also on individual aspects of the business to come to the conclusion that it is a case of warehousing business and, therefore, would fall only under the head "Business Income".

6. In view of the above well considered and concurrent reasoning given by the CIT (Appeals) as well as the Appellate Tribunal, we find no reason to differ with the findings of fact recorded by the CIT (Appeals) as confirmed by the Appellate Tribunal, which reasoning is fully

justified in the facts of the present case. This Court finds no good reason to differ with the said findings of fact. Accordingly, ***the substantial question of law is answered in favour of the assessee and against the Revenue***.

7. In the result, finding no merit in the present appeals, the same are dismissed. However, there shall be no order as to costs.

(R.S.J.) **(R.K..J.)**

01.12.2014

Index : Yes/No

Internet : Yes/No

GLN

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