

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 618 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

JYOTI ESTATE....Appellant(s)

Versus

DY.COMMISSIONER OF INCOME TAX....Opponent(s)

=====

Appearance:

MR SN DIVATIA, ADVOCATE for the Appellant(s) No. 1

MR.VARUN K.PATEL, ADVOCATE for the Opponent(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 18/11/2014

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. Being aggrieved and dissatisfied with the impugned judgment and order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench (hereinafter referred to as 'the Tribunal') dated 21.07.2005 in ITA No. 209/Ahd/1998 for the Assessment Year 1994-95 respectively, the assessee has preferred the present Tax Appeal for consideration of the following substantial question of law which were framed while admitting the matters:

“(A) Whether, on the facts and in the circumstances, the Tribunal was justified in holding that the rental income from letting out of warehouses/godowns together with various services rendered to the occupant did not constitute a business activity of the appellant and as such the income arising therefrom was not assessable under sec. 28 of the Income-tax Act, 1961 as business income?”

Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal should not have arrived at conclusion that the income from letting out of the warehouse/godown was assessable as property income under sec. 22 of the Income-tax Act, 1961?”

2. The appellant, a partnership firm, is engaged mainly in the business of letting out warehouses/godowns for storage purposes alongwith infrastructure facilities. The appellant firm had filed its return of income for the assessment years in question claiming the rental income from warehouse as

business income. However, the assessment officer held that the income from letting out the warehouse/godown was not assessable as business income but was 'income from house property'. On appeal the CIT (Appeals) held that the income from letting out of warehouses was assessable as business income.

3. On appeal before the ITAT by the revenue, by impugned judgment and order, ITAT allowing the appeal held that the rental income derived from letting out of warehouses/godowns was liable to be taxed as income from house property and not as income from business. Being aggrieved and dissatisfied with the impugned judgment and order passed by the ITAT, the assessee has preferred the present Tax Appeal for consideration of the aforesaid substantial questions of law.

4. Mr. Divatia, learned advocate appearing for the appellant has drawn the attention of this Court to the profit and loss account statement and balance sheet of the assessee placed on record and submitted that the rent received from the warehouse in the case of the assessee is incidental to the business. He submitted that such income can be assessable only under the head 'business income' and not as 'income from house property'.

4.1 Mr. Divatia has relied upon the decision of this Court in the case of **Commissioner of Income-tax vs. Surat Textile Market Co-operative Shops and Warehouse Society Ltd reported in [2003] 264 ITR 289** wherein it is held that nominal rent for godown and shops constitutes income from

other sources and that the income derived by the assessee by permitting use of auditorium by collecting charges would fall under the head 'business income'. It is held that the income which was derived by fulfillment of the object of the assessee to provide amenity to its members shall be construed as business income. It is further held that provision of canteen had to be construed as service planned and provided by the assessee as an amenity to facilitate trade and income from such canteen had therefore to be construed as business income.

4.2 Mr. Divatia has also placed reliance on an unreported decision of this Court in Tax Appeal No. 266 of 2013 and allied matters rendered on 04.04.2013. This Court has observed as under:

"We notice that under some what similar background, when the Tribunal in case of Saptarishi Services [*Supra*] had held the income to be his business income and not from the house property, this Court had dismissed the appeal holding that no question of law arises. In such case, the assessee had taken certain piece of land on lease and thereupon put up construction of a commercial building with an idea of having a business center. Different portions of the building were given on rent to third parties and the assessee treated the rent as service charges under the head, *income from business and profession*. Assessee explained to the Assessing Officer that in addition to providing the premises, the assessee also provided several other facilitates; such as, services of lift, services of receptionists, secretarial services, data processing, conference room, *etc.* The Assessing Officer did not accept the contention and treated the income, derived from the house property. The Tribunal ultimately held in favour of the assessee and came to conclusion that, , ..the

director of M/s. Saptarashi Services (P) Limited are not related to the directors of M/s. Kohinoor Tobacco Products (P) Limited. The electricity charges from October 1, 1989 to March 31, 1990, were paid to M/s. Mohanlal Hargovandas who were one of the members of the service centre and M/s. Saptarshi Services (P) Limited reimbursed them later. The assessee is having EPABX machine which facilitates providing telephone services to the occupants of the service centre. Besides this, the assessee is providing various services to the occupants like services of lift, services of receptionists, secretarial services, data processing, conference room, etc. The object of the said complex is that facilities to be provided with the building. Thus the assessee is providing a working place along with the various facilities.

Against such decision, Revenues appeal was dismissed by this Court.

The decision of Supreme Court in case of Sambhu Investment (P) Limited [*Supra*] was rendered in different facts-situation. In such case, the assessee was owner of immovable property. It occupied a portion thereof and let out the rest to be used as table space to occupants, with furniture and fixtures and lights and air-conditioners. For such purpose, tenants paid monthly rental; inclusive of charges. The High Court held that such income should be treated as *income from house property*. The Apex Court upheld this judgment.

In the present case, the facts are vitally different. The assessee had not rented out property but had allowed its use thereof for the purpose of joint venture business. In addition to the space with proper infrastructural facilities, it also provides various other facilities to be used for the purpose of diamond processing.”

5. Mr. Varun Patel, learned advocate for the revenue supported the impugned order passed by the Tribunal. He submitted that the Tribunal has considered the fact that the provision for security, adequate space for canteen, light and water arrangements, telephone and other facilities and

providing tarred roads are incidental to the main activity of letting out of godowns for storage of fertilizers.

5.1 Mr. Patel submitted that it can be seen from the assessment order as well as the letter from Indian Potash Ltd that their requirement was semi plinth which means there were no constructed godowns and that there cannot be godowns without walls, doors and roofs. He submitted that therefore whatever the assessee earned from Indian Potash Limited cannot by any strength of imagination be said to be godown rent claimed to be assessable as business income. He has relied upon an unreported decision of this Court in the case of the same assessee on the same subject matter which was disposed of vide order dated 17.11.2014 rendered in Tax Appeals Nos. 276 to 282 of 2002.

6. We have carefully considered the submissions made by learned advocates for both the sides. The ground in this appeal relates to the head of income as to under which head warehousing charges (rent) is assessable. The Tribunal in paragraph 2 has observed that the issue stands covered in favour of the revenue by the Tribunal's consolidated decision in the assessee's own case vide order dated 25.01.2002 for A.Y 1986-87 to 1991-92 wherein the income from godowns has been held to be income from house property.

6.1 The said order dated 25.01.2002 was challenged by the assessee before this Court by filing Tax Appeals No. 276 of 2002 to 282 of 2002. This Court while dismissing the said appeals on 17.11.2014 confirmed the view taken by the Tribunal and upheld the order wherein income from godown

is held to be income from house property. The relevant portion of the said decision is reproduced hereunder:

“7. The Tribunal in paragraph 5.15 of the impugned order observed as under:

“5.15 The assessee is undoubtedly the owner of godowns constructed by them which have been let out to M/s. IPL for storage of fertilizers. The income derived by the assessee by way of rent of such godowns from M/s. IPL is therefore clerally liable to be taxed as “income from property” and not as “income from business” as claimed by the assessee. The fact that the company had rendered certain incidental services for earning such rental income would not alter the nature of such income as being assessable under the head “income from house property”. The provision for security, adequate space for canteen, light and water arrangements telephone and other facilities and providing tarred roads are incidental to the main activity of letting out of godowns for storage of fertilizers. M/s. IPL making payment for use of godowns for storage of fertilizers and such rental income squarely falls within the ambit and scope of “income from house property” chargeable to tax u/s 22 to 27 of the Act.”

7.1 We are in complete agreement with the reasonings adopted and findings arrived at by the Tribunal. It is a settled law that whether any income falls under one head or the other has to be decided according to the common notions of practical and reasonable man for the act does not provide any guidance in the matter and that no general principle could be laid down which is applicable to all cases and each case has to be decided on its own facts and circumstances. Given

the set of facts and circumstances in the present case, we find that the decisions cited by learned advocate for the assessee shall not be applicable herein. The assessee herein has not let out the constructed building but is providing complex service oriented activities. The return received by the assessee is not the income derived from the exercise of property rights only but is derived from carrying on an adventure in the nature of trade. If the entire conduct and series of activities undertaken by the assessee firm is examined right from the inception of firm, it is borne out that the assessee carried out the activities with a view to earn profit or gain rather than to earn income as an owner of the asset. We therefore are of the opinion that the Tribunal was justified in holding that the rental income from letting out of warehouses/godowns together with various services rendered to the occupant did not constitute a business activity of the appellant and as such the income arising therefrom was not assessable under sec. 28 of the Income-tax Act, 1961 as business income. “

7. We are in complete agreement with the reasonings adopted and findings arrived at by the Tribunal. We therefore are of the opinion that the Tribunal was justified in holding that the rental income from letting out of warehouses/godowns together with various services rendered to the occupant did not constitute a business activity of the appellant and as such the income arising therefrom was not assessable under sec. 28 of the Income-tax Act, 1961 as business income. We, therefore, answer the questions raised in the present appeal in the affirmative - in favour of the revenue and against the assessee. The impugned order passed by the Tribunal is upheld. Appeal is dismissed accordingly.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

divya

