

In the High Court of Judicature at Madras

Dated: 11.11.2014

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) Nos.815 to 818 of 2014
& connected M.Ps.

M/s.Keyaram Hotels P. Ltd.,
2 Harrington Road,
Chetpet, Chennai - 600 031.

.... Appellant in the above T.C.(A)s.

Vs.

The Deputy Commissioner of Income Tax
Company Circle II (4)
Chennai - 600 034.

.... Respondent in the above

T.C.(A)s.

APPEALS under Section 260A of the Income Tax Act against the order dated 05.06.2014 made in I.T.A.Nos.272 to 275/Mds/2014 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai.

For Appellant : Mr.Sriram

COMMON JUDGMENT
(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the assessee as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

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"1. Whether the Appellate Tribunal is correct in law in holding that the income derived by the appellant from leasing of the 'commercial properties' is not business income while assessing such income under the head 'income from house property' on the wrong reading of the facts available on record in relation thereto establishing perversity in their order?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal, having found that the transaction is a business activity was justified in concluding that the income has to be assessed as "income from house property"?

3. Whether the Appellate Tribunal is correct in law in sustaining the stand of the respondent on the assessment of lease income under head 'income from house property' even though it was not a case of letting 'simpliciter' and on the contrary letting with amenities and services, warranting computation under the head 'business' granting deduction of expenses incurred in relation thereto as against allowance of standard deduction envisaged in the computation of 'income from house property'?

4. Whether the Appellate Tribunal is correct in law in sustaining the stand of the respondent on the assessment of lease income under head 'income from house property' even though the facts and circumstances warrant assessment of a portion of such income under head 'income from business' alternatively upon taking into consideration the amenities and services provided

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under the lease and incurring of expenses in maintaining as well as providing such amenities and services?"

2. The assessment in the above cases relates to the assessment years 2004-05, 2005-06, 2007-08 and 2008-09.

3. The assessee company is deriving rental income from letting out a commercial complex apart from income from other sources. For the assessment years under consideration, the assessee filed return of income declaring the income under the head 'business' claiming all expenses and deductions allowable while computing the income under the head 'business'. While completing the assessment, the Assessing Officer did not allow the expenses claimed under the head 'business' stating that the assessee had not engaged in any business activity but had given its premises on rent. Hence, the Assessing Officer computed the income under the head 'Income from house property'. Aggrieved by the said order of the Assessing Officer, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who by placing reliance on a decision of this Court in respect of the assessee's own case for the assessment year 2001-02, dismissed the appeals. Challenging the said order of the Commissioner of Income Tax (Appeals), the assessee preferred further appeals before the Income Tax Appellate Tribunal. The Tribunal after hearing both sides, following the decision rendered by this

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Court in the assessee's own case for the assessment year 2001-02 reported in **300 ITR 118** dismissed the appeals holding that there is no change in the facts and circumstances of the assessment years under consideration.

4. Aggrieved by the order of the Income Tax Appellate Tribunal, the present Tax Case (Appeals) have been filed.

5. We have heard learned counsel appearing for the appellant and perused the materials placed before this Court.

6. It is seen from the order of assessment that the assessee had given its premises for rent and did not engage in any business activity at all. Under such circumstances, the Assessing Officer computed the income under the head 'income from house property'. There are no materials placed before us by the assessee to contradict the above said facts.

7. Though a plea is taken by the learned counsel appearing for the appellant that the earlier decision of this Court in respect of the assessee's own case reported in **300 ITR 118** is distinguishable and the present appeals are based on different plea, we find that the counsel for the appellant is not able to pursue the matter any further except stating so, because neither the decision of this Court is filed as part of typed set of

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papers nor produced any decisions rendered earlier.

8. The Supreme Court had an occasion to deal with the similar issue in the decision reported in **42 ITR 49(SC) (East India Housing and Land Development Trust Ltd Vs. CIT)**. The assessee therein is a company formed with the object of promoting real estate business and developing markets. It claimed that the income derived from shops let out was to be assessed under Section 10 of the 1922 Act as "profits or gains" of business. In considering the question, the Supreme Court pointed out that the mere fact that the assessee had to obtain licence from the Corporation of Calcutta and to maintain sanitary and other services in conformity with the provisions of the Act, by itself, would not enable the assessee to claim that income from letting out of the property was to be treated as "business income". Referring to different heads of income under Section 6 of the 1922 Act, the Apex Court pointed out as under:-

" If the income from a source falls within a specific head set out in S.6 the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. The income derived by the company from shops and stalls is income received from property and falls under the specific head described in S.9. The character of that income is not altered because it is received by a company formed within object of developing and setting up markets. In *United Commercial Bank Ltd Vs. CIT (1957) 32 ITR 688 (SC)* this Court explained after

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an exhaustive review of the authorities that under the scheme of the IT Act, 1922, the heads of income, profits and gains enumerated in the different clauses of S.6 are mutually exclusive, each specific head covering items of income arising from a particular source."

In so holding, the Apex Court ultimately held as follows:-

" The income received by the appellant from shops is indisputable income from property ; so is the income from stall from occupants. The character of the income is not altered merely because some stalls remain occupied by the same occupants and the remaining source of income from the stalls is occupation of the stalls, and it is a matter of little moment that the occupation which is the source of the income is temporary. The IT authorities were, in our judgment, right in holding that the income received by the appellant was assessable under S.9 of the IT Act."

9. In the decision reported in **266 ITR 685 (Mad) (Commissioner of Income Tax Vs. Chennai Properties and Investments Ltd)**, this Court elaborately considered the decisions of the Apex Court as well as this Court and pointed out that the question as to whether letting out of the property results in "business income" or "income from property" is to be decided based on the facts of each case. Pointing out to the decision in the case of **East India Housing (1961) 42 ITR 49 (SC)** as well as in the case of **Karanpura Development Co.Ltd Vs. CIT** reported in **(1962) 44 ITR 362(SC)** and **Sultan Brothers (1964) 51 ITR 353 (SC)**, and the

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reasoning in the decision reported in **42 ITR 49 (East India Housing and Land Development Trust Ltd., Vs. CIT)**, this Court further held that income from letting out of the property, even in case of company carrying on business in real estate as well as having rental income from the property owned by the assessee has to be assessed as "income from house property". This Court in Chennai Properties case, further pointed out as follows:-

" Though it is not clear from the context as to why the Act describes income from property as income from house property, the substantive provision of law which creates the charge and obligates the person who receives such income to have it assessed under the head does not confine its application only to house property, but extends to all buildings whether such building is used as dwelling house or for other purposes."

10. It further held that there had been a consistent view by the Apex Court in all these cases that even if the assessee's business was in real estate, the income on letting out of the property was to be assessed as "income from house property". The only exception are cases, where the letting of the building was inseparable from the letting of the machinery, plant and furniture. In such cases, it was held that the rental income would not have been realised, but for the letting out of the machinery, plant or furniture along with such building and therefore, the rental received for the building had to be assessed under the head "Income from

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other sources". It was reiterated that where the owner of the property exploited the property by leasing out the same and realised income by way of rent, the same was to be assessed under the head "Income from house property" and not as "business income". The said decision was applied in the decision of this Court in the assessee's own case **Keyaram Hotels (P) Ltd Vs. Assistant Commissioner of Income Tax** reported in **(2008) 300 ITR 118 (Mad)**.

11. The Supreme Court in the decision of **(1) Universal Plast Ltd., (2) Guntur Merchants Cotton Press Co. Ltd Vs. Commissioner of Income Tax** laid down the following ratio :-

"(1) no precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease, amount, rents, licence 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 ;

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(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 also will cease to be business assets and the transaction will only be exploitation of property by an owner thereof, but not exploitation of business assets."

12. We have already referred to the decision of the Apex Court in ***East India Housing and Land Development Trust Ltd Vs. Commissioner of Income Tax*** reported in ***(1961) 42 ITR 49 (SC)***, which was also considered in the case of ***(1)Universal Plast Ltd., (2) Guntur Merchants Cottpn Press Co.Ltd Vs. CIT*** reported in ***237 ITR 454***. The question involved therein was as to whether income from letting of the property was to be treated as "business income" or not. As has been pointed out in the decision in the case of ***(1)Universal Plast Ltd., (2) Guntur Merchants Cottpn Press Co.Ltd Vs. CIT*** reported in ***237 ITR 454***, when the facts noted in the case before us clearly point out that the transaction was only by way of exploitation of the property by the assessee and not by way of exploitation of business assets, we do not find any ground to accept the contention of the assessee that the nature of business carried on by the assessee would be conclusive of the nature of

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receipts on the letting of the property. Going by the decision in the case of ***East India Housing and Land Development Trust Ltd., Vs. Commissioner of Income Tax*** reported in ***(1961) 42 ITR 49 (SC)***, when the rental income falls within the specific head of income from house property, the mere fact of the assessee having business in letting out the property as stated in its memorandum, by itself, will not conclusively point out that the income is nothing but business income. Even in the case of ***Commercial Properties Ltd., Vs. CIT*** reported in ***(1928) 1 LR 55 Calcutta***, a decision which was confirmed by the Apex Court, it was held that rental income derived by a company, whose sole object was to acquire lands, build houses and let them to tenants and whose sole business was management and collection of rents from the said properties, was held assessable under Section 9 and not under Section 10 of the Income Tax Act.

13. Thus, applying the decision in the case of ***East India Housing and Land Development Trust Ltd Vs CIT*** reported in ***42 ITR 49 (SC)*** to the facts as found by the Assessing Officer that the assessee had not engaged in any business activity, this Court accepts the case of the Department that income received from letting out of the property was rightly assessed by the Officer as "income from property".

14. In the light of the above, the order of the Tribunal stands

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confirmed and all the above Tax Case (Appeals) are dismissed. No costs.

Consequently, connected miscellaneous petitions are also dismissed.

Index :No
Internet:Yes
sl/sasi

(R.S.,J) (R.K.,J)
11.11.2014

To

1. The Income Tax Appellate Tribunal, "C" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals) VIII, Chennai.

**R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.**

Sl/sasi

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