

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : October 22, 2007  
Date of Decision : October 25, 2007

+ **ITA No. 392 of 2007**

**OCEAN STRUCTURES (P) LTD.** .....Appellant  
Through : Mr. Krishan Mahajan, Advocate.

versus

**ASST. COMMISSIONER OF INCOME-TAX** ...Respondent  
Through: Ms. Sonia Mathur, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

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|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in Digest?                    | Yes |

### **JUDGMENT**

**Dr. S. Muralidhar, J.**

1. This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') is directed against the Order dated 29.9.2006 passed by the Income Tax Appellate Tribunal (the 'Tribunal') in ITA No. 2847/Del/2002 for the Assessment Year 1999-2000. The Tribunal reversed the Order dated 15.4.2002 passed by the Commissioner of Income Tax [the 'CIT(A)'] and held that the income earned by the Assessee should be charged to tax under Section 22, i.e., under the head "income from house property" and not under Section 28 of the Act, i.e., under the head "profits and gains of business"

2. The Assessee constructed a building named 'CTC Plaza' on a plot of land measuring 1200 sq. yds. at F-43, Kilokri Ring Road, Ashram Chowk, New Delhi ('the premises'). The Assessee entered into a licence agreement dated 30.9.1998 with M/s Chhabra Silk & Sarees, Chandni Chowk, New Delhi under which the licensee was permitted to use the premises for its business of dealing in sarees, garments, fabrics, etc. for a consideration which was to be a percentage of the sale proceeds.

3. The Assessing Officer (AO), after discussing the terms of the licence, came to the conclusion that the Assessee and the licensee were not independent entities but were closely connected to each other. The AO concluded that the licence agreement had been drafted in a manner to make the receipt of the income from the house property appear to be business income calculated as a percentage of the sales of the licensee. The AO, as a matter of fact, further found that during the Assessment Year in question, the shareholding pattern of the Assessee company had undergone a sea change. The partners of the licensee firm M/s Chhabra Silk and Sarees were the majority shareholders with a controlling interest over the Assessee company. The AO concluded that “the receipt of income in the hands of assessee company is based on sale made by the licensee over which the assessee company would have no control had both the entities been independent commercial entities.” Based on these findings, the AO concluded that the income had to be charged as income from house property and not as business income.

4. In the appeal filed by the Assessee, the CIT(A) after discussing some of the clauses of the licence agreement came to the conclusion that the commission earned by the Assessee was business income and not income from house property and that this was “duly evidenced by the size of commission received by the company which only a commercial complex carrying commercial activities can fetch.”

5. The Tribunal reversed the decision of the CIT(A) relying on the principles settled by the Supreme Court in the decisions in *United Commercial Bank v. Commissioner of Income Tax*, 32 ITR 688 and *East India Housing and Land Development Trust Ltd. v. CIT*, 42 ITR 49(SC) which had been reaffirmed in *Universal Plast v. CIT*, 237 ITR 454(SC). The Tribunal concluded that the nomenclature given by the parties to the consideration for use of premises was immaterial, and that clause of the licence agreement made it clear that the Assessee had parted with the possession of the premises to M/s Chabbra Silks for earning income from such premises. Accordingly the Tribunal upheld the order of the AO that the proper head for charging income tax would be under Section 22 of the Act, i.e., “income from house property”.

6. We have heard the submission of Mr. Krishan Mahajan, learned counsel for the assessee and Ms. Sonia Mathur, learned Standing Counsel for the Revenue. On examining the clauses of the licence agreement we

detect no infirmity in the finding of fact arrived at by the AO that the entire arrangement of a licence agreement with M/s Chhabra Silk was a colourable device to make the income from house property appear as income from business. We are not a little surprised that the CIT(A) has, without advertng to the finding of the AO that the licensor and the licensee are not independent entities but are closely connected to each other, come to a conclusion that the commission paid to the Assessee was not 'income from house property'. It is apparent from the reading of the clauses of the licence agreement that the Assessee has merely parted with the possession of the premises for the purposes of earning income therefrom. We are also unable to appreciate the conclusion arrived at by the CIT(A) that the quantum of the consideration was determinative of whether the income was business income or income from house property. We accordingly find no infirmity in the conclusions on facts arrived at by the AO which have been affirmed by the Tribunal.

7. No substantial question of law arises for consideration. The appeal is dismissed.

**S. Muralidhar, J.**

**Madan B. Lokur, J.**

October 25, 2007  
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