

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.01.2020
DELIVERED ON: 30.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal Nos.2193 to 2195 of 2008 & 979 of 2009

M/s. PSTS Heavy Lift and Shift Ltd.
Wavoo Mansion, 2nd Floor
48, (Old No.39), Rajaji Salai
Chennai 600 001

.. Appellants in TCA
Nos.2193-2195/08

M/s. CeeDeeYes IT Parks Pvt. Ltd.
No.42, Second Main Road
Gandhi Nagar
Adayar
Chennai 600 020.

.. Appellant in
TCA No.979/09

The Deputy Commissioner of Income Tax
Company Circle - V(2)
Chennai.

.. Respondent in TCA
Nos.2193-2195/08

The Assistant Commissioner of Income-tax
Company Circle I (3)
121, Nungambakkam High Road
Chennai 600 034.

.. Respondent in
TCA No.979/09

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench, dated 20.03.2008 in ITA Nos.1179/Mds/2007, 1180/Mds/2007 and 1181/Mds/2007 and against the order of the Income Tax Appellate Tribunal, Chennai Bench "A" dated 18.05.2009 in ITA No.998/Mds/2008, for the Assessment Year 1999-2000, 2000-2001, 2001-2002 and 2005-2006 respectively.

For Appellants : Mr.M.P.Senthil Kumar

For Respondents : Mr.T.Ravikumar
Senior Standing Counsel

J U D G M E N T

Dr.Vineet Kothari,J

The substantial question of law involved in the present tax appeals filed by the Assesseees is "Whether the income earned by the Assesseees during the Assessment Years in question from letting out of its warehouses or property to lessees, is taxable under the head 'Income from Business' or 'Income from House Property?'"

2. The learned Income Tax Appellate Tribunal held against the Assesseees and held such income to be taxable as 'Income from House Property', mainly relying upon the judgment of Division Bench of this Court in the case of *CIT v. Chennai Properties and Investment Pvt. Ltd. [(2004) 266 ITR 685]*, which judgment came to be reversed by the Hon'ble Supreme Court later on in the appeal filed by *M/s. Chennai Properties and Investment Pvt. Ltd. v. CIT [(2015) 373 ITR 673 (SC)]*.

3. The facts in brief of both the Assessee are as under:

M/s. CeeDeeYes IT Parks Pvt. Ltd. - As per the Assessment Order passed in the said case, the Assessee company was incorporated to carry out the business of providing infrastructure amenities, work space for IT companies and constructed the property in question and let it to one such IT company M/s. Cognizant Technology Solutions India Ltd. The Assessee claimed the rental income to be taxable as its 'Business Income' and not as 'Income from House Property', but the Assessing Authority as well as the Appellate Authorities held against the Assessee and held such income to be income from house property.

4. M/s. PSTS Heavy Lift and Shift Limited - For the Assessment Year 1999-2000, the Assessing Authority held that the Assessee owned two warehouses situate near SIPCOT Tuticorin with total land area of 3.09 Acres and built up area of each approximately 32000 sq.ft. The Assessee earned income of Rs.21.12 Lakhs during the Assessment Year 2000-2001 by letting out the warehouses to two companies M/s. W.Hogewoning Dried Flower Limited and M/s. Ramesh Flowers Limited and out of the total rental income of Rs.21.12 Lakhs, it claimed depreciation of Rs.6.02 Lakhs on the said business asset in the

form of Warehouses. The Assessee claimed that Warehousing was included in the main objects of its Memorandum of Association of the Company and not only Warehouses were utilised for storing their clients cargos, but other areas were used to park their equipments such as trucks, cranes, etc. and amenities like handling equipments like pulleys, grabs, weighing machines were fixed in the corners and such facilities were also provided to the clients. The Assessee claimed it to be the Business Income and such Income to be taxed as Income from Business. But, the Assessing Authority as well as the Appellate Authority held that the said income of Assessee to be taxable under the Head 'Income from House Property'. The Assessing Authority also inter alia relied upon another judgment of this Court in *CIT v. Indian Warehousing Industries Limited* [258 ITR 93], where the rental income was received by the Assessee from letting of the Warehouses to the Food Corporation of India.

5. The learned counsel for the Assessee, Mr.M.P.Senthil Kumar, at the outset, submitted that the very basis of the orders passed by the authorities below, has since been taken away by the reversal of the judgment of this Court in the case of **Chennai Properties** supra,

by the Hon'ble Supreme Court and therefore, the appeals filed by the Assessee straightaway deserves to be allowed and the question of law framed deserves to be answered in favour of the Assessee.

6. The learned counsel for the Assessee further submitted that it will depend upon the facts of each case and if earning of the rental income by letting out of the business asset or the properties of the Assessee is the sole business of the Assessee, then the income from such rentals or lease money cannot be taxed as income from house property, but can be taxed only as income from business. He submitted that there was enough material on record to establish the claim of the Assessee to tax such income as business income in the hands of the Assessee, so that the deductions in the form of depreciation or other business expenses could be allowed against such income, but the Assessing Authorities below, in order to deny such deductions or depreciation and other expenditure incurred by the Assessee to earn such business income, deliberately held that such rental income was taxable under the head 'Income from House Property', so that the only limited deductions under that Head of 'Income from House Property' could be allowed to the Assessee and a

higher taxable income can be brought to tax under the provisions of the Act.

7. In support of his contentions, he relied upon the following case laws:

- (a) **Chennai Properties Investments Limited v. Commissioner of Income Tax [(2015) 373 ITR 673 (SC)];**
- (b) **Rayala Corporation Private Limited v. Assistant Commissioner of Income Tax [(2013) 386 ITR 500 (SC)];** and
- (c) **Raj Dadarkar & Associates v. Assistant Commissioner of Income Tax [(2017) 394 ITR 592 (SC)].**

8. *Per contra*, the learned counsel for the Revenue Mr. Ravikumar, supported the orders passed by the learned authorities below, as also the Income Tax Appellate Tribunal and placing reliance upon the earlier judgments of Madras High Court as well as the old judgments under the old Income Tax Act, 1922, rendered by the Hon'ble Supreme Court, sought to submit that the income from lease of the property deserves to be taxed under the Head 'Income from house property'.

9. In the alternative, Mr.Ravikumar, learned Standing Counsel for the Revenue also submitted that as far as the separate income earned by the Assessee from the amenities provided to the clients in the Warehouses or the property of the Assessee was concerned, such portion of income deserved to be taxed under the Head 'Income from other sources' under Section 56 of the Act and not as 'Income from Business'. He relied upon the following judgments in support of his contentions:

- (i) ***East India Housing & Land Development Trust Ltd v. Commissioner of Income Tax [(1961) 42 ITR 49 (SC)];***
- (ii) ***Sultans Brothers (P) Ltd. v. Commissioner of Income Tax [(1964) 51 ITR 353 (SC)];***
- (iii) ***Shambu Investment (P) Ltd. v. Commissioner of Income Tax [(2003) 263 ITR 143 (SC)];***
- (iv) ***A.R. Complex v. Income Tax Officer [(2007) 292 ITR 615 (Mds)];***
- (v) ***Commissioner of Income Tax v. Indian Warehousing Industries Ltd. [(2002) 258 ITR 93 (Mds)];*** and
- (vi) ***Jyoti Estate v. Deputy Commissioner of Income Tax***

[(2015) 229 Taxman 404 (Guj.)].

10. We have heard the learned counsel for both sides and perused the materials on record and also the judgments cited before us.

11. We are of the considered opinion that the present appeals filed by the Assessee deserve to be allowed and the question of law deserves to be answered in favour of the Assessee and against the Revenue and the reasons are as follows.

The misconceived premise of the Tribunal as well as the Authorities below is that the income from letting out of the property, which was the business asset of the assessee company and the sole and exclusive business of the Assessee was to earn income out of such house property in the form of business asset, was still taxable only as 'income from house property'. Such misconception emanated from the judgment of this Court in the case of *CIT v. Chennai Properties and Investment Pvt. Ltd.* [(2004) 266 ITR 685], which was reversed by the Hon'ble Supreme Court later on.

12. The Hon'ble Supreme Court in **Chennai Properties Investments Limited v. Commissioner of Income Tax [(2015) 373 ITR 673 (SC)]** (supra), with which we respectfully agree and also are bound to follow, clearly held that where the assessee is a company whose main object of business is to acquire properties and to let out those properties, the rental income received therefrom was taxable as 'income from business' and not 'income from house property', following the ratio of the Constitution Bench judgment of the Supreme Court in **Sultans Brothers (P) Ltd. v. Commissioner of Income Tax [(1964) 51 ITR 353 (SC)]**, wherein it was held that each case has to be looked at from business man's point of view to find out whether the letting was doing of a business or the exploitation of the property by owner.

13. The relevant portion of the decision of the Supreme Court in the case of **Chennai Properties** (supra) is quoted below for ready reference, in which the Hon'ble Supreme Court also relied upon its earlier decision in **Karanpura Development Co. Ltd. v. Commissioner of Income Tax [44 ITR 362 (SC)]**, are quoted below for ready reference:

*"Before we refer to the Constitution Bench judgment in the case of **Sultan Brothers (P) Ltd.**, we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in '**Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal**' [44 ITR 362 (SC)]. That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and **then sub-leasing them to collieries and other companies**. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies **was the business of the assessee**. **The income which was received from letting out of those mining leases was shown as business income**. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It*

was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: -

“As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its

professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned.”

*After applying the aforesaid principle to the facts, which were there before the Court, it came to the **conclusion that income had to be treated as income from business and not as income from house property.** We are of the opinion that the aforesaid judgment in Karanpura Development Co. Ltd.'s case squarely applies to the facts of the present case.*

*No doubt in **Sultan Brothers (P) Ltd.**'s case, Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at an conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case, viz., whether a particular business is letting or not. This is so stated in the following words: -*

“We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the

exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature.”

*We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, **letting of the properties is in fact is the business of the assessee.** The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate*

Tribunal. No orders as to costs." (emphasis supplied)

14. The said decision came to be followed by another Bench of Supreme Court in the case of **Rayala Corporation** (supra), in which the position of law was succinctly reiterated and followed by the Hon'ble Supreme Court with the following observations:

*"9. Upon hearing the learned counsel and going through the judgments cited by the learned counsel, we are of the view that the law laid down by this Court in the case of **Chennai Properties (supra)** shows the **correct position of law** and looking at the facts of the case in question, the case on hand is squarely covered by the said judgment.*

*10. Submissions made by the learned counsel appearing for the Revenue is to the effect that the rent should be the main source of income or the purpose for which the company is incorporated should be to earn income from rent, so as to make the rental income to be the income taxable under the head "Profits and Gains of Business or Profession". **It is an admitted fact in the instant case that the assessee company has only one business and that is of leasing its property and earning***

rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.

11. *The judgment relied upon by the learned counsel appearing for the assessee squarely covers the facts of the case involved in the appeals. The business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income.*

12. *In view of the law laid down by this Court in the case of Chennai Properties (supra) and looking at the facts of these appeals, in our opinion, the High court was not correct while deciding that the income of the assessee should be treated as Income from House Property." (emphasis supplied)*

15. Similarly, in **Raj Dadarkar & Associates v. Assistant Commissioner of Income Tax [(2017) 394 ITR 592 (SC)]**, the same position was re-iterated in the following manner:

"14) There may be instances where a particular income may appear to fall in more than one head. These kind of cases of overlapping have frequently arisen

under the two heads with which we are concerned in the instant case as well, namely, income from the house property on the one hand and profits and gains from business on the other hand. On the facts of a particular case, income has to be either treated as income from the house property or as the business income. Tests which are to be applied for determining the real nature of income are laid down in judicial decisions, on the interpretation of the provisions of these two heads. Wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, in case provisions of Section 22 of the Act are satisfied with primary ingredient that the assessee is the owner of the said building or lands appurtenant thereto. Section 22 of the Act makes 'annual value' of such a property as income chargeable to tax under this head. How annual value is to be determined is provided in Section 23 of the Act. 'Owner of the house property' is defined in Section 27 of the Act which includes certain situations where a person not actually the owner shall be treated as deemed owner of a building or part thereof. In the present case, the appellant is held to be "deemed

owner” of the property in question by virtue of Section 27(iib) of the Act. **On the other hand, under certain circumstances, where the income may have been derived from letting out of the premises, it can still be treated as business income if letting out of the premises itself is the business of the assessee.**

15) What is the test which has to be applied to determine whether the income would be chargeable under the head “income from the house property” or it would be chargeable under the head “Profits and gains from business or profession”, is the question. It may be mentioned, in the first instance, that merely because there is an entry in the object clause of the business showing a particular object, would not be the determinative factor to arrive at a conclusion that the income is to be treated as income from business. **Such a question would depend upon the circumstances of each case. It is so held by the Constitution Bench of this Court in Sultan Bros. (P) Ltd. v. CIT, (1964) 5 SCR 807.** (emphasis supplied)

16. In view of the settled legal position above, with which we respectfully agree, we do not find any later and recent contrary view of

the aforesaid legal position. The earlier decisions rendered by Madras High Court, based on its views in ***CIT v. Chennai Properties and Investment Pvt. Ltd. [(2004) 266 ITR 685]***, cannot be now relied upon by the learned counsel for the Revenue, in view of the reversal of the said judgment by the Supreme Court in ***M/s. Chennai Properties and Investment Pvt. Ltd. v. CIT [(2015) 373 ITR 673 (SC)]***. The other judgments relied upon by the Revenue are also rendered in different context.

17. We are of the clear opinion that once the property in question is used as business asset and the exclusive business of the assessee company or firm is to earn income by way of rental or lease money, then such rental income can be treated only as the 'Business Income of the Assessee' and not as 'Income from House Property'. The Heads of Income is divided in various six heads, including 'Income from House Property', which defines the specific source of earning such incomes. The income from house property is intended to be taxed under that head mainly if such income is earned out of idle property, which could earn the rental income by user thereof from the lessees. But, where the income from the same property in the form of lease

rentals is the main source of business of the Assessee, which has its business exclusively or substantially in the form of earning of the rentals only from the Business Assets in the form of such landed properties, then, in our opinion, the more appropriate Head of Income applicable in such cases would be 'Income from Business'.

18. A bare perusal of the Scheme of the Income Tax Act, 1961, would reveal that while computing the taxable income under the Head 'Income from business or profession', the various deductions, including the actual expenditure incurred and notional deductions like depreciation etc. are allowed vis-a-vis incentives in the form of deductions under Chapter VIA. But, the deductions under the Head 'Income from House Property' are restricted to those specified in Section 24 of the Act, like 1/6th of the annual income towards repairs and maintenance to be undertaken by landlords, interest on capital employed to construct the property etc. Therefore, in all cases, such income from property cannot be taxed only under the head 'Income from House Property'. It will depend upon the facts of each case and where such income is earned by the Assessee by way of utilisation of its business assets in the form of property in question or as an idle

property which could yield rental income by its user, by the lessees. In the earlier provisions of Income from House Properties, even the notional income under the Head 'Income from House Property' was taxable in the case of self-occupied properties by landlords, is a pointer towards that.

19. Since, in the present cases, it is not even in dispute that all the exclusive and main source of income of the Assessee was only the rentals and lease money received from the lessees in both the cases and the Assessing Authority took a different and contrary view mainly to deny the claim of depreciation out of such business income in the form of rentals, without assigning any proper and cogent reason. Merely because the lease income or rental income earned from the lessees, could be taxed as 'Income from House Property', ignoring the fact that that such rentals were the only source of 'Business Income' of the Assessee, the Authorities below have fallen into the error in holding that the income was taxable under the Head Income from house property. The said application of the Head of Income by the Authorities below was not only against the facts and evidence available on record, but against the common sense itself.

20. The amended definition under Section 22 of the Income Tax Act, 1961, now defines the 'Income from House Property' as the annual value of property, as determined under Section 23 of the Act, consisting of buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property, as he may occupy for the purposes of any business or profession carried on by him, the profits of which are chargeable to income tax, shall be chargeable to Income Tax under the head 'Income from house property'. Thus, even the amended definition intends to tax the notional income of the self occupied portion of the property to run Assessee's own business therein as business income. Therefore, the other rental income earned from letting out of the property, which is the business of the Assessee itself, cannot be taxed as Income from house property.

WEB COPY

21. Moreover, the Heads of Income, as defined in Section 14 of the Act do not exist in silos or in watertight compartments under the Scheme of tax and thus, these Heads of Income, as we have noted above, are fields and heads of sources of income depending upon the

nature of business of the Assessee. Therefore, in cases where the earning of the rental income is the exclusive or predominant business of the Assessee, the income earned by way of lease money or rentals by letting out of the property cannot be taxed under the Head 'Income from house property', but can only be taxed under the Head 'Income from business income'.

22. In view of the aforesaid, where the facts of the cases are undisputed that both the Assessee in the present case carry on the business of earning the rental income, as per the Memorandum of Associations only and the fact is that they were not carrying on any other business, compels us to come to the conclusion that the present appeals of the Assessee are required to be allowed. The same are accordingly allowed and the question of law framed above is answered in favour of the Assessee and against the Revenue. No costs.

Index : Yes
Order : Speaking

(V.K.J.) (R.S.K.J.)
30.01.2020

kpl

WEB COPY

To

1. The Deputy Commissioner of Income Tax
Company Circle - V(2)
Chennai.
2. The Assistant Commissioner of Income-tax
Company Circle I (3)
121, Nungambakkam High Road
Chennai 600 034.
3. The Income Tax Appellate Tribunal
Chennai "B" Bench.
4. The Income Tax Appellate Tribunal
Chennai "A" Bench .



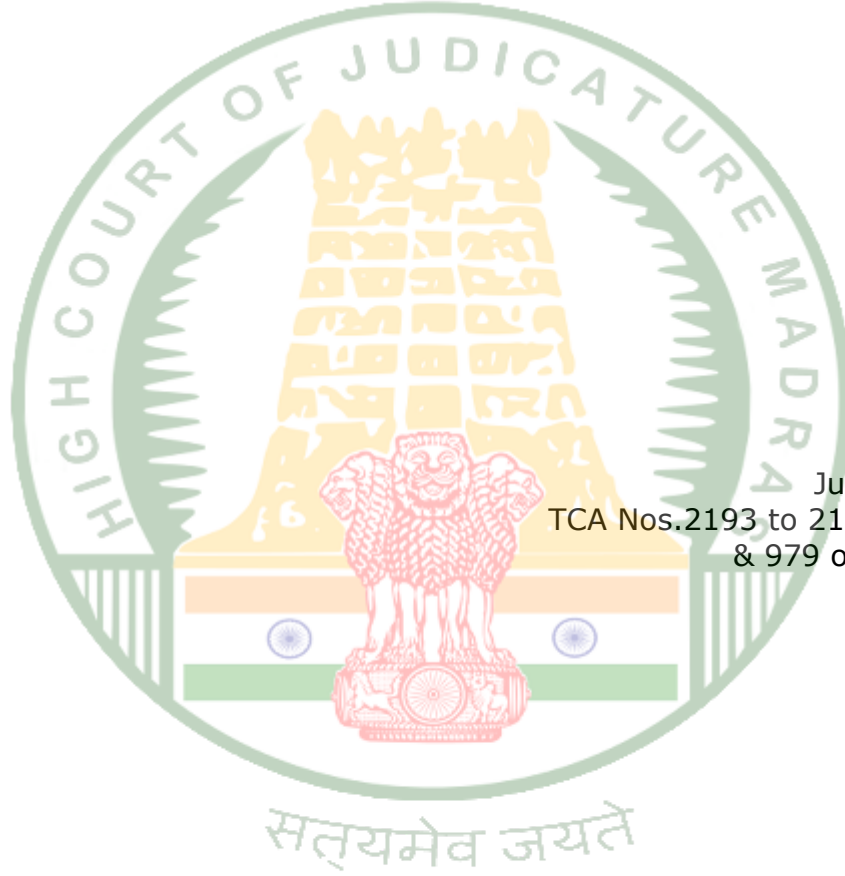
WEB COPY

Judgment dt. 30.01.2020 in TCA Nos.2193 / 2008
etc. batch [M/s. PSTS Heavy Lift and Shift Ltd.
v. The Deputy Commissioner of Income Tax]

24 / 24

DR.VINEET KOTHARI,J,
and
R.SURESH KUMAR,J

kpl



Judgment in
TCA Nos.2193 to 2195 of 2008
& 979 of 2009.

WEB COPY

30.01.2020