

Court No. - 35

Case :- INCOME TAX APPEAL No. - 72 of 2017

Appellant :- Shri Hardoi Baba Roller Flour Mills Pvt. Ltd. Hardoi

Respondent :- Commissioner Of Income Tax Bareilly

Counsel for Appellant :- Abhinav Mehrotra

Counsel for Respondent :- Krishna Agarwal, Krishna Agarwal

Hon'ble Bharati Sapru, J.

Hon'ble Piyush Agrawal, J.

(Delivered by Hon'ble Piyush Agrawal, J.)

Supplementary affidavit, filed today, is taken on record.

Learned counsel for the assessee gives up his right to file a reply.

The present appeal has been preferred against the order dated 20.07.2016 passed by the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as, 'the Tribunal') in Income Tax Appeal No. 350/L/2016. The present appeal was admitted by this Court on 04.01.2018 on the following question of law:

“(I) Whether, on a true and correct interpretation of law, the treatment of receipts from rent, derived from surplus space being let-out has rightly been classified by the Ld. ITAT as “Business Income” as against the appellant's claim of it being taxable under the head “Income from House Property”?

“(II) Whether, the impugned order of the ITAT is in accordance with law as the ITAT has recorded its findings ignoring a very specific argument made by the assessee resulting in recording of perverse findings and has drawn incoherent conclusions.?”

The facts of the case are that the assessee filed its returns of income on 29.09.2012 showing a total income of Rs. 10,79,200/- for the Assessment Year 2012-13. On 15.01.2013, the assessee filed its revised returns to correct the depreciation claim on the same income. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 was issued on 06.08.2013, which was served upon it on 07.08.2013. Thereafter, by an order dated 09.09.2013, the case was transferred to Joint Commissioner of Income Tax, Range – Sitapur. Thereafter, on 23.10.2013, notice under section 143(2) of the Income Tax Act was issued and on 03.01.2014, notice under section 142(1) of the Income Tax Act was issued to the assessee. On 19.12.2014, the questionnaire was also issued and the same was duly served upon the assessee in accordance with law.

The assessee submitted its reply and produced books of account for verification. On examination of the books of accounts, certain discrepancies were noticed. The assessee declared the income from house property amounting to Rs. 12,50,000/- and claimed deduction under section 24 of the Income Tax Act for a sum of Rs. 3,75,000/-. It was noticed that the assessee has claimed double deductions; first as depreciation on

building and thereafter, deduction under section 24 of the Income Tax Act.

The Assessing Authority, while framing the assessment order dated 23.01.2015 has disallowed double deductions made by the assessee as the assessee has let out its space which forms business income and deduction under section 24 of the Income Tax Act was not permissible. The Assessing Authority has disallowed the deduction of Rs. 3,75,000/- and disallowed a further sum of Rs. 20,736/- as claimed as travelling & conveyance expenses and Rs. 50,000/- as freight and cartage and added back to the total income of the assessee.

Feeling aggrieved by the aforesaid order, the appellant - assessee filed an appeal and the same was dismissed by the Commissioner of Income Tax (Appeals) vide order dated 16.03.2016.

Still feeling aggrieved, the appellant – assessee filed an appeal before the Tribunal, who, by the impugned order, has partly allowed the appeal of the assessee, but has confirmed the disallowance under section 24 of the Income Tax Act, i.e., addition of Rs. 3,75,000/-.

The assessee was directed to bring on record its article of association as well as copy of the income tax

returns for the period 2010-11 to 2014-15 and rent agreement. By means of the supplementary affidavit dated 21.01.2019, the same was brought on record.

The Department has filed counter affidavit bringing on record all relevant materials.

We have heard Shri Abhinav Mehrotra, learned counsel for the appellant – assessee and Shri Krishna Agarwal, learned counsel for the respondent – Department and perused the materials brought on record.

The counsel of the appellant argued that the assessee is entitled to claim deduction under section 24 of the Income Tax Act as well and the authorities below were not justified in rejecting the same. He further relied upon the Memorandum of Association of the Company and emphasized that the main object of the Company is not to earn income from renting its property. He relied upon the judgment of the Apex Court in ***Raj Dadarkar & Associates Vs. ACIT – CC – 46*** (Civil Appeal Nos. 6455-6460 of 2017, decided on 09.05.2017).

The counsel for the Revenue has relied upon the orders passed by the lower authorities and argued that two claims of depreciation cannot be permitted and the authorities were justified in rejecting the claim under

section 24 of the Income Tax Act.

On going through the record, especially, the Memorandum of Association, at serial no. 7, the following object incidental or ancillary to the attainment of main objects is mentioned, which is as follows:

“7. To let out on lease or on hire the whole or any part of the property of the company on such terms as the company shall determine.”

From the perusal of the said memorandum of association, it reveals that the object of the Company is also to have business income from letting out the whole or part of the property of the Company. From the perusal of the record, it also reveals that the assessee has claimed depreciation on the building, which was let out and on the other hand, wants to claim deduction under section 24 of the Income Tax Act as house property.

In the case of ***Raj Dadarkar & Associates*** (supra), relevant paragraph nos. 14 and 19 of the said judgment are quoted below:-

“14. 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.

*19. Reliance placed by the appellant on the judgments of this Court in **Chennai Properties & Investments Ltd. and Rayala Corporation (P) Ltd.** would be of no avail. In **Chennai Properties & Investments Ltd.** where one of us (Sikri, J.) was a part of the Bench found that the entire income of the appellant*

was through letting out of the two properties it owned and there was no other income of the assessee except the income from letting out of the said properties, which was the business of the assessee.....”

From the perusal of the aforesaid judgment, it is also clear that if the income has been earned only from renting of the premises, then the same cannot be allowed to claim deduction under section 24 of the Income Tax Act.

From the perusal of the record of the case in hand, it is crystal clear that the assessee, in its Memorandum of Association, had an object to earn income from renting out its property. The assessee has filed its returns showing income earned only from renting out of the property and there is no other income of the assessee in the disputed year. The assessee, in the disputed year, has also claimed deduction on the same property, rented out, which is not permissible under the Act. The authorities below were justified in rejecting the second claim made by the appellant – assessee under section 24 of the Income Tax Act, as only one deduction is permissible under the Income Tax Act.

In view of the fact, as stated above, the present appeal has no merits and it is hereby dismissed.

The questions of law are answered, accordingly, in favour of the Revenue and against the Assessee.

Order Date :-06.03.2019

Amit Mishra