आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 3324/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2014-15

Assistant Commissioner of Income Tax, Corporate Circle 6 (2), Chennai.	v.	S.N. Damani Infra Pvt. Ltd., No. 6, Ground Floor, Rayala Tower, 781-785, Anna Salai, Chennai – 600 002. **[PAN: AAOCS 0334C]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. AR V Sreenivasan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing : 09.11.2021
घोषणा की तारीख/Date of Pronouncement : 30.11.2021

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-15, Chennai, dated 18.10.2019 and pertains to assessment year 2014-15.

2. The Revenue has raised the following grounds of appeal:

> *"1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.*

2. The Ld. CIT(A) erred in allowing the relevant income i.e. letting out of the warehouse properties on rent, under the head "House Property" when the primary source of income of the assessee in the business of providing warehouse property on rent.

2.1. The Ld. CIT(A) erred in allowing the relief to the assessee by holding that the relevant income to be assessed as income from "House Property", basically by WT holding that the assessee did not provide any amenities nor rendered any service.

2.2. The Ld. CIT(A) ought to have appreciated the decision of the Hon'ble Supreme Court in the case of M/s Rayala Corporation Pvt. Ltd. [2016] 72 taxmann.com 255 (Mad)(HC) wherein held that income earned from an activity of leasing property and earning rent, to be brought to tax under the head of "Business Income".

2.3. The Ld. CIT(A) ought to have appreciated the decision of the Hon'ble jurisdictional High Court in the case of M/s NDR Warehousing Pvt. Ltd. [2015] 60 taxmann.com 255 (Mad)(HC) wherein held that in case of warehousing business, Th'T the income earned would fall under the head of ``Business Income".

3. For these and other grounds that may be adduced at the time of hearing. It is prayed that the order of the Ld. CIT(A) may be set aside and the order of the Assessing Officer be restored."

3. The brief facts of the case are that the assessee is in the business of providing warehouse and supply chain solution, filed its return of income for assessment year 2014-15 on 29.09.2014, declaring total income of Rs. 8,48,87,080/-. The

only source of income of the assessee is rental income derived from building owned and let out to a tenant. The assessee has declared rental income derived from property under the head income from house property after claiming applicable deduction u/s. 24(a) and 24(b) of the Income Tax Act, 1961 (herein after "the Act"). The AO has assessed rental income derived from letting out of property under the head income from business or profession on the ground that the assessee is in the business of providing warehouse solution and supply chain management and said activity is in the nature of business, but not simple letting out of property to derive rental income. The AO had also taken support from the main objects of the assessee to treat rental income under the head income from business with the help of certain judicial precedents including decision of Hon'ble Supreme Court in the case of CIT vs Chennai Properties and investments Ltd (2015) 373 ITR 673 (SC). The relevant findings of the AO are as under:

"2.4. In the context of above submission of the assessee the following facts needs to be considered:

a) ln the `Notes forming part of Financial statement' under the head `A. Background, the assessee has stated as follows:

"SN Damani lnfra private Limited was incorporated under part lx of companies Act 1956, on March 30, 2010. It was formed to convert the erstwhile partnership firm M/s SN Damanim Enterprises into a

private Limited company. The company is engaged primari.ly in the business of providing warehouse or property on rent."

b) Currently the only source of Income is lease income. There is no other income. The lease income mainly comes from letting out of warehouses. This income is not just letting out of its properties. The income comes from providing warehousing services. Kind attention is invited to the website content of the assessee provided in Annexure A to this order.

c) ln the case of Chennai Properties (supra) the Honb'le SC considered SLt(fan Brothers (P.) Ltd. v. CIT 51 lTR 353 and observed as follows 1.n Para 10:

"No doubt in Sultan Brothers P. Ltd.'s case (supra), 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 arri.ve 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 followi.ng words:

"We think each case has to be looked at fr6m 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 which 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.

In this case the assessee viewed its assets as providing ware housing solution and supply chain management and not merely as house property as evident from website content used for marketing its business. To exploit its warehouse the assessee uses commercial assets like logo (copied and pasted below from assessee's website) on *conversion of firm to company since 2011 (reference Notes forming part of financial statement –Note 8 fixed assets – Tangible.*

d) The assessee regularly makes advertisement in newspaper and online to promote its business. Please refer Annexure B – the ledger of advertisement.

e) The assessee had leased in properti.es i..e. lands from I.) Kalpana R Damam 0 ii) Saraswathi Apartments Pvt Ltd iii) Swasthik Apartments Pvt Ltd and iv) G. N. Damani. (This property was leased in the current Assessment Year) and constructed warehouse on them and leased them out.

f) The Hon'ble HIGH COURT 0F MADRAS in T.C.A. NOS. 303 TO 305 AND 812 0F 2013 in the case of Commisioner of Income Tax v NDC Warehousing (P) Ltd in its order dated December 1, 2014 in para no 5 observed as follows:

" In the instant case, we find that the Commissioner of Income Tax (Appeals) as well as the Tribunal have not only gone into the objects clauses of the memorandum of association of the company but also on individual aspects of the business to come to the conclusion that it is a case of warehousing business and therefore, would fall only under the head "business Income".

In the present case also not only the objects but also the activities of the assessee goes to prove that the assessee is in warehousing business and infrastructure goes to prove that the assessee is in warehousing business and infrastructure industry. This is evident from verification of P&L where security charges, lease rent payments for leased in properties, repairs and maintenance – warehouse, advertisement charges, business promotion, consultancy charges, conference expense, medical expenses, professional fee and salary to securities were charges. All these expenditures are partly related to warehouse directly and partly to common administrative expenses to run the business of warehouse and infrastructure.

g) The assessee constructed one IT Park at Karapakkam, Chennai as evident from the fixed asset schedule. The assessee lets *out the same to Scope International Marg, an IT enabled Service Company.*

2.5 Decision: In this instant case of the assessee the only source of income is from warehousing services. The company's one of the objectives is to lease out. The assessee leased in properties for the purposes of leasing out. The assessee built IT infrastructure and let out to an IT enabled Service Company. Hence it is concluded that the income received by assessee is assessable under the head income from business and profession. Hence the standard deduction claimed by the assessee is disallowable however the expenditures claimed in the P&L and Depreciation though not claimed by the assessee is allowed. The income is computed as follows:

Business income:
Profit before Tax : 11,66,72,573
Add:
Depreciation As per CO Act : 93,60,735
Interest on TDS : 32,550
Interest on IT : 78,857
Donations : 11,175
Land expenses : 39,386
Loss on SPM Assets : 99,421
: 96,22,949
Less:
Depreciation as per IT Act: 1,52,54,651 : 1,52,54,651
Business Income : 11,10,40,046
Assessable income : 11,10,40,046
Returned income : 8,48,87,075
Difference in income : 2,61,41,796 "

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Ld. CIT(A), the assessee has reiterated its submissions made before the

AO and argued that rental income derived from let out of premises is assessable under the head house property, but not under the head income from business or profession, when the assessee is involved in activity of simple letting out without providing any additional facilities which is in nature of business or profession. The Ld. CIT(A), after considering relevant submissions of the assessee and has also taken note of fact, observed that facts of the present case are distinguished from facts of the case considered by the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd vs CIT, (supra) where main objective of the company is letting out of premises, whereas in the present case, the assessee is into simple letting out premises on monthly rental without providing any amenities to the tenants, which is not in the nature of systematic business activity. Therefore, he opined that rental income derived by the assessee from letting out of premises is assessable under the head income from house property, but not under the head income from business. Therefore, he directed the AO to accept income declared by the assessee under the head income from house property. The relevant findings of the Ld. CIT(A) are under:

> *"6.3 I have perused the decision of CIT(A)-15, Chennai in the case of M/s. Singhvi Developers Pvt. Ltd. in the order vide ITA No. 271/2016-*

17/CIT(A)-15 dated 28.02.2019. The relevant portion of the CIT(A)'s order is reproduced hereunder:

"4.3.1. The only issue contested in appeal is the AO's assessment of rental income from letting out of property owned by the appellant company under the head, "Business Income' offer rejecting the appellant's claim that it should be assessed under the head -`Income from `House Property'. Thereby, the AO has denied the appellant's claim of statutory deduction of 30% u/ s 24(a) from the rent received. After referring to the Hon'ble supreme Court's decision in the case of Rayala Corporation Pvt. Ltd. and in the case Of Chennai Properties Ltd., the AO has observed that the appellant's only source of income is from rental income and therefore, the appellant's main objective is real estate including of Iease.

4.3.2. Before the CIT(A), the appellant's AR has contended that the appellant has been consistently following the method of declaring rental income under the heed-income from `House Property' from this AY 2014-15 onwards. The AR has emphasized that the appellant's main objective is not the business of leasing out of properties. The AR has pointed out that in the case of Chennai Properties and Investments Ltd., the main objective of the company was letting out of properties, whereas it is not so in the appellant's case. For the same reason, the appellant's case is distinguishable from the apex court's decision in the case of Rayala Corporation Pvt. Ltd. The AR has contended that only when as assessee treats the leased out assets as business asset and is in the business of letting out of properties, the rental income can be considered as business income. The AR has pointed out that in all those decisions, wherein the income was assessed under the head, 'Business Income' the assessee would have rendered several amenities to the tenants and the properties would have been managed as business assets. In the appellant's case, the asset was not treated as business assets, etc, and no amenities were rendered to the tenants.
4.3.3. I have perused the following particulars furnished by the appellant's AR which was already considered by the AO in the assessment order.

(a) Memorandum and Articles of Association of the appellant company,

(b) Lease deed dated 07-03-2013 between the appellant company(Lessor) and. M/:s Faurecia Emissions Control Technologies Pvt. Ltd.(Lessee).

(c) Letters dated 25-10-2016, 28-10-2016 and 7-11-2016 addressed to the Assessing Officer during the assessment proceedings.

4.3.4. From the perusal of the above documents, it is clear that the appellant was not in the business of letting out of properties and it is not the main objective of the appellant company. Perusal of the lease deed also reveals that the appellant did riot treat the property as business asset and did not render amenities to the tenants. Although the above documents were furnished before the Assessing Officer, the AO has not controverted the same. The AO's only observation is that the rental income is the only source of income for the appellant company. I do not agree with the AO's conclusion that, just because rental income is the only source for the appellant company, this same must be assessed as business become.

4.3.5. I have perused the decision of Hon'ble Madras High Court in the case of Keyaram Hotels Pvt. Ltd. Vs. ACIT [2008] (300 ITR 118)(Mad.), which is briefly mentioned below.

> *"Section 22, read with section 28(i), of the Income-tax Act, 1961 - Income from house property - Chargeable as – Assessment year 2001-02 – Assessee - company was owner of a property and had earned income by letting it out - In its return of income, it had shown such income as business income - However, Assessing Officer assessed said leave income under head 'Income from house property' - Whether since on facts, it was clear that income was generated out of exploitation of property by leasing out same and there was no commercial activity carried out by assessee to earn such income, such rental income was rightly assessed as income from house property – Held, yes"*

4.3.6. 1 have also perused the decision of Hon'ble Supreme Court in the case of Raj Dadarkar and Associates Vs. ACIT [2017] (394 ITR 592), which is briefly mentioned below:

"Section 22, read with sections 27 and 28(i) of the Income-tax Act, 1961 Income from house property - Chargeable as (Letting of shops)- Assessee acquired leasehold rights in a property from MCGB - It constructed various shops and stalls on said property and gave same to various persons on sub-licensing basis – Income generated from sub-licensing was claimed as business income - Assessing Officer took a view that since assessee had acquired leasehold right in land for more than 12 years, it was to be regarded as 'deemed owner' of premises by virtue of section 27 (iiib) - Accordingly, income earned from letting out shops and stalls was taxed under head 'income from house property' -

Tribunal as well as High Court upheld order of Assessing Officer - Whether since assessee had not established that it was engaged in any systematic or organized activity of providing service to occupiers of shops/stalls, mere fact that object clause of partnership deed mentioned that business of assessee was to take premises on rent and to sub-let same, was not sufficient to conclude that income in question was taxable as business income - Held, yes - Whether, therefore, impugned order passed by authorities below was to be confirmed - Held, yes [Paras 16 and 18] [In favour of revenue]

4.3.7 In the aforesaid decision, the apex court has held that a clause in the objects of an assessee, is not a conclusive proof to determine its activity and whether an assessee is into a business activity or not is to be determined on facts. In the aforesaid decision, the apex court has referred to the decisions in the case of Chennai Properties and Investments Ltd, and Shambu Investments Pvt. Ltd.

4.3.8. From the above decisions and after perusal of the facts and circumstances, 1 have come to the following conclusion.

(a) Letting out of properties is not the main objects of the appellant.
(b) The appellant is not in the business of letting out its properties.
(c) The appellant did not render common amenities to the tenant so as to
hold the rental income under the head, 'Business Income'.
(d) The AO has not brought on record and conclusive proof to substantiate assessment of rental income under the head, Business income'.
(e) The appellant has been consistently declaring rental income under the head, 'House Property'.
4.3.9. From the above remarks and decisions relied on, I am of the considered opinion that the rental income declared by the appellant should be assessed under the head 'House Property' and not under the head, 'Business Income'. Therefore, the AO is directed to accept the appellant's declaration of rental income under the head, 'House Property' and to allow statutory deduction of 30% u/s 24(a) of the IT Act. The appellant's grounds are allowed."

6.4 After perusing the appellant's submission with supporting documents and after perusal of the CIT(A)'s decision in the case of M/ s Singhvi Developers Pvt. Ltd. mentioned above, I am convinced that the rental income received by the appellant is to be assessed under the head - Income from other sources as the appellant did not provide amenities nor rendered any service. The

> *lease rental agreement and other particulars submitted by the appellant support this point of view. The AR has contended that the decisions relied on by the AO in the cases of Chennai Properties Pvt. Ltd., Rayala Corporation Pvt. Ltd., and NDR Warehousing Pvt. Ltd., are not applicable to the appellant's case as leasing out properties as business activity is not the main object of the appellant company. It is further contended that unlike in those cases, the appellant has been consistently declaring rental income under the head – Income from House Property.*
>
> *6.5 From the above remarks and decisions relied on, I am of the considered opinion that the rental income declared by the appellant should be assessed under the head 'House Property' and not under the head, 'Business Income'. Therefore, the AO is directed to accept the appellant's declaration of rental income under the head, 'House Property' and to allow statutory deduction of 30% u/s 24(a) of the IT Act. The appellant's grounds are allowed. Since the income is to be assessed under the head — House Property, the depreciation allowed by the AO on their property should be withdrawn."*

5. The Ld. DR submitted that the Ld. CIT(A) has erred in directing AO to assess rental income under the head income from house property by relying order of Commissioner of Income Tax (Appeals) -15, Chennai in the case of M/s. Singhvi Developers Pvt Ltd. in ITA No. 271/2016-17 dated 28.02.2019, without comparing facts of the present case to facts considered by the Ld. CIT(A) in the above case. The Ld. DR further submitted that the Hon'ble Supreme Court in the case of M/s. Rayala Corporation Pvt. Ltd., (2016) 72 Taxmann.com 255 (Mad), very clearly held that income earned from an activity of leasing property and earning rent, to be brought to tax under the head income from business. The Hon'ble

jurisdictional High Court in the case of M/s. NDR Warehousing Pvt. Ltd., vs CIT (2015) 60 Taxmann.com 255 (Mad), held that in the case of warehousing business, income earned would fall under the head business. The Ld. CIT(A) without considering relevant facts has simply directed the AO to assess income under the head income from house property.

6. The Ld. AR for the assessee on the other hand, supporting the order the Ld. CIT(A) submitted that the assessee is into simple letting out of property for monthly rental without providing any amenities to the tenant and thus, the activity of simple letting out cannot be treated as a systematic business activity which is in the nature of trade and commerce. The Ld. AR further submitted that the Ld. CIT(A) has rightly distinguished decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investment Ltd vs CIT, (supra), in light of main objects of the company and held that in the case of Chennai Properties and Investments Ltd., the main object of company is to develop and let out properties, whereas, in the present case, it is a simple letting out of property on monthly rental. Therefore, he submitted that the Ld. CIT(A) has rightly apprised the facts in light of

various evidences filed by the assessee to direct AO to assess income under the head income from house property and thus, order of the Ld. CIT(A) should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the main object of the assessee as per its Memorandum of Association is not into development and let out of properties. The assessee is into the business of warehousing, supply chain solutions, which is different from own, develop and letting out of properties. The AO has taken reference to objects incidental or Ancillary to the attainment of the main objects, as per which clause 4 of incidental objects speaks about let on lease or otherwise mortgage, sell dispose of immovable or movable properties. Similarly, clause 39 of incidental objects speaks about purchase, take on lease any house, building or structure. Based on incidental or Ancillary objects, the AO concluded that main objects of the assessee is into develop and let out properties and thus, income derived from said activity falls under the head 'income from business or profession', but not under the 'head income from house property' as claimed by the assessee. To support his view, the

AO has relied upon ratio of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. vs CIT, (supra), where, it was held that if main objects of the assessee is to own, develop and letting out properties, then rental income derived from said activities is assessable under the head 'income from business'.

8. We have given thoughtful consideration to reasons given by the AO in light of various arguments advanced by the assessee, in light of main objects of the assessee, and we ourselves do not subscribe to the reasons given by the AO to assess rental income derived from letting out properties under the head 'income from business or profession' for simple reason that the assessee's main object is warehouse and supply chain solutions, which is different from letting out of properties on rent. Further, the assessee did not render any amenities to the tenant so as to hold rental income under the head income from business or profession. The AO has not brought on record any evidence to substantiate his view of rental income to be assessed under the head income from business or profession, except stating that the main object of

the assessee is into own and let out property on rental income. But in particular, the AO has not brought out any evidence to prove that the assessee is in the business of letting out properties on rental income as a systematic business activity. Therefore, we are of the considered view that unless the AO brings on record certain evidences to prove that the main objects of the assessee is into own and let out properties on rental income and further, the assessee is carrying out its objects by developing and letting out properties on rental income, it cannot be said that the assessee is into business of own, let out properties on rent. No doubt, the Hon'ble Supreme Court in the case of Chennai Properties & Investment Ltd vs CIT, (supra) has held that if main objects of the assessee company is into own, develop and let out properties on rent, then income derived from such activity should be assessed under the head 'income from business or profession'. But, in the present case, the AO has failed to prove the fact that main object of the assessee is into own, develop and let out properties on rent. Therefore, rental income derived from letting out of properties cannot be assessed under the head 'income from business or profession' in light of the ratio laid down by the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd., vs CIT, (supra).

9. Be that as it may, in the latest decision of the Hon'ble Supreme Court in the case of Raj Dadarkar and Associates vs ACIT (2017) 394 ITR 592 (SC), the Hon'ble Apex Court has considered identical issue, and after considering its earlier decision in the case of Chennai Properties & Investments Ltd vs CIT, (supra) has held that clauses of 4 objects of the assessee is not a conclusive proof to determine its activity and whether the assessee is into business activity or not is to be determined on facts. The court further held that whether assessee is into the systematic and organized activities by providing service to occupiers of premises or a mere let out of property on rent has to be decided on facts. In this case, the main objects of the assessee is not into own, develop and let out properties on rent and further, the assessee has not carried out letting out of properties on rent as a systematic or organized business activity. Further, the assessee has not provided any amenities to the occupants of the premises except providing premises on simple leave and license basis. Therefore, we are of the considered view that, the case of the assessee is squarely covered by the decision of the Hon'ble

Supreme Court in the case of Chennai Properties & Investment Ltd vs CIT, (supra) and the latest decision of Hon'ble Apex Court in the case of Raj Dadarkar and Associates vs ACIT, (supra). The AO without appreciating facts has wrongly concluded that income derived from letting out of properties is assessable under the head 'income from business or profession' as against income declared under the head 'income from house properties'. The CIT(A) after considering relevant facts has rightly directed the AO to assess income derived from letting out of properties under the head income from house property. Hence, we are inclined to uphold findings of the Ld. CIT(A) and dismiss appeal filed by the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the court on 30th November, 2021 at Chennai.

Sd/-	**Sd/-**
(महावीर सिंह)	**(जी. मंजुनाथ)**
(MAHAVIR SINGH)	**(G. MANJUNATHA)**
उपाध्यक्ष **/Vice President**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 30th November, 2021
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF