IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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I.T.T.A No.667 of 2016

Between:

The Principal Commissioner of Income Tax,
Guntur. …Appellant

And

M/s. Sri Bharathi Warehousing Corporation,
8-24-31, Mangalagiri Road,
Guntur. …. Respondent

DATE OF JUDGMENT PRONOUNCED: 30.01.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**

AND

*** THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

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! Counsel for Appellant : **M.Kiranmayee,**
Sr.Standing Counsel for Income Tax Dept.

^ Counsel for Respondent : ---

< Gist:

> Head Note:

? Cases referred:

1) Civil Appeal No.4494 of 2004 dated 09.04.2015 of Hon'ble Apex Court (M/s.Chennai Properties & Investments Ltd., Chennai vs. The Commissioner of Income Tax Central-III, Tamil Nadu)

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

I.T.T.A.No.667 of 2016

JUDGMENT: (*Per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is filed under Sec.260-A of Income Tax Act, 1961 (for short "I.T. Act") by the Revenue against the order of Income Tax Appellate Tribunal (for short "I.T.A.T"), Visakhapatnam Bench, Visakhapatnam in I.T.A.No.275/Vizag/2012 dated 19.12.2016 whereby and whereunder the I.T.A.T dismissed the above said I.T.A filed by the Revenue.

2) The assessee firm—Sri Bharathi Warehousing Corporation, Guntur which was incorporated under a partnership deed dated 21.01.2000 has been receiving rental income and also income from trade of tobacco. The said firm filed returns declaring its total income as Rs.22,74,280/- for the Assessment Year 2008-09. It appears, the A.O in his assessment order noted that during the year under consideration, the assessee's sales of tobacco amounted to Rs.3,40,24,250/- and income from rents Rs.3,27,98,587/- as admitted in the Trading and Profit and Loss Account filed by the assessee. The A.O observed, the rental income received by the assessee firm was mainly from the following concerns during the year:

1) Standard Chartered Bank, Mumbai
2) Bata India Limited, Calcutta
3) EDS Electronic Data Systems India (P) Limited, Bangalore,
4) Food World Super Market (Spencer) Limited

The A.O came to conclusion that the correct head of the income under which the rentals were to be brought to tax was “Income from house property” but not “Income from Profits and Gains of business or profession” and accordingly, issued show cause notice to the assessee as to why the income shown by him should not be treated as “Income from house property”. The assessee responded submitting its explanation to the effect that the main object of the firm was to carry on business in letting out the properties constructed either on acquired or leased lands for a considerable rent and in addition to it, the firm was also carrying on the business in tobacco and the intention of the assessee firm was to let out the property only to earn considerable amount of rent much like an ordinary prudent businessman and the properties leased out by the firm were only with business motive and not as a land owner and therefore, the income derived as rents being part of its business, can be shown as income from business. However, the A.O concluded otherwise that the rental income received by the assessee could not be treated as business income but only as income from house property and accordingly, passed the assessment order.

a) Aggrieved, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). The said appeal was allowed in favour of the assessee holding that the income earned by the assessee by way of rents was part of the business.

b) Aggrieved, the Revenue preferred I.T.A.No.275/Vizag/2012 before the I.T.A.T, Visakhapatnam Bench, Visakhapatnam. Relying on the judgment of Hon'ble Apex Court in ***M/s.Chennai Properties & Investments Ltd., Chennai vs. The Commissioner of Income Tax Central III, Tamil Nadu*** (Civil Appeal No.4494 of 2004 dated 09.04.2015)[1], the Tribunal dismissed the appeal observing that the assessee in the instant case had, acquired the land on lease basis in various places like Mumbai, Calcutta and Chennai and constructed commercial complexes and leased out the same to the commercial entrepreneurs such as Standard Chartered Bank, Mumbai; Bata India Limited, Calcutta; EDS Electronic Data Systems India (P) Limited, Bangalore and Food World Super Market (Spencer) Limited for higher rental amount and the intention of the assessee was very much clear from the date on which it was existed as to carryout the business activity such as to construct the godowns or residential or commercial buildings or commercial shops etc, on the lands either owned by the firm or by taking land on long lease from others which was the activity of the assessee and in that view, the judgment of the Supreme Court in ***M/s.Chennai Properties & Investments Ltd., Chennai***'s case (supra) would squarely apply to the facts of the instant case and therefore, the income earned by the assessee was "Income from business" and not "Income from house property".

Hence, the instant appeal.

[1] Civil Appeal No.4494 of 2004 dated 09.04.2015

3) The appellant, in the grounds of appeal has, in terms of Section 260-A(2)(c) of the I.T.Act mentioned the following substantial questions of law for consideration:

> *1. "Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in not upholding the decision of the A.O treating the rent receipt as income from house property when the source of income as exploitation of building on a leased land belonging to the partner of the firm"?*
>
> *2. "Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in changing its decision for earlier years on similar issue relying on a decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Limited (Civil Appeal No.4494/2004 dated 09-04-2015) whose facts are not identical and similar"?*

4) Heard Smt. M.Kiranmayee, learned Senior Standing Counsel for Income Tax Department/appellant on the admissibility of appeal with reference to the above substantial questions of law.

5) Fulminating the order of the Tribunal, learned counsel would argue that the Tribunal in respect of the same assessee held for the Assessment Years 2003-04, 2004-05, 2005-06 in I.T.A.No.67/Vizag/ 2007 that the income received by the assessee was income from the house property and not a business income and in that view of the previous order, the Tribunal in the present instance also ought to have allowed the appeal and held in similar lines but it committed a grave

error in dismissing the appeal preferred by the Revenue. Learned counsel would further argue that the decision in ***M/s.Chennai Properties & Investments Ltd., Chennai***'s case (supra) has no application to the present case for the reason that the main objective of assessee firm was to conduct tobacco business and hence it was liable to show the rents derived from various complexes as income from house property but not as income from business. She thus prayed to admit the appeal and allow the same.

6) We have perused the impugned order and also the partnership deed dated 21.01.2000 of the assessee firm, a copy of which was filed by the appellant as part of the material papers. The partnership deed would show that three partners constituted a partnership firm namely Sri Bharathi Warehousing Corporation by virtue of partnership deed dated 21.01.2000. In it, they got it mentioned that the partnership business shall be carried on under the name and style of Bharathi Warehousing Corporation, Guntur and the partnership was at will. Regarding the nature of the business to be carried on by the said firm, it was mentioned that the firm was to construct godowns or residential or commercial buildings or flats or commercial shops etc, on the lands either owned by the firm or by taking land on long lease from others and lease out the same to others. It was also mentioned that any other business also may be carried on with the mutual consent of all the partners if deemed lucrative.

a) Thus a close scrutiny of the above terms would unhesitatingly manifest that the main objective of the partnership firm was to carry on the business in construction of godowns, residential or commercial buildings or flats or commercial shops etc., on the lands either owned by the firm or by taking on long lease basis from others and lease out the same to others. The terms would further signify that doing of any other business was only ancillary to the main business and that too an optional one which is evident from the clause "any other business also may be carried on with the mutual consent of all the partners if deemed lucrative". Non-mentioning of specific type of business and doing of such unspecified business, only if the partners deemed it lucrative, would indicate that the unspecified business proposed to be carried on with mutual consent was only an optional but not the main objective of the partnership firm. Thus the optional business proposed was not as clear and emphatic as that of the main business.

b) Be that as it may, admittedly during the assessment period under scrutiny, the assessee firm earned income in tobacco business as well as by rents. Hence the point was whether the assessee firm under law, was entitled to show both the incomes under the head income from business or under two different heads i.e, income from business and profession and income from house property.

c) In ***M/s.Chennai Properties & Investments Ltd., Chennai***'s case (supra), the brief facts were that the appellant-assessee was a Company and its main objective as stated in its Memorandum of Association was to acquire the properties in City of Madras and to let out those properties. The assessee showed its rental income as income from business in its return. However, the Assessing Officer computed it under the head rental income. The appeal preferred by the assessee before the Commissioner of Income Tax (Appeals) was allowed. Aggrieved, the department filed appeal before the I.T.A.T and the same was dismissed. Then the Department approached the High Court and its appeal was allowed by the High Court holding that the Income Tax derived by letting out the properties would not be the income from business but the income from house property. The assessee then carried the matter to the Apex Court. Considering its earlier judgments, the Apex Court observed the deciding factor was not the ownership of the lands or lease but the nature of the activity of the assessee and the nature of the operations in relation to them and ultimately held, that the letting of the properties was in fact the business of the assessee and therefore, the assessee rightly disclosed the income under the head income from business and accordingly, allowed the appeal.

d) Applying the above ratio to the instant case, it can be emphatically said that the main objective of the assessee firm as manifest from the partnership deed was to carry on business in construction of different types of buildings such as godowns, residential or commercial buildings, flats, shops etc., and lease them out as a part of its business activity but not as exploitation of the property as an owner. In simple, construction of different types of buildings and leasing them out was the main business activity of the firm and doing other activity was only an optional one. In that view, the assessee firm was right in showing its both incomes under the head income from business. Therefore, we find no merit in the argument of learned Standing Counsel that the rental income should be shown under a different head. We also do not find any merit in the other argument that since the Tribunal has held in the previous instances that the income received by the same assessee was the income from house property and not a business income, in the instant case also it should have held similarly, for the reason that in the earlier instances, the Tribunal had no occasion to peruse the judgment in ***M/s.Chennai Properties & Investments Ltd., Chennai***'s case (supra) which was rendered by the Apex Court on 09.04.2015.

7) At the outset, we do not find any substantial questions of law involved in this appeal. Accordingly, this appeal is dismissed at the admission stage.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

SANJAY KUMAR, J

U. DURGA PRASAD RAO, J

Date: 30.01.2017
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