IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.567 of 2007

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Pandooi Place, Patna, a partnership firm having its office at Pandooi Place, Boring Road, Patna, P.S. Budha Colony, Patna through its partner, Sri Ranjan Kumar, son fo Sri Bameshwar Prasad Narayan Singh, resident of Pandooi Place, Boring Road, P.S. Budha Colony, District-Patna.

.... Appellant/s

Versus

1. The Commissioner of Income Tax-1, Patna.
2. Income Tax Officer Ward 5(4), Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. D.V. Pathy, Advocate
Mrs. Manju Jha, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, Sr. S.C.
Mrs. Archana Prasad, Jr. S.C.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-11-2016

The present is an appeal under Section 260A of the Income Tax Act, 1961 arising out of an order dated 6th February, 2007 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. No.369/Pat of 2004 for the assessment year 1998-99.

2. The appellant is an assessee, who has constructed a commercial complex in the name and style of Pandooi Place at Boring Road, Patna. The assessee is drawing rental income from the same.

The construction of this property was started relevant to assessment year 1990-91, but after completion of the building, no return was filed for the assessment year 1994-95 when assessment proceedings were initiated under Section 147 of the Act and a notice was issued to file its return. The assessee filed its return on 1st March, 2002 showing loss of Rs.63,086/- claiming its status as Firm. However, the Assessing Officer found the status of assessee is of AOP and not as a Firm and assessed the rental income as an income from the house property.

3. The appeal against the order was dismissed on 5th August, 2004. The Commissioner of Income Tax (Appeals) distinguished the judgments of the Hon'ble Supreme Court in S.G. Mercantile Corporation P. Ltd. *V.* Commissioner of Income-Tax, Calcutta, [1972] 83 I.T.R. 700 and East India Housing and Land Development Trust Ltd. *v.* Commissioner of Income-tax, West Bengal, [1961] 42 ITR 49 to hold the rental income as the income from house property. The further appeal before the Tribunal remained unsuccessful and still further; the assessee is in appeal before this Court.

4. In the present appeal, the following substantial question of law was framed on 29th January, 2015:

> "Whether in the facts and circumstances of the case rental income derived from the constructed building from letting out the property by name 'Pandooi Place' constitutes an income from house property or income from business?"

5. Learned counsel for the appellant relies upon two

recent judgments of the Hon'ble Supreme Court reported as Chennai Properties and Investments Ltd. *V.* CIT, [2015] 373 ITR 673 and Rayala Corporation Pvt. Ltd. Vs. Assistant Commissioner of Income Tax, [2016] 386 ITR 500, to contend that in a case of an assessee drawing rental income from a building constructed for earning income is an income from the business and not an income from the house property. It is also pointed out that the judgment in the case of East India Housing and Land Development Trust Ltd. (supra) and Constitution Bench judgment in Sultan Brothers (P) Ltd. V. Commission of Income Tax, [1964] 51 ITR 353 were considered by the Hon'ble Supreme Court in Chennai Properties and Invest Ltd. (supra) and it was held that income in such circumstances has to be treated as income from business. The relevant extracts read as under:

> "**9.** 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.v. CIT [1962 44 ITR 363(SC)]* squarely applies to the facts of the present case.
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> **10.** No doubt in *Sultan Bros. (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 the 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:
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> > " 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."

11. 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 the 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[1] of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."

6. In a later judgment in Rayala Corporation Pvt. Ltd. (supra), the Hon'ble Supreme Court considered the judgment in S. G. Mercantile Corporation (P) Ltd. (supra) as well and returned the following finding:-

"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".

7. In view of the aforesaid two judgments, which have considered the judgments referred to by the learned counsel for the Revenue before the CIT; the Tribunal and also before this Court, the argument of the learned counsel for the revenue cannot be accepted. Thus, the question of law is answered in favour of the assessee and against the Revenue.

8. The appeal is, therefore, allowed and it is held that the income of the appellant from letting out the property of Pandooi Place at Boring Road, Patna is an income from business.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Sunil

AFR/NAFR	A. F. R.
CAV DATE	N. A.
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