IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1703 OF 2018
WITH
INCOME TAX APPEAL NO. 1727 OF 2018
WITH
INCOME TAX APPEAL NO. 1900 OF 2018

Pr. Commissioner of Income Tax-3 Mumbai ...Appellant

Versus

Banzai Estates P. Ltd. ...Respondent

Ms. Sushma Nagaraj, a/w Singhi, Advocates for the Appellant.
Mr. Fenil Bhatt, a/w Sameer Dalal, Advocates for Respondent.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATE : JULY 09, 2024

ORAL JUDGMENT (PER : G.S. KULKARNI, J.)

1. These three Appeals under Section 260A of the Income Tax Act, 1961 ("**the Act**") are directed against an order dated 31st May, 2017 passed by the Income Tax Appellate Tribunal ("***Tribunal***") whereby the appeals filed by the respondent-assessee have been allowed. The issue before the Tribunal was as to whether the income received by the respondent-assessee from the property owned by it be accepted as "income from house property" or as contended by the Revenue, it should be treated as "business income".

2. The Assessment Years in question are Assessment Years 2008-09, 2009-10 and 2010-11.

3. The facts subject matter of these proceedings are identical for all the three Assessment Years. The assessee is engaged in the business of hiring and leasing of properties. The assessee declared an income from a self-owned property situated at MBC Tower, TTK Road, Chennai (for short "**MBC Tower property**") as income from house property. Apart from such income, the assessee also declared rental income received from sub-letting of four other properties not owned by the assessee, as income from business. The Assessing Officer did not accept the income earned from the MBC Tower property as "income from house property" and held such income necessarily to be a "business income".

4. Being aggrieved by such order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax Appeals ("**CIT-A**"). The CIT-A confirmed the view taken by the Assessing Officer in assessing the income earned by the assessee from the self-owned property, as income from business ("profits and gains from business").

5. Being aggrieved by the orders passed by the CIT-A, the assessee approached the Tribunal. Before the Tribunal the assessee contended that in the past the assessee was consistently treating rental income from the MBC Tower property as income from house property, which was accepted by the Revenue. The Tribunal was of the view that the Revenue was consistent in accepting assessee's income derived from MBC Tower property as "income from house property", it was observed that the Assessing Officer however had taken a reverse position, for the assessment years in question, by treating its income from MBC Tower property to be "income from business", without a valid reason. The Tribunal, referring to the decision of the Supreme Court in ***Raj Dadarkar & Associates v. Assistant Commissioner of Income-tax*** [1] held that in the present case, Section 22 of the Act was clearly applicable as the property in question was owned by the Assessee. The Tribunal also observed that the Supreme Court in the case of ***Commissioner of Income-tax v. Shambhu Investment (P.) Ltd.***[2] confirmed the decision of the Calcutta High Court in ***Shambhu Investment P. Ltd. vs. Commissioner of Income-Tax***[3], wherein the High Court had taken a view that when the assessee was the owner of certain premises, then the income derived from such property would be income from house

1 *[2017] 81 taxmann.com 193 (SC)*
2 *[2001] 116 Taxman 795 (Calcutta)*
3 *[2003] 263 ITR 143 (SC)*

property. The Tribunal also considered other relevant decisions to come to a conclusion that the Appeal filed by the assessee must be allowed.

6. In the above circumstances the Revenue is before this Court raising the following substantial questions of law:-

> *"A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in treating the rental income derived from the premises owned by the Assessee in MBC Tower, Chennai as income assessable under the head "Income from House Property", without appreciating the fact that income earned from the said premises has been derived from exploitation of properties for commercial business activities which is in the nature of business income assessable under the "Income from Business" as per the ratio laid down by the Hon'ble Apex Court in the case of Shambhu Investments vs. CIT in 263 ITR 143 (SC)?*
>
> *B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in treating the rental income derived from letting out properties taken on lease from others as income assessable under the head "Income from House Property", without appreciating the fact that the Assessee is following the business module of taking properties on rent and sub-letting the same after furnishing & providing entire gamut of facilities associated with such properties to various parties which is nothing but a business venture and is assessable under the head "Income from Business"?*
>
> *C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in treating the rental income derived from letting out properties (owned and taken on lease from others) as income assessable under the head "Income from House Property", without appreciating the fact that the rental income from the said properties was further advanced for purchase of another property instead of repaying the existing loan on said property which indicates the prudent business approach of the Assessee?"*

7. We have heard Learned Counsel for the parties. We have also perused the record.

8. Learned Counsel for the revenue submits that this is a clear case where the income earned by the assessee from letting out the MBC Tower property was required to be assessed as income, under the head "business income", and not under the head of "income from house property" for the reason that the primary business of the assessee was a business of letting out properties and deriving income therefrom. It is submitted that for such reason, the rental income received by the assessee from MBC Tower property could not be categorized under the head "income from house property". In supporting such contention, Learned Counsel for the Revenue placed reliance on the decision of the Supreme Court in ***Chennai Properties & Investment Ltd. v. Commissioner of Income-tax, Central-III, Tamil Nadu***[4]. Thus, the primary contention as urged on behalf of the Revenue is that in the context of Section 22 read with Section 24 of the Act, the provisions would permit a distinction in categorizing income under different heads, in the facts and circumstances in hand. It is her contention that such a position stands approved by the Supreme Court in the case of ***Chennai Properties & Investment Ltd (supra)***.

---

4 [2015] 56 taxmann.com 456 (SC)

9. On the other hand, Learned Counsel for the assessee would submit that Section 22 of the Act makes no distinction on the basis of the assessee's business and in fact it was appropriate in the facts of the present case for the assessee to treat the rental income from the MBC Tower property as an income from house property. It is submitted that there was nothing improper much less illegal for the benefit being conferred under Section 24 of the Act, to be availed by the assessee. It is submitted that in fact in the previous three Assessment Years i.e. in 2005-06, 2006-07 and 2007-08, the Revenue had accepted that this very income be taken to be income from house property and without any material change in the circumstances, much less in law, the Revenue has taken a position contrary to what had prevailed in the earlier assessment years. Hence, it was not appropriate for the Assessing Officer to take a different position for the Assessment Years in question. It is therefore submitted that the questions of law as raised by the Revenue do not arise for consideration on the principles of consistency which need to be accepted, and as applied by the Tribunal.

10. Having heard the Learned Counsel for the parties and having perused the record, it is not possible to persuade ourselves, to accept the contentions as urged on behalf of the Revenue, so as to hold that the present proceedings give rise to any substantial question of law raised

by the Revenue in the present Appeals, the reasons for which, we discuss hereafter.

11. Section 22 of the Act, making a provision for “income from house property” ordains that the “annual value” of property consisting of any 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 out by him, the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "income from house property”. Section 23 provides the manner in which “annual value” would be determined. Section 24 provides for deductions from income from house property.

12. In the present case, the assessee has availed of deduction under Section 24, which appears to be one of the reasons that the Assessing Officer thought it appropriate to disallow, what was accepted in the earlier three Assessment Years 2005-06, 2006-07 and 2007-08. On a bare reading of Section 22, we find that in the present case, the basic requirements for the assessee to consider the income as received from MBC Tower property as “income from house property” stands clearly satisfied, as the assessee derives income from house property “owned by it”.Even if the assessee is to be in the business of letting or

subletting of properties and deriving income therefrom, there is no embargo on the assessee from accounting the income received by it, from the property "owned by assessee" (MBC Tower) as "income from house property" and at the same time, categorizing the rental income from other properties not of assessee's ownership under the head income from business. The Revenue's reading of Section 22 differently to those who are in the business of letting out properties as in the present case namely in combination of a property of assessee's ownership and also to have income from properties which are not of assessee's ownership from which rental income is derived, would amount to reading something into Section 22, than what the provision actually ordains. The legislature does not carve out any such categorization/exception. Thus, we do not find that the Revenue is correct in its contention that, in the circumstances in hand, a straight jacket formula is required to be applied, namely, that Section 22 is unavailable to an assessee, who is in the business of letting out properties.

13. In the prior Assessment Years, the Assessing Officer had accepted the assessee's treatment of such income as an income from house property, which is one of the factors which has weighed with the Tribunal to allow the Appeals filed by the assessee, on the principle of

consistency. We are of the opinion that such principles are appropriately applied by the Tribunal. The Supreme Court has held it to be a settled principle of law that although strictly speaking *res judicata* does not apply to income tax proceedings, and as such, what is decided in one year may not apply in the following year. Thus, when a fundamental aspect permeating through different assessment years has been treated in one way or the other and that has been allowed to continue such position ought not be changed without any new fact requiring such a direction. (See: ***M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax***[5]). The decision of the Supreme Court in ***M/s. Radhasoami Satsang (Supra)*** has been referred in a decision of a recent origin in ***Godrej & Boyce Manufacturing Company Ltd. vs. Dy. Commissioner of Income Tax, Mumbai, & Anr***[6]***.***

14. We may also usefully refer to a decision of this Court in the case of ***Principal Commissioner of Income-tax v. Quest Investment Advisors (P.) Ltd***[7]***,*** in which this Court referring to the decision of the Supreme Court in ***Bharat Sanchar Nigam Ltd. 4 Anr. vs. Union of India 4 Ors***[8] which followed the decision in *Radhasoami Satsang Sabha (supra)* accepted the rule of consistency. The following observations of

5 *(1992) 1 SCC 659*
6 *(2017) 7 SCC 421 para 38*
7 *[2018] 96 taxmann.com 157 (Bombay)*
8 *[2006] 282 ITR 273 (SC)*

the Supreme Court are required to be noted:-

> *"15. The question in Radhasoami Satsang v. Commissioner of Income-tax [1992] 1 SCC 659; [1992] 193 ITR 321 (SC) (also cited by the State of U. P. was whether the Tribunal was bound by an earlier decision in respect of an earlier assessment year that the income derived by the Radhasoami Satsang, a religious institution, was entitled to exemption under sections 11 and 12 of the Income-tax Act, 1961. The court said:*
>
> *"We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year, unless there was any material change justifying the Revenue to take a different view of the matter."*

15. Insofar as Revenue's reliance on the decision in ***Chennai Properties (supra)*** is concerned, the same is not well founded for the reason that in such case, the assessee itself had chosen to account such income derived by the assessee, as an income under the head "income from business". This was a case where the Revenue was of the contrary view, namely that such income ought not to be allowed as an income from business and must be treated as income from house property. The Supreme Court thus held that the income was rightly disclosed by the assessee under the head gains from business, and it was not correct for the High Court to hold that it needs to be treated as income from house

property. The situation being quite different in the said case, the same would not be applicable in the present facts. This is not a case where the assessee itself had taken a position that such income be treated as income from business.

16. In the light of the above discussion, we are of considered opinion that the Appeals do not give rise to any substantial question of law.

17. The appeals are accordingly dismissed. No Costs.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**