

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8<sup>TH</sup> DAY OF NOVEMBER 2011

PRESENT

THE HON'BLE MR. JUSTICE V. G. SABHAHIT

AND

THE HON'BLE MR. JUSTICE S. N. SATYANARAYANA

I.T.A. No. 1073 OF 2006

C/W

I.T.A. No. 1071 OF 2006 & I.T.A. No. 1072 OF 2006

I.T.A. No. 1073 OF 2006

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX,  
C.R.BUILDING, QUEENS ROAD,  
BANGALORE.
2. THE DEPUTY COMMISSIONER OF  
INCOME-TAX,  
CENTRAL CIRCLE 2(1),  
C.R.BUILDING,  
QUEENS ROAD,  
BANGALORE.

... APPELLANTS

(BY SRI M. THIRUMALESH, ADV.)

AND:

M/S. ASK BROTHERS FAMILY TRUST,  
44, RACE COURSE ROAD,  
BANGALORE.

... RESPONDENT

(BY SRI A. SHANKAR & SRI M LAVA, ADVS.)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16.02.2006 PASSED IN ITA NO. 1312/BANG/2003, FOR THE ASSESSMENT YEAR 1996-97. PRAYING THAT FOR THE REASONS STATED THERIN, THIS HON'BLE COURT MAY BE PLEASED TO (i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (ii) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA.NO.1312/BANG/2003 DATED 16.02.2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A. No. 1071 OF 2006

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX,  
C.R.BUILDING, QUEENS ROAD,

BANGALORE.

2. THE DEPUTY COMMISSIONER OF  
INCOME-TAX,  
CENTRAL CIRCLE 2(1),  
C.R.BUILDING,  
QUEENS ROAD,  
BANGALORE.

... APPELLANTS

(BY SRI M. THIRUMALES, ADV.)

AND:

M/S. ASK BROTHERS FAMILY TRUST,  
44, RACE COURSE ROAD,  
BANGALORE.

... RESPONDENT

(BY SRI A. SHANKAR & SRI M LAVA, ADVS.)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16.02.2006 PASSED IN ITA NO. 1311/BANG/2003, FOR THE ASSESSMENT YEAR 1995-96, PRAYING THAT FOR THE REASONS STATED THERIN, THIS HON'BLE COURT MAY BE PLEASED TO (i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (ii) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA.NO.1311/BANG/2003 DATED 16.02.2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL

CIRCLE-2(1), BANGALORE, IN THE INTEREST OF JUSTICE  
AND EQUITY.

I.T.A. No. 1072 OF 2006

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX,  
C.R.BUILDING, QUEENS ROAD,  
BANGALORE.

2. THE DEPUTY COMMISSIONER OF  
INCOME-TAX,  
CENTRAL CIRCLE 2(1),  
C.R.BUILDING,  
QUEENS ROAD,  
BANGALORE.

... APPELLANTS

(BY SRI M. THIRUMALESH, ADV.)

AND:

M/S. ASK BROTHERS FAMILY TRUST,  
44, RACE COURSE ROAD,  
BANGALORE.

... RESPONDENT

(BY SRI A. SHANKAR & SRI M LAVA, ADVS.,)

THIS ITA IS FILED UNDER SECTION 260-A OF  
I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16.02.2006  
PASSED IN ITA NO.1313/BANG/2003 FOR THE  
ASSESSMENT YEAR 1997-98, PRAYING THAT FOR THE  
REASONS STATED THERIN, THIS HON'BLE COURT MAY BE

PLEASED TO (i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (ii) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA.NO.1313/BANG/2003 DATED 16.02.2006 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS COMING ON FOR HEARING THIS DAY, SABHAHIT J., DELIVERED THE FOLLOWING:

J U D G E M E N T

These appeals are filed by the Revenue being aggrieved by the order passed by the Income Tax Appellate Tribunal, Bangalore Bench 'B' (hereinafter called as 'Tribunal' for short) in ITA Nos.1311 to 1313(Bang)/2003 for the Assessment years 1995-96 to 1997-98.

10/8

2. The assessee had filed its return of income for the assessment year 1996-97 on 31.3.1997. The return was assessed in the status of AOP. The return was processed under Sec.143(1) of the Act and since it was found that the assessee had rental income which is assessable under the head 'Income from house property' and assessee has shown the income under the head 'other sources' and had claimed expenses, the assessment was reopened by the assessing officer by order dt. 8.3.2002. During the assessment year 1995-96, 1996-97 and 1997-98 also the income was shown as income from other sources which according to the assessing officer, was the income from house property and was shown as income from other sources and assessment was reopened by the Assessing Officer by order dt. 8.3.2002 and rejected the claim of the assessee and treated the income as income from house property and accordingly made the assessment and issued

108

demand notice. Being aggrieved by the same the assessee preferred appeal in ITA Nos. 11, 12 and 13/CC-2(1)/CIT (A)-VI/02-03 before the Commissioner of Income Tax (Appeals)-VI, Bangalore on 12.04.2002. The appeal was allowed by order dt. 30<sup>th</sup> June 2003 by holding that having regard to the terms of the agreement and the facts and circumstances of the case the assessee had rightly shown the income derived under the licensing agreement as income from other sources and Assessing Officer was not justified in treating the said income as income from house property and accordingly allowed the appeal. Being aggrieved by the same revenue preferred ITA Nos.1311 to 1313 (Bang)/2003 on the file of the Tribunal and the Tribunal by the impugned order dt. 16.2.2006 confirmed the order passed by the appellate authority and dismissed the appeal filed by the Revenue. Being aggrieved by the

lcg

order of the Tribunal these three appeals are filed by the Revenue.

3. We have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

4. I.T.A. Nos.1073/06 and 1071/06 have been admitted on 18.4.2007 and I.T.A. No. 1072/06 has been admitted on 5.4.2007 for consideration of following substantial questions of law raised in the appeal memo which reads as follows:

1. Whether the Appellate Authorities were correct in holding that rental income should be treated as license fee during the current assessment year and brought to tax under the head "Income from other Sources" and not under the head

Legs



"Income from house property" as declared by the assessee during the assessment year 1998-99?

2. Whether the Appellate Authorities were correct in holding that reopening of assessments were not correct despite the reopening having taken place due to the admission made by the assessee during the assessment year 1998-99?

5. Learned counsel appearing for the appellants submitted that the licensing agreement will clearly show that it was a case of leasing of the schedule premises and furnitures and fixtures and the premises as described in the schedule have been let out to the licensee. Therefore, the agreement is in the nature of the lease deed and the income should be treated as income from house property as held by the assessing officer and not as income from other sources. Learned counsel submitted that the contents of the agreement

let

under clauses referred to in the order of the Tribunal would clearly substantiate his contention. In support of his contention he has also relied upon the decision of the Hon'ble Supreme Court in the case of SHAMBHU INVESTMENT P. LTD. vs. COMMISSIONER OF INCOME-TAX reported in 2003 (263) ITR 143, wherein the Hon'ble Supreme Court was considering the question of law as to whether the income received by way of rent from the property as income from house property and having regard to the contents of the agreement in the said case the Hon'ble Supreme Court has answered the question of law in favour of the Revenue by holding that it is income from house property. Learned counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of SULTAN BROTHERS PRIVATE LTD. vs. COMMISSIONER OF INCOME-TAX, BOMBAY CITY II reported in 1964 (LI) ITR 353 wherein, the Hon'ble Supreme Court while considering the question about

Veys

composite letting of building fitted with furniture and fixtures for the purpose of being run as a hotel. Income derived from lease, whether income from business or income from property and has laid down three tests to be satisfied to include the income as income from other sources. The learned counsel submitted that though the first and second conditions are satisfied as there is only one agreement, wherein the licensee is put in possession of the premises and fixtures as per the license and the rent fixed is in respect of fixtures and premises and is inseparable. The third condition is not satisfied.

6. Learned counsel appearing for the respondent submitted that since the date of agreement income received under the said agreement is shown as income from other sources and has been accepted and reopening of the assessment only on the ground that

15/2

during the earlier year 1998-99 income has been shown as income from house property would not be a ground to reopen the assessment as the terms of the agreement entered into subsequent to 31.3.1997 is entirely different from the terms of the agreement in the agreement dt. 1.4.1994.

7. We have given careful consideration to the contention of the learned counsel appearing for the parties and scrutinised the material on record.

8. The licensing agreement dt. 1.4.1994 would clearly show that it is a licensing agreement and the terms of the said agreement would further show that the consideration to be paid by the licensee as mentioned in clause 3 of the agreement as follows :

"3. That the LICENSEE, in consideration of the License of the schedule property and other

W's

Assets, agreed to part with 25% of room income (exclusive of discount) collected from the room guests to the LICENSOR and such Licensing Charges may be modified by mutual consent of the parties hereto from time to time."

Further, clauses 2, 6 and 12 of the agreement read as follows :

"2. That the License of the Schedule Property shall subsist for a period of 11 months on and from to-day i.e., from First day of April 1994 that on completion of the said 11 months or on completion of any extended period, the LICENSEE is vested with the option to renew the License for any period not exceeding 36 months and in total the LICENSEE is vested with the option to renew/extend the License only and up to 31<sup>st</sup> day of March, 1997.

6. The LICENSEE shall effect and keep in god condition the entire schedule property and other Assets, subject to normal wear and

level

tear, during tenure of the License and without damage to such schedule property and other Asset. However if any damage is caused to the scheduled property for the improper use, negligence or inadvertent use by the LICENSEE and or/its workmen, all such damages and repairs to the scheduled property shall be attended to by the LICENSOR, then the LICENSEE shall reimburse all such amounts to the LICENSOR.

12. The LICENSEE shall bear all the regular maintenance expenses to run the business effectively in respect of Assets taken on License from the LICENSOR. However, expenses in respect of sanitary and plumbing works, building repairs, repairs to boilers and bore wells, annual painting expenses of the hotel building and repairs to furniture shall be borne by the LICENSOR."

9. It is clear from the above said clauses that the intention of the parties while entering into the

leg

agreement dt. 1.4.1994 was only to grant license to the respondent and it cannot be said to be a lease deed. Further, having regard to the nature of consideration to be paid by the licensee as per clause 3 referred to above and the schedule mentioned in the agreement, it is clear that the said license fee for the premises and the furniture and fixtures is inseparable. Further, the above said clauses of the agreement would clearly show that there was no intention to lease the premises and it was only the license agreement entered into between the parties to the agreement dt. 1.4.1994 and can never be described as a lease deed. In view of the provisions of Sec.56 (2) (iii) of the Income Tax Act it is clear that the income so received has to be treated as income from other sources and not as income from house property. Mere fact that the assessee has shown the subsequent agreement applicable from 31.3.1997 the income shown as income from house property having regard to the

10/8

terms and conditions of the said agreement dt. 1.4.1997, would not by itself enable the revenue to hold that the earlier income had been shown wrongly as income from other sources and it ought to have been shown as income from house property as conditions of the said agreement relating to the consideration to be paid, wherein fixed rent of Rs.2,20,000/- per month has to be paid by the lessee to the lessor and the deed is termed as lease deed. Wherefore, the concurrent finding of fact arrived at by the appellate authority that the income has been rightly shown as income from other sources as the income received pursuant to the agreement dt. 1.4.1994 has been rightly shown as income from other sources and could not have been treated as income from house property, is justified and does not suffer from any error or illegality as to call for interference in this appeal. Accordingly, the substantial questions of law are answered against the Revenue and

levs.



in favour of the assessee and we hold that the appeals are devoid of merit and pass the following:

ORDER

Appeals are dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE

BNS