IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

1. ITA No. 974/Bang/2016
Assessment Year : 2011-12

2. ITA No. 975/Bang/2016
Assessment Year : 2012-13

M/s. Sree Seshachala Builders Ltd., : APPELLANT
#102/5, 7th Main, 3rd Block,
Jayanagar,
Bengaluru-560011.
PAN : AACCS3831L

Vs.

1. Deputy Commissioner of Income Tax, : RESPONDENTS
Circle-12(3),
Bengaluru.

2. Deputy Commissioner of Income Tax,
Circle-6(1)(2),
Bengaluru.

Assessee by : Shri. V. Srinivasan, Advocate
Revenue by : Shri. M. K. Biju, JCIT

Date of hearing : 21.02.2017
Date of Pronouncement : 24.03.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

These appeals are preferred by the assessee against the order of CIT(A) on common grounds. Therefore, these appeals were heard together and are being disposed off through this consolidated order.

2. For the sake of reference, we extract the grounds raised in appeal No. 974/Bang/2016 as under:

"1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the assessment of the business receipts of Rs.46,20,413/- from allied services/ activities performed by the appellant as part of the income assessable under the head "Income from House Property" instead of assessing the said receipts under the head "Profits and Gains from Business" as returned by the appellant under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] failed to appreciate that the receipts collected from the tenants of the appellant for the maintenance of common

areas and rendering common utility services, provision of air conditioning and uninterrupted power [DG] services and rendering parking facilities in and around the complex were conducted in an organized manner with employed workmen, and therefore the same were correctly regarded as assessable under the head "Business" and the corresponding business expenses incurred by the appellant was allowable under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. Though various grounds are raised in these appeals, but the sole ground involved, relate to the nature of receipt received on leasing of the immovable property.

4. The facts and briefs borne out from the record are that the assessee has received the rental income on leasing out his immovable property and

claimed it to be the income as business income, but the Assessing Officer has assessed it as an income from house property. The assessee preferred an appeal before the CIT(A) with the submissions that beside letting out the property, the assessee has also provided certain services to its tenants. Therefore, the consideration received on account of services rendered to its tenants should be treated as business income. Relying upon the judgment of the Apex Court in the case of *Shambu Investment Private Limited (2003) 263 ITR 143 (SC),* the CIT(A) has disallowed the claim of the assessee and confirmed the order of the AO.

5. Now the assessee is in appeal before the Tribunal and placed reliance upon the judgment of the jurisdictional High Court in the case of *CIT Vs. S. Mohan Kumar (HUF)* in *Income Tax Appeal No. 325/2009 dated 7.2.2011*. Reliance was also placed upon the judgment of Madras High Court in the case of *Tarapore And Co. vs. CIT 259 ITR 389,* in support of his contention that wherever it is possible to work out receipt received on account of services rendered, it would be business income. During the course of hearing, the learned counsel for the assessee has also invited our attention to the Leave and License Agreement and the agreement executed for Hire of Amenities in support of his contention that the amount of consideration received from its tenants would be its business income.

6. The learned DR on the other hand submitted that from the Leave and License Agreement, it is not clear as to what consideration was

received on account of providing certain amenities, envisaged in para 26 of the agreement. Therefore, the entire consideration received by the assessee should be treated as income from house property, as laid down in the judgment of jurisdictional High court in the case of *CIT Vs. S. Mohan Kumar* (Supra).

7. Having carefully examined the order of lower authorities, in the light of judgment referred to by the parties, we find that the assessee has let out the property to its tenant "M/s. ICICI Prudential Life Insurance Co. Ltd.,". Copy of Leave and License Agreement is placed on record at page Nos. 54 to 63. Besides the Leave and License Agreement, the assessee has also filed the agreement for Hire of Amenities which is also available on record at page Nos. 65 to 71 of the compilation.

8. From careful perusal of the Leave and License Agreement, we find that the property was let out to the lessee and certain amenities as mentioned in para 26 were also provided, but nothing has been stipulated in the agreement as to what amount to be paid for availing the amenities by the lessee to the lessor. From perusal of the Agreement for Hire of Amenities, we find this agreement was executed only to provide the electricity facilities through generator for which the lessee is required to pay certain amount to the lessor. Besides, no other stipulation has been made in the agreement. We have also carefully examined the judgment of jurisdictional High Court in the case of *CIT vs. S. Mohan Kumar (HUF)*

(supra). We find that in this judgment, the Lordship has categorically held that wherever the income from properties are separable from letting out the other amenities, the income can be divided in 2 categories viz., income from house property and income from business but wherever the income is inseparable from letting out the property and other amenities, the entire income would be chargeable under the head "income from house property". For the sake of reference, we extract the relevant portion of the judgment as under:

> *"Answering the said question, they held the rent from the building will be computed separately from the income from the furniture and fixtures and in the case of rent from the building the appellant- will be entitled to the allowances mentioned in sub-section (4) of Section 12 and in the case of income from the furniture and fixtures, to those mentioned in sub-section (3), and that no part of the income can be assessed under Section 9 or under Section 10. Therefore, in substance it was held the income falls under the heading of income from other sources and not income from business. Therefore, the Supreme Court did not go into the question whether income from the furniture and fixtures would fall under the income from house property at all. As such, the said judgment has no application to the facts of this case.*
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> *16. In this case the question for consideration is whether the income from furniture and fixtures is to be put under the head income from house property'. As both the leases are contained in very same document the said judgments are of very little assistance in deciding the case on hand. However, the Madras High Court in the case of TARAPORE AND COMPANY v. COMMISSIONER OF INCOME TAX reported in (2003) 259 I.T.R. 389 dealing with an identical issue held as under:-*
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> > *"That the actual rent received by the owner (assessee) would constitute the basis for determining the annual value and it was the value which would have to form the basis for determining the income from house property and for allowing the deduction from income from house property to the extent permitted under the other provisions of the Income-tax Act. In making such computation, there was no provision to add*

other amounts received by the owner of the building as representing the value of the service charges rendered by him to his tenants as income from house property. Hence, the Tribunal was right in holding that the receipts from service charges were liable to be assessed as income from other sources and not income from house property."

17. Therefore, from the aforesaid statutory provisions it is clear that if the income is to be chargeable under the heading of 'income from house property' it should be the income which represents the annual value of property consisting of any building or lands appurtenant thereto of which the assessee is the owner and only such income shall be chargeable to income tax under the head 'income from house property.' When Section 56(2)(iii) makes it explicitly clear that the income from machinery or fixture belonging to the assessee and let out on hire, if is not chargeable under the heading of 'profits and gains of business or profession', then it-has to be charged to income tax under the heading 'income from other sources.' If the aforesaid income is inseparable from letting out the said plant machinery other than the income of such letting out cannot if it is not chargeable to income tax under 'profits and gains or profession', is chargeable under the head 'income from other sources'. Therefore under these circumstances, the income derived from letting out the furniture and fixture is not chargeable under the heading of 'income from house property'."

9. In the light of the aforesaid judgment, we are of the view that in the Leave and License Agreement, the total consideration has been stipulated for letting out the properties and whatever amenities mentioned in para 26 of this agreement, nothing can be worked out as to how much money was to be received for providing these facilities. Therefore, whatever consideration was received on account of Lease and License Agreement, the entire receipt can only be treated as income from house property and not as income from business. So far as the income received by virtue of

another agreement i.e., Agreement for Hire of Amenities, it can only be called to be business income. Therefore, we are partly modifying the order of the CIT(A) and direct the Assessing Officer to recompute the income from house property as well as the business income of the assessee for providing certain amenities in terms indicated above.

10. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 24th day of March, 2017.

Sd/-	Sd/-
(INTURI RAMA RAO)	**(SUNIL KUMAR YADAV)**
Accountant Member	**Judicial Member**

Bangalore.
Dated: 24th March, 2017.
/NS/

Copy to:

1. Appellants	2. Respondent
3. CIT	4. CIT(A)
5. DR, ITAT, Bangalore.	6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.