

आयकर अपीलीय अधिकरण “सी ” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA Nos.2267 to 2270/Chny/2019
(निर्धारण वर्ष / Assessment Years: 2011-12, 2014-15 to 2016-17)

Shri Shanthilal Movji Bhai Thakker 88/A, Dr.Allagappa Road, Purasawalkam, Chennai-600 084.	बनाम/ Vs.	The Income Tax Officer, Corporate Ward-6(4), Chennai.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AACPT-9083-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri D.Anand- Advocate
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri G.Johnson – Ld. Addl. CIT

सुनवाईकीतारीख/ Date of Hearing	:	12/10/2021
घोषणाकीतारीख / Date of Pronouncement	:	03/11/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the assessee in aforesaid appeals for Assessment Years (AY) 2011-12, 2014-15 to 2016-17 is common. Therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience & brevity.
2. A delay of 20 days has been noted in the appeals, the condonation of which has been sought by the assessee on the strength of condonation petition as supported by the affidavit of the assessee. It has

been submitted that delay was not deliberate but it occurred due to the fact that the assessee was travelling for business purposes. Though Ld. DR opposed condonation of delay, however, after going through the contents of the affidavit, the bench deems it fit to condone the delay. Accordingly, the appeals are admitted and proceeded with for adjudication on merits.

3. The appeal for AY 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 30/04/2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 147 of the Act on 23/12/2016. The Ld. AR has not urged legal grounds before us. The only grounds urged are that the lease rental income earned by the assessee has been assessed as 'income from House Property' as against 'Business Income' offered by the assessee. The Ld. AR advanced arguments and placed reliance on the decision of Hon'ble Apex Court in **M/s Chennai Properties & Investment Pvt. Ltd. V/s CIT (373 ITR 673)**. The Ld. DR, on the other hand, supported the assessment framed by Ld.AO. Having heard rival submissions, our adjudication would be as under.

4. The material facts are that the assessee being resident individual obtained a property situated at Manish Market, Chennai on lease for a period of 27 years and sub-leased the same to various persons. The lease income thus earned was offered as business income and various expenses were claimed against the receipts. However, since the lease was for a period exceeding 12 years, Ld. AO opined that in terms of provisions of Sec. 27(iib) read with clause (f) of Section 269UA, the assessee would be deemed owner of the property. Accordingly, the lease income earned therefrom was to be assessed as 'Income from

House Property' which would be eligible for statutory deduction of 30%. Finally, the aforesaid income was assessed as 'Income from House Property' and Ld. AO also made interest disallowance u/s 36(1)(iii) / 37(1) and disallowance u/s 14A.

5. During appellate proceedings, the assessee submitted that it was engaged in the business of real estate development, hotel business and lease rental business for more than two decades. The partnership firm of the assessee 'Sriji Developers' as well as corporate entity namely 'Sriji foundation Pvt. Ltd.' was engaged in real estate activities. The leased premises were a building wherein the shops were let out for rent. The main object was to let out the premises on rent and the receipts were rightly offered as 'business income'. The assessee also assailed the interest disallowance and disallowance u/s 14A.

6. The Ld. CIT(A), following first appellate order for AY 2012-13, confirmed the stand of Ld. AO in assessing the lease income as 'Income from House Property'. However, the interest disallowance was deleted by observing that business assets were more than the loan amounts borrowed by the assessee. The disallowance u/s 14A was restricted to the extent of exempt income earned by the assessee. Aggrieved, the assessee is in further appeal before us.

7. Upon due consideration of material fact, we find that the property under consideration was obtained by the assessee on long term lease basis and it was sub-leased to various tenants. The income thus earned was offered as 'business income'. The main object of sub-leasing was to exploit the property in a business-like manner and earn the rental income therefrom. It is also evident that the assessee and his associated entities had business interest in real estate development. As held by Hon'ble

Supreme Court in the case of **Raj Dadarkar & Associates V/s ACIT (81 Taxmann.com 193)**, there may be instances where a particular income may appear to fall in more than one head. On the facts of a particular case, income has to be either treated as income from the house property or as the business income. Tests which are to be applied for determining the real nature of income are laid down in judicial decisions, on the interpretation of the provisions of these two heads. Wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, in case provisions of Section 22 of the Act are satisfied with primary ingredient that the assessee is the owner of the said building or lands appurtenant thereto. Section 22 of the Act makes 'annual value' of such a property as income chargeable to tax under this head. How annual value is to be determined is provided in Section 23 of the Act. 'Owner of the house property' is defined in Section 27 of the Act which includes certain situations where a person not actually the owner shall be treated as deemed owner of a building or part thereof. In the present case, the appellant is held to be "deemed owner" of the property in question by virtue of Section 27(iib) of the Act. On the other hand, under certain circumstances, where the income may have been derived from letting out of the premises, it can still be treated as business income if letting out of the premises itself is the business of the assessee. As held in **Sultan Bros.(P) Ltd. v. CIT [1964] 51 ITR 353 (SC)**, 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. It is to be seen as to whether the activity in question was in the nature of business by which it could be said that income received by

the appellant was to be treated as income from the business. In the decision of Hon'ble Supreme Court in **Chennai Properties & Investments Ltd. (373 ITR 673)**, the entire income of the assessee was through letting out of the properties it owned and there was no other income of the assessee except the income from letting out of the said properties, which was the business of the assessee. Accordingly, the claim of the assessee as business income was accepted by Hon'ble Apex Court in **Chennai Properties & Investments Ltd. (supra)**.

8. Applying the ratio of above decisions, we find that the major source of income for the assessee is rental income. The assessee obtained long-term lease of the property and sub-leased the same in a regular systematic manner with a view to earn rental income from such activities in a business-like manner. The perusal of financial statements would show that the assessee had obtained loans to procure the properties and business investments were mostly in the nature of various properties. Therefore, considering the facts of the case, the income was rightly offered as 'Business Income' and the claim of the assessee, in this regard, was to be accepted. We order so. The Ld. AO is directed to re-compute the income of the assessee in terms of this order. Resultantly, the appeal stand partly allowed.

9. The facts as well as issues are similar in other assessment years. In AY 2014-15, the leased income has been assessed as Business Income and the assessee has been saddled with interest disallowance and disallowance u/s 14A. The appellate order is on similar lines as in AY 2011-12. Similar is the assessment order as well as appellate order for AY 2015-16. In 2016-17, an assessment has been framed u/s 143(3) on 30/11/2018 wherein the lease income has been assessed as Income

from House Property and certain interest disallowance has been made by Ld. AO. The appellate order is on similar lines as in other assessment years. Facts and issues being pari-materia the same, our findings as well as adjudication as for AY 2011-12, shall *mutatis-mutandis*, apply to all these years. The Ld. AO is directed to accept the lease income as 'Business income'. Resultantly, the appeal for these years stand partly allowed.

10. All the appeals stand partly allowed.

Order pronounced on 3^d November, 2021

Sd/-
(Mahavir Singh)
उपाध्यक्ष / **Vice President**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

चेन्नई Chennai; दिनांक Dated : 03/11/2021
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai