**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH "H" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT**
**AND**
**SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं/.I.T.A No.8026/Del/2019**
**निर्धारणवर्ष/Assessment Year: 2015-16**

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| **ACIT**<br>**Circle 25(2),**<br>**Room No. 196-A,**<br>**C.R. Building, I.P. Estate,**<br>**New Delhi.** | **बनाम**<br>**Vs.** | **M/s Tupelo Builders Pvt. Ltd.**<br>**60, 2nd Floor, Vasant Marg,**<br>**Vasant Vihar, New Delhi.** |
| | | **PAN No. AAECT3436A** |
| **अपीलार्थी Appellant** | | **प्रत्यर्थी/Respondent** |

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| निर्धारितीकीओरसे **/Assessee by** | **Shri Ajay Wadhwa, Adv.** |
| राजस्वकीओरसे **/Revenue by** | **Shri Vivek Verma, CIT DR** |

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| सुनवाईकीतारीख/ Date of hearing: | 22.09.2022 |
| उद्घोषणाकीतारीख/Pronouncement on | 02.12.2022 |

**आदेश /O R D E R**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-9, New Delhi dated 15.07.2019 for the AY 2015-16. The Revenue in its appeal raised the following grounds:

1. *"On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs.11,58,12,598/- made by the Assessing Officer on account of interest and processing charges. Ld.CIT(A) failed to admire the fact that loan was sanctioned to Sh. Rajiv Rattan and the name of the assessee company has been used for disguising the*

*arrangement of purchase in the name of assessee company in order to get benefit of "interest and processing charge" in name of assessee company.*

2. *On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs.5,40,00,000/- made by the Assessing Officer on account of income from other sources and accepting the claim of assessee that sum of Rs.4,50,00,000/- as income from Business and Profession. The assessee lent its name for a beneficial owner for purchase of property and also have received sum in the form of rent through a colourable leave and license agreement. In this process the assessee has also lent its name to the Home Loan sanctioned to Sh. Rajiv Rattan and claiming it as business expenses. Lending of name for the benefit of other persons cannot be held as Business and Profession of the company.*

3. *On the facts and circumstances of the case the order of Ld.CIT(A) is perverse."*

2. As both the above grounds are inter-connected the same are dealt with commonly hereunder.

3. Briefly stated the facts are that the Assessee a Private Limited Company e-filed its original return of income for the assessment year under consideration on 19.09.2015 declaring loss of Rs.7,07,00,678/- under the head "Income from Business". The assessment was completed on 30.12.2017 u/s 143(3) of the Act assessing rental income under the head "Income from other sources" as against income from business as declared by the assessee. The Assessing Officer also denied the claim of the assessee for interest and processing charges on home loan as allowable expenditure u/s 37(1) of the Act from "Income from Business".

4. The Assessing Officer noticed that during the previous year relevant to AY 2015-16 the assessee company along with Shri Rajiv Rattan purchased property bearing House No.13A, Amrita Shergill Marg, New Delhi. The Assessing Officer observed from the documents submitted by the assessee that the property was purchased from taking home loan of Rs.166.87 crores from Bank of India by the assessee and Shri Rajiv Rattan as joint applicants and the assessee has borrowed long term loan of Rs.83.36 crores from M/s Tupelo Properties Pvt. Ltd. which is the holding company of the assessee. The Assessing Officer observed that the property purchased by the assessee which has 95% stake in the property was let out to Shri Rajiv Rattan who has 5% stake in the property for a monthly rent of Rs.90 lakhs. As per the leave and license agreement dated 01.10.2014 the rental income received by the assessee was shown under the head "Income from Business".

5. In view of the above and based on some reports in the newspapers that Shri Rajiv Rattan has purchased property the Assessing Officer was of the view that an arrangement of purchase of property in the name of assessee company was made by Shri Rajiv Rattan by paying entire consideration provided by Shri Rajiv Rattan and the possession of the property has been given to the beneficial owner of the property by the leave and license agreement. The Assessing Officer examined the purchase of property in the light of the provisions of prohibition of Benami Property Transaction Act, 1988. The Assessing Officer observed

that the total value of 95% of share of the property acquired in the name of the assessee company has been shown as inventory in the books of the assessee company at Rs.322.85 crores, however, as per the records of sale deed dated 23.06.2014 and the other documents filed by the assessee it revealed that assessee company made entire payment of consideration and other statutory expenses for the property at Rs.245.02 crores through its bank accounts and another 5% amounting to Rs.12.25 crores has been taken by the assessee from Shri Rajiv Rattan on 04.02.2015 and there is direct nexus between the payment made by the assessee company and the funds provided by Shri Rajiv Rattan either through loan or through its subsidiary company or home loan.

6. The AO also observed that the arrangement of leave and license agreement dated 01.10.2014 and payment of rent by Shri Rajiv Rattan is a colourable device to make a facate to grant possession of property for immediate and future use to the beneficial owner and, therefore, the second limb of prohibition of Benami Property Transaction Act i.e., holding of property for the immediate or future benefit, direct or indirect has been satisfied. Therefore, he was of the view that Section 292(9A) of the prohibition of Benami Properties Transaction Act are clearly apply in case of the assessee company as the assessee acted as Benamidar for the beneficial owner of Shri Rajiv Rattan for the property purchased.

7. The Assessing Officer stated, inter-alia, that the transaction is Benami in nature and the assessee company is Benamidar of Shri Rajiv Rattan for the following reasons:

***i)*** *The loan taken from Bank of India of a sum of Rs. 163 crores was actually sanctioned to Shri Rajiv Ratan and the assessee company's name only features as a co-applicant.*

***ii)*** *There are news articles and media reports wherein it has come out that it is Shri Rajiv Rattan who has purchased the property at 13, Amrita Shergil Marg, New Delhi and the name of the company is nowhere visible.*

***iii)*** *This is an arrangement for purchase of a property where the consideration has been provided by Shri Rajiv Ratan and by leave and license agreement, the possession is also with him and he being the beneficial owner is enjoying its benefits.*

***iv)*** *The assessee company for the balance funds of Rs. 55 crores, took a loan from its holding company,M/s Tupelo Properties Private Limited, whose 99.99% shareholder is Shri Rajiv Rattan which shows that there is a direct nexus between the money provided by Shri Rajiv Rattan for the purchase of the property.*

***v)*** *The Assessing Officer further stated that no explanation has been given as to why the property has been purchased in the joint name with Shri Rajiv Rattan when he is neither a director nor a shareholder in the assessee company and why a leave and license agreement has been entered into with Shri Rajiv Rattan at a sum of Rs. 90 lakhs per month despite the fact that he is not occupying the property but still paying the rent to the assessee company. Leave and license agreement also have many errors, the assessee company has been shown to be absolute owner of the property in the agreement.*

***vi)*** *The Assessing Officer further stated that the leave and license agreement is a colorable device and that Shri Rajiv Rattan is not residing in the property and the assessee company has merely lent its name for the property whereas the beneficial owner for the property is none other but Sri Rajiv Rattan. Hence, according to the Assessing Officer, the interest and processing charges of Rs.11,58,06,398/- are not allowable as business expenditure since the property de-facto belongs to Shri Rajiv Rattan.*

8. The Assessing Officer further observed that though the assessee has kept the property in inventory but its conduct clearly establish the property cannot be business or commercial property and the assessee has lent its name for the beneficial owner for purchase of property and, therefore, AO held that rent from property is not income from business or profession of the assessee company. Accordingly, the rental income shown by the assessee was assessed under the head "Income from other sources".

9. The Assessing Officer further denied interest and processing charges on home loan as allowable business expenses u/s 37(1) of the Act for the reason that the property was held to be not a commercial property of the assessee and also not used for the purpose of business and the property purchased is benami property of Sh. Rajiv Rattan. Therefore, he was of the view that the expenses are not allowable u/s 37(1) of the Act.

10. On appeal the Ld. CIT(Appeals) on examining the provisions of prohibition of Benami Property Transaction Act, the facts of the asessee's case, the evidences produced before him and the decisions relied on, has passed an exhaustive order dealing with each of the allegations of Assessing Officer and the contentions are briefly given below:-

*i) Shri Rajiv Rattan is only one of the joint owners of the property as per the registered sale deed and this fact has*

*been disclosed by the assessee company in its books of account. The news clippings cannot be a basis of any allegation of Benami. In substance the assessee company has recorded the purchase to the extent of 95% and the source of the same i.e, the corresponding loan liability is duly recorded and disclosed in the books of account.*

*ii) In order to be classified as a Benami property/transaction, the basic premise is that the property is transferred to a person and consideration for such property has been provided by another person and the property is held for the immediate benefit of the person who has provided the consideration. In this case, Shri Rajiv Rattan is not another person but a joint holder of the property. Assessing Officer has failed to bring any evidence showing that the possession of the property is with another person other than the joint legal owners. Clearly, the consideration to the extent of 95% is from the sources arranged by the assessee company i.e, loans from Bank of India and from its holding company, which have been duly recorded in its books of account. It also comes out from the supporting documents that in case of default in repayment of the loan, it is the property of the company which could be attached and sold and monies shall be recovered there from. Hence, it cannot be said that the source of funds to the extent of 95% of the property belong to Shri. Rajiv Rattan. They belong to the assessee company.*

*iii) According to the Ld.CIT(A), 75% of funds were borrowed by the assessee company from the bank against hypothecation of the property and the remaining were borrowed from its holding company and the issuance of the debentures.*

*iv) The Ld.CIT(A) further stated that the property was let out to Shri Rajiv Rattan on fair market rent and not without consideration or on nominal rentals and the leave and license does not replace the title of the property.*

*v) Hence, Shri Rajiv Rattan is paying rent for the use of the property on the basis of its fair market value rentals.*

*vi) Leave and license agreement along with its addendum was also examined by the Ld.CIT(A) and no errors were found.*

*vii) The Ld.CIT(A) stated that purchase of property individually or jointly is a mutual commercial decision which is within the sole domain of the assessee company.*

*viii) The board resolution passed by the assessee company for purchasing the property in joint name was also placed on record.*

*ix) There are no undisclosed transaction, fact or involvement of any party apart from the parties to the transaction.*

*x) The Ld.CIT(A) stated that Assessing Officer has failed to bring out any motive for giving the transaction a benami colour. Allegations have been made by Assessing Officer on apparently incorrect appreciation of facts, without bringing out any motive for doing so. The onus of proving transactions to be Benami rests solely upon the person alleging it to be a Benami and Assessing Officer has not brought out any evidence on record to show that what is apparent is not the real transaction. The Ld.CIT(A) has also relied on the decisions of Hon'ble Supreme Court in the case of the **Mangathai Ammal vs. Rajeswari & Others (Civil Appeal No. 4805 of 2019) and P. Leelavathi vs. V. Shankarnarayana Rao (2019) 6 SCALE 112**.*

*xi) The Ld.CIT(A) has further examined main objects of the company and held that the property was rightly reflected as inventory.*

*xii) He further stated that since Shri Rajiv Rattan is also joint purchaser of the property, he is entitled to apply for a home loan and mention of assessee company's name as co-applicant does not affect its legal title.*

*xiii) The Income Tax Act does not prohibit disclosure and recording of partly owned property as inventory and that the business expenditure has been legitimately claimed since the property was let out for the defined business objectives and lease rent earned rightly disclosed as business income, and expenses were rightly claimed as business expenditure.*

11. The Ld. CIT(A) further following the decisions of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. (373 ITR 673) and in the case of Rayala Corporation Pvt. Ltd. Vs. ACIT (386 ITR 500) and the decision of the Coordinate Bench of the ITAT Delhi

in the case of Master Infrastructure Pvt. Ltd. Vs. ACIT (ITA No.671/Del/2014) held that the rental income received by the assessee is assessable under the head "Income from Business or Profession" and not under the head income from "other sources" and the interest and processing charges were incurred wholly and exclusively for the purpose of business and they are allowable expenses u/s 37(1) of the Act.

12. Before us, the Ld. DR strongly supported the orders of the Assessing Officer. The Ld. DR further submits that the home loan sanctioned were only for residential purposes and not for commercial purpose and that too for individuals. The Ld. DR submits that Shri Rajiv Rattan funded the loan from the property through holding company to assessee and the leave and license agreement entered into by the assessee company with Shri Rajiv Rattan for letting out of the property and the possession given to Shri Rajiv Rattan is nothing but allowing the beneficial owner to take possession of the property and the leave and license agreement is only a colourable device. The ld. DR vehemently contended that the acquisition of the property in the assessee company's name is a benami transaction and the property de-facto belongs to Shri Rajiv Rattan. He contended that Shri Rajiv Rattan is a sole owner of the property in as much as he owns the holding company which in turn owns the assessee company who provided the loan to the assessee company for purchase of the property. Hence, it is Shri Rajiv Rattan to whom the entire property belongs and more so since the home loan taken mentions

Shri Rajiv Rattan as the main applicant even though his share in the property is only 5% and further loans have been taken from the holding company, M/s Tupelo Properties Pvt. Ltd., of which Shri Rajiv Rattan is a sole shareholder. Therefore, Ld. DR contends that it os clear that the funds belong to Shri Rajiv Rattan and the assessee company is only for the name sake and Shri Rajiv Rattan takes all the decisions relating to the property and even the construction/renovation work which is going on after he has taken possession is out of his funds. The ld. DR stated that the property cannot be transferred without the consent of Shri Rajiv Rattan as he owns 5% share in the property. The ld. DR has further stated that the assessee company has share capital of only Rs. 1 lakh and it cannot on its own carry out such huge transactions and therefore it is Shri Rajiv Rattan who is de-facto the owner of the property.

13. On the other hand, the Ld. Counsel for the assessee Shri Ajay Wadhwa referring to loan sanction letter dated 19.06.2014 issued by Bank of India submits that the entire loan was credited to assessee company account. The Ld. Counsel submits that the transaction of purchase by assessee company along with Shri Rajiv Rattan cannot be treated as Benami Transaction as the purchase consideration was entirely paid by the assessee company, the Rajiv Rattan and the assessee are co-applicants of the loan obtained from the bank and the liability to clear the loan vests with the assessee company and not Shri Rajiv Rattan. Ld. Counsel submits that Sh. Rajiv Rattan has taken the property on leave

and license for a monthly rent of Rs.90 lakhs and the leave and license is a renewable for every 11 months. The Ld. Counsel further submits that there are no fetters on the assessee company to sell its 95% shares in the property and, therefore, the transaction cannot be treated as Benami Transaction.

14. The Ld. Counsel for the assessee also submitted the tabular presentation of the allegations levelled by the AO in treating the purchase of property by the assessee as Benami Property of Sh. Rajiv Rattan and the assessee's contentions as under:

| ***S.No.*** | ***Allegations of Assessing Officer*** | ***Contentions of Assessee*** |
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| *1.* | *The Ld. AO alleged that the transaction of purchase of property is a benami transaction and the assessee is Benamidar. His allegations are on the basis of following assumptions:*<br><br>*a. Loan has been sanctioned to Rajiv Rattan, mentioning the assessee company as co-applicant. Para 2.8, page of the Assessment Order.*<br><br>*- Loan could not have been disbursed to the assessee company. In fact issued to Shri Rajiv Rattan only. Para 2.9, page 3 of Assessment Order.*<br><br>*b. News articles/media reports.*<br><br>*c. It is apparent that there has been an arrangement of purchase of property in the name of assessee company with entire consideration provided by Sh. Rajiv Rattan and vide leave and license agreement, the possession of the property has been given to the beneficial owner of the property. Para 2.14, page 4 of the Assessment Order.* | ***A****. Benami transaction is, where neither the consideration is paid nor the benefits of the property is enjoyed by the person in whose name the property is acquired.*<br><br>***B****. In this case* ***consideration for the property was paid by the assessee as well as the benefits of the property are being enjoyed by the assessee as rental:***<br><br>***a****. AO has, on the basis of his assumption, stated that loan was not disbursed to the assessee but was issued to Mr. Rattan.*<br><br>*- Home loans are sanctioned by the banks only after inspection of the property and its ownership. In home loan, loan is generally not* |

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| | d. *There has been direct nexus between the payment made by the assessee company and the funds provided by Sh. Rajiv Rattan wither through loan through its subsidiary company or home loan. Para 2.14(i), page 5 of the Assessment Order.*<br><br>e. *The assessee could not explain the reason why the property has been purchased in the joint name of Sh. Rajiv Rattan who is neither director nor shareholder but having controlling stake in its holding company. Para 2.14(ii)(b), page 6 of the Assessment Order.*<br><br>f. *To complete the chain and for providing the possession of the said property to its beneficial owner, the assessee has entered into a leave and license agreement dated 01.10.2014. Para 2.14 (ii)(c), page 6 of the Assessment Order.*<br><br>g. *Rajiv Rattan is paying rent of Rs.90 lakhs per month for the property despite he is not using the property and still paying the rent to the assessee. Para 2.14(ii)(e), page 6 of the Assessment Order.*<br><br>h. *The assessee has acted as Benamidar for the beneficial owner Sh. Rajiv Rattan for the subject property. Para 2.15, page 6 of the Assessment Order.*<br><br>i. *Leave and License agreement is colourable device. Para 2.14(ii)(d), page 6 and 3.8(ii), page 9:*<br><br>- *In lease agreement the assessee has been shown to be absolute owner of the entire property.*<br><br>- *Mismatch in the address of Sh. Rajiv Rattan.*<br><br>- *The premises was rented for 6 months but the assessee has shown in its return of income for* | *disbursed to the applicant but is directly paid by the bank to seller and the bank also take into its custody original sale deed unless the loan is completely repaid.* ***Refer sanction letter attached.***<br><br>- *In this case also, pay orders were directly paid by the bank to the seller and original conveyance deed was taken into its custody by it which specifically mentions the % of ownership of the assessee and Mr. Rattan in the property. In this case 75% of the consideration was financed by the bank.* ***Refer sanction letter attached.***<br><br>- *In fact, overdraft facility given by the bank for Rs. 45 crores (star home loan) shows that the loan was granted to the company only and this facility was given considering the business of the company.* ***Refer sanction letter and page 12 of the paper book.***<br><br>*Therefore, it is incorrect to say that the loan was issued to Mr. Rattan only and not to the assessee.*<br><br>***b.*** *Even otherwise, most of the companies obtain loans on the guarantee of its directors/shareholders and in case of default by the company, the entire loan is recovered from such director/guarantor. In those cases, can it be said that the consideration is recovered from the director/shareholder instead of the company* |

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| | *5 months.*<br><br>- *From the date of leave and license agreement, Sh. Rajiv Rattan is not using the property still paying the rent to the assessee company.*<br><br>- *On the one hand assessee is getting rent from Sh. Rajiv Rattan and on the other hand it is making construction work in that property.*<br><br>- *The assessee has lent its name for a beneficial owner for purchase of property and to the home loan sanctioned to Rajiv Rattan. Lending of name for the benefit of other person cannot be held as business and profession of the company.*<br>***Para 3.9, page 9 and para 5, page 10 of the Assessment Order.*** | *and therefore, the property is Benami.*<br><br>***c.*** *To obtain any kind of loan from the banks, he banks ask the borrower to present as guarantor, if they are not satisfied with the borrower's ability to repay the loan.*<br><br>*In this case, the assessee did not have any valuable asset to offer to the bank in case of default and therefore, on the basis assets of Mr. Rattan as well such loan was granted to the assessee.*<br><br>***d.*** *Further, some portion of consideration was also taken by the assessee as a loan from its holding company. The holding company financed the said money through issuance of Debentures. The sum of money financed by issuance of debentures cannot be said to be Mr. Rattan's money as the company and its shareholder has separate legal entity.* ***Salomon Vs. Salomon (1879) AC 22***<br><br>***C. The benefits of the property are also being enjoyed by the assessee company, to the extent of its share in the property:***<br><br>***a.*** *The property was let out at fair market rentals of Rs.90 lakhs per month. This way, the benefit of the property is being enjoyed by the assessee by earning rentals. If this property was benami of Mr. Rattan, the assessee would have been given it as rent free* |

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| | | *accommodation.*<br><br>***b.*** *The property was given on rent through "leave and license agreement" instead of lease agreement. In leave and license agreement, there is no transfer of interest from owner to the tenant and the owner always has greater rights and advantages. In fact, the licensee does not enjoy the exclusive possession of the property and the owner has a right to enter and use the property any time and the licensee cannot contest the move. The license is neither transferable nor heritable. The assessee would have entered into long term/perpetual lease agreement, if the intention was to transfer the possession of the property to Mr. Rattan.*<br><br>*- Further, the agreement was entered into only for a period of 10 months with a renewable clause, if both the parties agree.*<br><br>*- The above shows that the leave and license was never with the intention to transfer the possession but only for the purpose of business.*<br><br>***c. In nutshell****: (i) 95% share in the property was purchased by the assessee and also registered in the name of the assessee; (ii) consideration was paid by the assessee for its share; (iii) the benefit of the property is being enjoyed by the assessee by earning rental income; (iv) no* |

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| | | *mala-fide intentions behind purchasing and financing the property in joint name. The decision was taken to get in venture jointly considering the reputation and experience of the Mr. Rattan.*<br><br>*- The burden of proving of benami nature of transaction lies on the person who alleges the transaction to be benami* ***Binapani Paul Vs. Pratima Ghosh (2007) 6 SCC 100***<br><br>*- Mere financial assistance for purchase of property cannot convert a bona-fide transaction to a benami transaction* ***Smt. P. Leelavathi vs. V. Shankarnarayana Rao (Civil appeal no. 1099 of 2008)***<br><br>*- Even otherwise, the property was purchased before 01.11.2016 i.e., prior to the operation of Amendment Act, 2016 and, therefore, proceedings cannot be initiated under the Benami Act, -* ***Supreme Court – Union of India & Anr. vs. M/s Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783 of 2022) dated 23.08.2022***<br><br>***C. With respect to the errors pointed out by the Ld. AO in the leave and license agreement:***<br><br>***a****. The errors pointed out by the Ld. AO in the agreement was due to non-consideration of addendum to the agreement. During the course of assessment proceedings, the Ld. AO* |

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| | | *did not raise any doubt on the agreement and therefore, the assessee did not get the opportunity to clarify the errors that has been pointed out in the order.* ***Addendum to the leave and license agreement is attached at page no. 108-112 of the paper book.***<br><br>***b.*** *Your Honour, due to delay in possession of licensed premises, the assessee and Mr. Rattan had amended some clauses of the agreement on 13.11.2014 and agreed that: i) the agreement will be effective from 01.11.2014; (ii) property being licensed imply 95% of the property; (iii) the period of agreement amended to 10 months; (iv) waiver of security deposit as the licensee also owner of 5% of the property. - Refer* ***pages 109-112 of the paper book.***<br><br>***c. The AO alleged the rent agreement is a colourable device without any basis.***<br><br>*- There is no observation that the property was given on rent without consideration or at miniscule rentals. The property was rented on fair market rentals at 90 lakhs per month.*<br><br>*- The Ld. AO has failed to show that the terms of agreement are such which shows that the transaction has different intent. Merely because huge sum of money is invested,* |

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| | | *transaction cannot be sham.* ***Aditya Birla Telecom Ltd. (263 Taxman 539) Bombay High Court, approved by the Hon'ble Supreme Court, Industrial Development Corp. (268 ITR 130) (High Court of Orissa), Entrepreneurs (Calcutta) (P) Ltd. (400 ITR 521) (Calcutta High Court), High Energy Batteries (India) Ltd. (348 ITR 574) (Madras High Court), Teletube Electronics (379 ITR 300) Delhi High Court***<br><br>*- Where consideration was actually exchanged and even if the same amounts were paid back to the same party by the assessee on the same day, it cannot be said to be sham. -* ***Seksaria Sons (P) Ltd. (138 ITR 419) - Bombay High Court***<br><br>*- Where consideration has actually paid, transaction actually took place, legal formalities complied with - only on the basis of assumption transaction cannot be sham -* ***Bhoruka Engineering Inds. Lt. (356 ITR 25) - Karnataka High Court.*** |

15. The Ld. counsel for the assessee company, Shri Ajay Wadhwa, further supported the order of the Ld.CIT(A) and contended that the consideration for the property was paid by the assessee company and the benefits of the same are also being enjoyed by it by way of rentals. A Benami transaction is one where neither the consideration is paid nor the

benefits of the property are enjoyed by the person in whose name the property is acquired/registered. This is not such a case. Ld. Counsel for the assessee took us through the sanction letter and the loan statement of the home loan taken for purchase of property to bring home the point that the home loan was not disbursed to Shri Rajiv Rattan only but to the co-borrowers and the drafts were directly paid by the bank to the sellers and the bank also took custody of the original sale deed till the loan is repaid. The bank financed approx. 75% of the purchase price of the property and also gave an over draft facility to the assessee company for a sum of Rs.34 crores and therefore according to the ld. Counsel, it is incorrect to say that the loan was issued to Shri Rajiv Rattan and not to the assessee company. Besides, the bank as per the sanction letter, bank statements and other documentations recognized the assessee company as 95% owner of the property. The ld. counsel gave an example wherein directors/shareholders routinely give guarantees to the bank for loans taken by the companies. In some cases, guarantor's assets are also given to the bank as collateral when the company takes a loan. In case of a default, the guarantor is equally liable as is the company for the repayment/recoveries of the loan. In such cases, it is never contended that the guarantor is the real owner of the property.

16. The Ld. Counsel further stated that, the sum financed by the holding company cannot be said to be Shri Rajiv Rattan's money as the company and its shareholders are separate legal entities and this matter

has been set to rest in the case of **Salomon vs. Salomon (1879) AC 22**. The Ld. Counsel of the assessee company also cited the judgement in the case of **Mrs. Bacha F. Guzdar 271 ITR 1 (Supreme Court)** for the proposition that, a shareholder does not have any vested right over the assets of the company and he is only entitled to dividend to the extent of its shareholding. The ld. counsel contended that the immediate shareholder or even the beneficial shareholder has no direct interest in the assets of the company and therefore the property belongs only to the assessee company to the extent of 95%.

17. The ld. counsel for the assessee further stated that there is no bar in transferring 95% of the company's interest to any person, if the company chooses to do so and therefore, the Department is incorrect in saying that Shri Rajiv Rattan having a 5% share in the property can stop the assessee company from sale of its share in the property. There is no embargo as per the agreement and even in law, the said share can be transferred if the assessee company wishes to do so. The ld. counsel for the assessee further stated that the property has been given on leave and license basis and there is no transfer of interest by the owner to the tenant. The leave and license agreement is only for a period of 10 months and extendable only if both the parties agree. In leave and license agreement, the licensee does not enjoy exclusive possession of the property and the owner has the right to enter in the property anytime and that the license is neither transferrable nor heritable. He

further stated that the fair market rental of Rs. 90 lakhs per month is at an arm's length and that there has been no allegation of any understatement of rentals. It was further contended that there was no malafide intention behind purchasing and financing the property in joint name and the decision to take the property jointly was taken considering the reputation and experience of Mr. Rajiv Rattan.

18. He further contended that it is settled law that the burden of proving that transaction is Benami lies on the person who alleges it to be. He placed reliance on the decision of **Hon'ble Supreme Court in the case of Binapani Paul vs. Pratima Ghosh (2007) 6 SCC 100**. Mere financial assistance in purchase of property cannot convert a bona fide transaction in a Benami transaction and placed reliance on the decision of Hon'ble Supreme Court in the case of **Smt. P. Leelavathi vs. V. Shankarnarayana Rao (Civil appeal no. 1099 of 2008)** and also cited recent decision of Hon'ble Supreme Court in the case of **Union of India & Anr. Vs. M/s Ganpati Dealcom Pvt. Ltd. (Civil Appeal No. 5783 of 2022)** to mention that even otherwise the property was purchased before 01.01.2016, i.e, prior to the operation of Amendment Act, 2016 and therefore, proceedings cannot be initiated under the Benami Act.

19. The Ld. Counsel of the assessee further contested the claim of the Department that Rajiv Ratan was using his own money for repair and renovation of the property by taking us through the balance sheet and

the supporting documents like ledgers which were placed at pages 12 and 195 of the paper book wherein it clearly comes out that the repair and renovation etc. was being carried out by the assessee company and not by Shri Rajiv Rattan.

20. The Ld. Counsel of the assessee further stated that the property has been given on rent by the assessee company and it has started to receive rentals and whether Shri Rajiv Rattan occupies it or occupies it after the completion of renovations is his prerogative and as far the assessee company is concerned, it is enjoying the rent from November, 2014as per the leave and license agreement dated 01.10.2014 read with its addendum dated13.11.2014.He further stated that the leave and license agreement is not a colorable device and rent has actually exchanged and enjoyed by the assessee company and that it is a perfect business transaction without any flaws.

21. With regard to assessing the rental income under the head “Income from other sources” the Assessing Officer has stated that since the entire transaction is a sham, the income received by way of leave and license should be taxed under the head income from other sources and not under the head “Income from business or profession” as claimed by the assessee company. As per Assessing Officer, the property being a benami property, having purchased in joint name, there is a restriction on its sale and therefore it could not be treated as a part of the inventory, it is

a residential property and also that home loan are never granted for commercial purposes. Assessing Officer further stated that the assessee has not shown any business income from any property in the past years and has merely lent its name for the beneficial owner i.e., Shri Rajiv Rattan and therefore the income cannot be held as income from business or profession.

22. The Ld. Counsel referring to Memorandum of Association (MOA) of the assessee company which is placed at page 70, the main objects of the assessee company in Clause No. 2(A) of MOA is to "construct, acquire, hold/sell builders, buildings, tenements and such other movable and immovable builders and to rent, let on hire and managed them and to act as real estate agent and immovable property dealers". Therefore, the Ld. Counsel submits that the main objects of the assessee company was to rent, let on hire and manage the immovable property and, therefore, the income from letting out of property is assessable under the head "Income from Business" and not under the head "Income from House Property".

23. According to the Ld. Counsel for the assessee, the main object of the assessee company includes, inter-alia, renting of properties and to manage them. The decision to purchase the property in joint name and letting it out was a mutual business decision of the assessee company and Mr. Rajiv Rattan and, the Assessing Officer cannot step into the shoes of

the businessman and dictate how business decisions should be made. The ld. counsel further contented that the loan was sanctioned by the bank after considering the documentations and the ownership of the property and in fact gave an overdraft facility to the assessee company on the basis of such home loan. The category under which the loan has to be given is a decision that is purely of the bank and whether bank gives loan as a home loan or as a commercial loan, has no bearing on the nature of the income under the Income Tax. For obtaining loan, the assessee would try for the best terms in terms of rate, tenure and other benefits, regardless of the category under which he gets it. The terms of the loan and the quantum is beneficial by having Mr. Rajiv Rattan as the first applicant and the assessee company as its co-applicant, it does not affect the treatment of income under Income Tax.

24. The Ld. Counsel further cited judgments in the case of **Hon'ble Supreme Court in the case of Chennai Properties and Investments Pvt. Ltd. (373 ITR 673), Rayala Corporation (P.) Ltd (386 ITR 500), Agya Ram (386 ITR 545) (Delhi High Court), Shyam Burlap Company Ltd. (380 ITR 151) (Calcutta High Court), Nisarg Realtors (P.) Ltd.(195 ITD 402) (ITAT Mumbai) and Arihant Estate (P.) Ltd. – (6037/Mum/2016) (ITAT Mumbai)** to contend that the rent from the property has to be taxed under the head business or profession as the main objects of the company was to acquire and give property on rent and manage the same.

25. The Ld. Counsel for the assessee further submits that the Assessing Officer disallowed interest and processing charges of home loan obtained by the assessee company from Bank of India alleging that the subject property is not commercial property and also not being used for the purpose of business and, therefore, the interest expense is not allowable u/s 37(1) of the Act. The Ld. Counsel for the assessee submits that the main object of the assessee company permits to own construct and let out property and the assessee company is doing business as per its main objects and, therefore, the correspondence expenses should be allowed to the assessee u/s 37(1) of the Act.

26. Heard rival submissions, perused the orders of the authorities below and the decisions relied upon. The assessee company was incorporated on 16.08.2012 with the primary objects, inter alia, to construct, acquire, hold/sell builders, buildings, tenements and such other movable and immovable builders and to rent, let on hire and manage them and to act as real estate agent and immovable property dealers. Shares of the assessee company are owned by its holding company i.e., M/s Tupelo Properties Private Ltd. along with its nominee shareholder. In a board meeting held on 16.05.2013, it was resolved that the assessee company along with Mr. Rajiv Rattan will purchase a prestigious property situated in Lutyen's Delhi at 13, Amrita Shergill Marg, New Delhi-110003 in a ratio of 95:5 with an intention to do business. Mr. Rajiv Rattan is a substantial shareholder holding 99.9% in

the assessee's holding company i.e., M/s Tupelo Properties. The said property was purchased for a consideration of Rs.217 crores which is the fair market value on 23.06.2014 and the source of funds for purchase of property were as under:

| | Particulars | Amount (Rs.) |
|---|---|---|
| i) | Home Loan from Bank of India (Diamond home loan) | 118.125 crores |
| ii) | Home loan from Bank of India (star home loan with OD Facility) | 45 crores |
| iii) | Loan taken from holding company | 55 crores |

Copy of sale deed is placed at page no. 33-51 of the paper book and payment schedule along with the relevant bank statements, cheques and sanction letter of the loans are placed at page no. 119-126 of the paper book. Share to the extent of 95% in the property was recorded by the assessee in its books of the account under the head "inventories" and the corresponding loan liability was also recorded. Repair/renovation and furnishing work of existing building was also carried out which enhanced the cost of the inventories to Rs.232 crores. Thereafter, in October 2014, the assessee entered into a leave and license agreement with Mr. Rajiv Rattan to let out its share of property to him for a monthly fair rentals of Rs. 90 lakhs per month. Copy of leave and license agreement along with its addendum is placed at pages 99-112 of the paper book. The rent received from Mr. Rattan was credited into the profit and loss account and offered to tax as business income and the corresponding interest and other expenses were claimed as deduction. The Assessing

Officer completed the assessment on 30.12.2017 u/s 143(3) of the Act treating the rental income as income from other sources and disallowed all the expenses. Thereby assessing the income of the assessee at Rs.5,38,94,260/- as against the returned loss of Rs.7,07,00,678/-.

27. On appeal, the Ld. Commissioner of Income Tax (Appeals) vide his order dated 15.07.2019 granted relief to the assessee after considering the facts of the case and submissions of the assessee observing as under:

> *"5.2 I have considered the facts of the case, basis of addition made by the AO and submissions of the appellant. It is observed that in the assessment order passed by the AO, he has relied upon various provisions of the Prohibition of Benami Transactions Act, 1988 ("Benami Act"). Before proceeding to adjudicate on the issue of Benami Transaction, it is relevant to note that the order has been passed by the AO under the provisions of Income Tax Act, 1961. However, as the AO has made observations on the transaction undertaken by the appellant by making reference to the provisions of the Benami Act, same are dealt with below:*
>
> *5.3 In the assessment order, the AO has attempted to state that the property purchased by the appellant company was a benami transction, that the appellant company was a benamidar and the beneficial owner was Sh. Rajiv Rattan. In order to do so, the AO has relied upon various news clippings, extracts of which have been reproduced in the assessment order. These news clippings contain snippets of purchase of property on Amrita Shergill Marg by Sh. Rajiv Rattan. In this regard, it is noteworthy that the purchase of property sh. Rajiv Rattan is not inaccurate, as he is one of the joint owners of the property as per the registered sale deed. This fact is disclosed by the appellant company itself in its books of accounts. Further, the AO has also reiterated the source of the purchase consideration, which is already disclosed in the books of accounts of the appellant and also submitted during assessment proceedings.*
>
> *Basis the above, the AO has attempted to classify the purchase of the property by the appellant company as a*

*Benami Transaction. However, a perusal of the Benami Act shows that there exist two basic premises on which a transaction is to be evaluated.*

*Section 2(9) of the Benami Act defines a Benami Transaction as follows:*

*"benami transaction" means, -*

*(A) A transaction or an arrangement-*

*(a) Where a property is transferred to , or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and*

*(b) The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,*

*Except when the property is held by-*

*(i) A Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;*

*(ii) A person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;*

*(iii) Any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;*

*(iv) Any person in the name of his brother or sister or lineal ascendant or*

*descendant, where the names of brother or sister or lineal ascendant or descendent and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or*

*(B) A transaction or an arrangement in respect of a property carried out or made in a fictitious name; or*

*(C) A transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;*

*(D) A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious."*

*5.4 A perusal of the above definition shows that for a property to be classified as Benami, the first premise is the payment of purchase consideration by "Another Person" i.e. a person other than the person in whose name the property is held. In the appellant's case, the AO's allegation is that part of the purchase consideration was indirectly paid by Sh. Rajiv Rattan, who is indeed the joint owner of the property. Thus, the first basic premise clearly fails.*

*5.5 A perusal of the remaining clauses of Section 2(9) of the Benami Act show that the second premise to classify a transaction as Benami is the non disclosure of facts or source of consideration or creation of fictitious ownership which shows the real transaction to be different from the apparent transaction. A perusal of the assessment order shows that the AO has reiterated the source of purchase consideration as disclosed by the appellant company in its books of accounts and as produced during assessment proceedings. Thus, the source of purchase consideration as noted by the AO is the same as what has been explained and accounted for by the appellant company. As stated above, the facts regarding ownership of the property by the appellant company and Sh. Rajiv Rattan are also disclosed in the registered sale deed. The proof of ownership of significant portion of the property by the appellant company is not only apparent directly from the sale deed but also apparent indirectly from the risk of default and repossession of the property, as in case of default*

*of loan (constituting 70% of purchase consideration) the said property (in which the appellant company owns 95% share) would be repossessed by the bank. The role of Sh. Rajiv Rattan in the documents of loans, his control over the parent company of the appellant are also already documented in the books of accounts are in line with the role of a joint purchaser or property and have been justified in the written submissions by the appellant company. Further, there is no requirement for Sh. Rajiv Rattan being a substantial shareholder of the holding company, to become a director in the appellant company. Thus, there are no undisclosed facts or undisclosed transactions, or involvement of any parties apart from the parties to the transaction and hence the second basic premise also fails.*

*In the absence of satisfaction of the very basic premises on which a transaction may be evaluated as Benami Transaction, the provisions of Benami Act are clearly not attracted.*

*5.6 Further, Hon'ble Apex Court in the case of Mangathai Ammal vs. Rajeswari & Others (CIVIL APPEAL NO. 4805 OF 2019) (Arising out of SLP(C) No. 29642 of 2016) and in various other cases have identified broad parameters which need to be satisfied to classify a transaction to be a benami transaction. It has also been clearly spelt out that the onus of satisfying such parameters rests solely upon the person alleging the transaction to be a benami transaction, and such onus must be duly discharged on the basis of actual evidence on record, and not on the basis of surmises and conjectures. These parameters are discussed below:*

*I. <u>The source from which the purchase money came</u>:*

*5.7 The source of purchase consideration is an undisputed fact as reproduced above. As submitted by the appellant and verified by the AO, approximately 70% of the purchase consideration was borrowed by the appellant company from a bank against the hypothecation of the said property (in which the appellant company itself owns 95%) and the remaining consideration was borrowed by the appellant company from its parent company and from issuance of debentures. As rightly pointed out by the appellant in its submissions, the significant risk of default was always borne by the appellant company who was the legal owner of 95% of the said property. Hence, the source of purchase consideration as stated by the AO is already documented by the appellant company.*

*Even if the purchase consideration was partly indirectly paid by Sh. Rajiv Rattan on the pretext that he exercises control over the appellant company's holding company, then it was disclosed in respective books of accounts. Further, a perusal of the title deed clearly shows that Sh. Rajiv Rattan is very much a part to the transaction, as he owns a share in the property. Any payment made by him either directly or indirectly does not make the transaction a benami transaction, as the money has not been provided by an outsider, but by a party to the transaction.*

*It is also noteworthy that Hon'ble Apex Court in the case of P. Leelavathi vs. V. Shankarnarayana Rao (2019) 6 SCALE 112 has held that even if payment is made by an outsider, that itself cannot be the sole consideration to classify the transaction as Benami. In the absence of any such evidence brought on record by the AO, this parameter is not satisfied.*

*II. <u>The nature and possession of the property, after the purchase</u>:*

*Here again, it is an undisputed fact that the property is let out for lease rent by the appellant to Sh. Rajiv Rattan. However, the ownership and proprietary possession of the property rests 95% with the appellant company and 5% with Sh. Rajiv Rattan, as per the registered sale deed. As per the terms of the leave and license agreement the temporary possession of the property rests with Sh. Rajiv Rattan in the capacity of a tenant, for which fair monthly rental of Rs.90,00,000/- is paid by him. Thus, the possession of Sh. Rajiv Rattan is for fair consideration, and not without consideration. In case the transaction was benami in nature, then the possession would rest with the beneficial owner without payment of fair consideration. It is noteworthy that possession under the leave and license agreement does not replace title, as title of the property as per statutory records i.e. sale deed documents the legal share of respective parties. Further, the AO has not brought out any evidence to prove that the said property was not in possession of the legal owners. Hence, this parameter is not satisfied.*

*III. <u>Motive, if any, for giving the transaction a benami colour</u>:*

*5.8 A perusal of the assessment order shows that the AO has not brought out any motive for giving the transaction a benami colour. Various allegations have been made by the AO on apparently incorrect interpretation of facts, without bringing*

*out any motive for doing so. The sourcing of purchase consideration, purchasing the property, documenting title of ownership in the registered sale deed, execution of lease rent agreement and earning of market lease rent therefrom are all documented by the appellant in its books of accounts. Thus, reiteration of these facts does not prove any motive to give the transaction a benami colour.*

*5.9 Further, in the assessment order, the AO has stated that the appellant could not justify any reason for jointly purchasing the property with Sh. Rajiv Rattan, and hence treated the property as Benami. In this regard, it is noteworthy that the decision to purchase the property either individually or jointly with someone is solely a commercial decision, the expediency of which rests solely with the appellant company. Various courts and tribunals have held that the AO does not have jurisdiction to question the commercial expediency of a particular transaction.*

*5.10 As regards the AO's objections to the payment of rent by Sh. Rajiv Rattan while the property is not occupied by him, is also irrelevant and ignorant of facts. The appellant company has submitted that some construction work was being undertaken at the property, due to which it was not yet occupied by Sh. Rajiv Rattan. In doing so, the AO has ignored the fact that fair market lease rent is being paid by Sh. Rajiv Rattan to the appellant company. The decision of occupying the property rests solely with Sh. Rajiv Rattan. The decision of letting out the property while some construction work is being done is the mutual decision and understanding between the lessor and lessee.*

*5.11 As regards, the observation of the AO that the leave and license agreement has been enacted between the appellant company and Sh. Rajiv Rattan to claim the expenditure of interest on home loan, which would have otherwise not been allowed if the property would have been purchased only be Sh. Rajiv Rattan, it is noted that the AO has ignored that in the later case, Sh. Rajiv Rattan would also not be paying rental income to the appellant company.*

*Further, the appellant has already submitted a tablular comparison of tax liabilities in both cases, which clearly show that there is no loss of revenue in the former scenario. It must also be noted that property taxes are higher in cases where properties are let out for rent. Thus, the overall tax*

*liability is certainly higher in case of letting out of properties as compared to self occupancy.*

*Here also, the parameter is not satisfied.*

*IV. The position of the parties and the relationship, if any, between the claimant and the alleged benamidar:*

*The relationship between the appellant company and Sh. Rajiv Rattan is duly disclosed in its books of accounts, which have been duly audited by independent statutory auditors. The nature of relationship and position of parties are duly disclosed in books of accounts, which are submitted before Ministry of Corporate Affairs and before Income Tax Authorities. Thus, the relationship along with details of transaction are duly disclosed. Further, there is no illegality or prohibition of raising funds by a company from its parent company. Here also, the parameter is not satisfied.*

*V. The custody of the title deeds after the sale; and*

*Although the AO has not raised any questions or made any observations in this regard, the appellant company has submitted that the company being the significant owner of the property maintains custody of the title deeds after the sale. This fact has neither been examined by the AO nor objected to by the AO. Hence, this parameter is also not satisfied.*

*VI. The conduct of the parties concerned in dealing with the property after the sale*

*5.12 As submitted during the assessment proceedings and accepted by the AO, the property has been leased out by the appellant to Sh. Rajiv Rattan from whom the appellant continues to earn lease rent till date. The AO has not brought out any evidence on record to show that the possession of property rests with anyone apart from the legal owners of the property. As Sh. Rajiv Rattan is a legal owner of part of the property, possession of the property by him under the lease agreement for payment of due consideration of lease rental cannot be treated as a colourable arrangement. Thus, this parameter is also not satisfied.*

*5.13 Hence, none of the parameters established by the Hon'ble Apex Court have been satisfied by the observations made by the AO in the assessment order. At this juncture, it is noticeable that the Hon'ble Apex Court has clearly laid*

*down that the onus of proving a transaction to be benami rests solely upon the person alleging it to be a benami transaction. Such onus is to be discharged only by evidence and documents placed on record and not by conjectures or surmises.*

*5.14 In light of the above requirements, it is evident that neither the parameters for classifying a transaction to be Benami are satisfied, nor has the AO discharged his onus of bringing sufficient evidence on record to substantiate his observations. Hence, the transaction entered into by the appellant company cannot be classified as Benami Transaction and accordingly, it is evident that the transaction of purchase of property and letting it out for business purpose was bona-fide and for the purpose of business. Hence, the said transaction cannot be treated as benami in nature.*

*5.15 The remaining observations made by the AO in the assessment order are hereby dealt with as per the provisions of the Income Tax Act, 1961:*

*A. As regards the observation made by the AO that the leave and license agreement is a colourable device to hide the real ownership of the entire property by Sh. Rajiv Rattan, it is noted that the AO has not brought any basis or motive on record to do so. It is not the case that the leave and license agreement is made for a miniscule amount, which is also not being paid by the lessee. The market rate of rent is regularly being paid by Sh. Rajiv Rattan to the appellant company and is duly recorded as business income in the books of accounts of the appellant company. Further, the AO has not brought out any loss of tax to the Revenue in the present arrangement vis-à-vis the arrangement proposed by the AO wherein the entire property would have been owned and held by Sh. Rajiv Rattan. This has also been tabulated by the appellant in its written submissions.*

*B. The AO has made certain observations regarding neither treating the lease rent earned by the appellant as business income, nor as income from house property, and instead treating it as name lending under Income from Other Sources. As discussed above, the property purchased by the appellant company is not a benami transaction, and the bona-fides of the transaction have been duly disclosed in its books of accounts and before the AO. The observations made by the AO for not*

*treating the lease rent received as business income, are dealt with below:*

C. *The AO has noted that the property has been purchased by the appellant as a front entity for Sh. Rajiv Rattan. The findings on the merits of the transaction of purchase of said property have been documented in earlier paragraphs, basis which the bona-fides of the transaction have been clearly established. As submitted by the appellant company, its objectives include infrastructure projects, real estate projects, including their construction, letting out etc. Hence, the activity of purchasing the property and letting it out falls within the ambit of business activities for which the appellant company was incorporated. Thus, the property purchased by the appellant company is rightly shown in its books of accounts as inventory, and income thereof is rightly treated as business income.*

D. *The AO has stated that home loans are never granted for commercial properties and therefore, property purchased from home loan cannot be treated as inventory. In doing so, the AO has perhaps ignored the fact that the property purchased by the appellant company is a residential property. There is no bar in the Income Tax Act, 1961 that a company cannot purchase residential house property. As rightly pointed out by the appellant, various builders and construction companies build residential houses across India. Thus, the residential house property purchased by the appellant company has rightly been shown as inventory in the books of accounts of the appellant company.*

E. *The AO has also raised objections on the issuance of home loan for purchase of the said property and that the loan sanction letter includes the name of Sh. Rajiv Rattan. In this regard, it is noteworthy that Sh. Rajiv Rattan is also a joint purchaser of the property, and is very well entitled to apply for a home loan. As per page 5 of the assessment order, the AO has himself noted that the loan documents also mention the name of the appellant company as the co-applicant. Thus, the loan documents mention the name of both legal owners of the property. Further, it is common parlance that mention of the appellant company as the co-applicant or the main*

*applicant does not effect its legal title, as documented in the registered sale deed.*

*F. The AO has also stated that the ownership of property in joint name creates restriction on sale, and hence cannot be shown as inventory. This objection is not only ill founded but also incorrect and erroneous. The appellant company may decide to purchase any share in property and show its relevant share as inventory in its books of accounts. The provisions of Income Tax Act do not prohibit disclosure of partly owned property as Inventory. The appellant company is free to sell or otherwise use its share in property as it commercially deems fit. Further, the possibility of a future conflict which may or may not arise if the joint owner of the property may or may not agree to sell his share is yet again irrelevant and cannot be used to discredit the bona fide of the transaction undertaken by the appellant company.*

*G. Lastly, the decision of Hon'ble Supreme Court relied upon by the AO in the case of Sultan Brothers (P) Ltd. has already been distinguished by the Hon'ble Apex Court in the case of M/s Chennai Properties and Investment Ltd. vs. CIT (373 ITR 673).*

*5.16 The AO has also stated that the lease rent agreement was entered on 01.10.2014 and thus the appellant should have earned rent for 6 months, whereas it has shown rent for 5 months, and made an addition of Rs.90,00,000/- to the income from other sources. It is the claim of the appellant that the AO did not raise this query during the assessment proceedings, thereby denying the appellant the opportunity of responding to the query or furnishing any evidence.*

*The above claim when verified from the contents of the impugned assessment order, is found to be acceptable in as much as though the AO has discussed in details about various observations, it has not indicated anywhere regarding calling for details, documents or clarification with respect to short accounting of rent for five months only against the impugned observation for six months. Under this premises the leave and license agreement including addendum dated 13.11.2014 being filed by the appellant before me is accepted for adjudication as the same is not falling in the category of new evidence under Rule 46A of the I.T. Rules.*

*As stated above, the appellant company had submitted that the Leave and License Agreement was amended by way of addendum dated 13.11.2014, whereby certain terms of the agreement were modified and it was made effective from 01.11.2014. This fact has been duly examined and verified. Hence, the appellant company had rightly earned lease rent for a period of 5 months in the subject assessment year.*

*5.17 In the assessment order, the AO has also disallowed interest and processing charges of Rs.11,58,12,598/- claimed as business expenses by the appellant. The reasons for disallowance have been stated as the property not being commercial in nature and not being used for business. As noted above, the property was let out by the appellant as per its defined business objectives and lease rent earned by the appellant is rightly disclosed as business income, these expenses were rightly claimed as business expenditure incurred in order to earn such business income.*

*The issue of property being residential in nature has already been dealt with in earlier paragraphs and is not being reiterated herewith. It is admitted by the AO that these expenses pertain to the property purchased by the appellant. It is also noted that the said property is duly shown as inventory by the appellant in its books of accounts. Thus, the interest and processing charges having been incurred wholly and exclusively for the purpose of its business, are thus allowed. The disallowance of Rs. 11,58,12,598/- is hereby deleted.*

*The issue of disallowance of interest and processing charges of Rs.11,58,12,598/- from the income from other sources becomes infructuous as the income has rightly been offered to tax as business income by the appellant"*

28. We observed that the AO has relied on the news clippings to state that Sh. Rajiv Rattan purchased the property, purchase of property by Rajiv Rattan is not inaccurate, as he is one of the joint owners of the property as per the registered sale deed. This fact is disclosed by the assessee company itself in its books of accounts. Further, the AO has also reiterated the source of the purchase consideration, which is already

disclosed in the books of accounts of the assessee company. A property to be classified as benami, the first premise is the payments of purchase consideration by "ANOTHER PERSON" i.e., a person other than the person in whose name the property is held. In the assessee's case, the AO's allegation is part of the purchase consideration was indirectly paid by Sh. Rajiv Rattan, who is indeed the joint owner of the property. Thus, the first basic premise clearly fails. Source of purchase consideration and ownership noted by the AO is same as disclosed by the assessee. Assessee's ownership in the property is apparent not only from sale deed but also from the risk of default and repossession of the property, in case of default of loan. Relationship of Rajiv Rattan is also disclosed and in the documents and books of account. There are no undisclosed transaction, fact or involvement of any party apart from the parties to the transaction. Hence, the second basic premise also fails. Source of purchase consideration is an undisputed fact. 70% of purchase consideration was borrowed by the assessee from bank against hypothecation of the property and remaining was borrowed from holding company and issue of debentures. Even if, the consideration was partly or indirectly paid by Rajiv Rattan, it was disclosed in the books of respective companies and he is party to the transaction. Any payment made by him does not make transaction benami. The property was let out to Sh. Rajiv Rattan for monthly fair rentals and not without consideration. Leave and License does not replace the title. Allegations

have been made on assumptions, apparently incorrect interpretation of facts and without bringing out any motive for doing so. Decision to purchase the property either individually or jointly with someone is solely a commercial decision, the expediency of which rests solely with assessee company. Payment of rent by Sh. Rajiv Rattan while property is not occupied by him is irrelevant and ignorant of fact that fair market lease rentals were paid by him. Decision to occupy property rests solely with Sh. Rajiv Rattan. Allegation that the leave and license agreement was enacted to claim interest expense is ignorant of fact that if there was no agreement, Sh. Rajiv Rattan would also not be paying rental income. The AO has not brought out any evidence on record to show that the possession of the property rests with anyone else apart from the legal owners of the property. Onus of proving transaction to be benami rests solely upon the person alleging it to be a benami transaction as held by the Hon'ble Supreme Court in the cases of Mangathai Ammal vs. Rajeswari & Others (Civil Appeal No. 4805 of 2019) and P. Leelavathi vs. V. Shankarnarayana Rao (2019) 6 SCALE 112. Hence, the transaction entered into by the assessee company cannot be classified as benami transaction and accordingly transaction of purchase of property and letting it out for business purpose was bona fide. Considering the objects of the assessee company, the purchase of property is rightly shown in the books as "inventory". Since, Rajiv Rattan is also a joint purchaser, he is entitled to apply home loan. Mention of appellant's name as co-

appellant does not effect its legal title. The provisions of Income Tax Act does not prohibit disclosure of partly owned property as inventory.

29. The assessee company had complete freedom and right to terminate the leave and license agreement. Relevant terms and conditions mentioned in the agreement are reproduced as under:

*"5.1.2 That the Licensor agrees that in case the Licensed Premises are transferred/sold by him to a prospective buyer takes place during the term of this Agreement or renewal thereof then in that event a Deed of Adherence shall be signed accepting all the terms and conditions of this agreement.*

***7. Termination***

*7.1 That this Agreement shall automatically terminate on the expiry of the period i.e. 11 months, if not extended further with mutual consent of both the parties and the Licensee shall vacate the Licensed Premises simultaneous to which the Licensor shall return the Interest Free Refundable Security Deposit to the Licensee.*

*7.2 The Licensor shall be entitled to terminate the Agreement only in the event Licensee fails to pay the consideration to the Licensor in terms of the Agreement for a consecutive period three months and the Licensee fails to rectify the same within of 45 days of the notice thereof being served by the Licensor on the Licensee.*

*7.2.1 Notwithstanding, anything to the contrary the Agreement can be terminated by the Licensee without giving any notice under the following circumstances:*

*(i) The Licensor fails to render necessary co-operation and assistance as may be required from time to time in performance of any of the provisions of the Agreement.*

*(ii) Failure of the Licensor in fulfilling any of its obligations under this Agreement and/or breach of any of the provisions of this Agreement.*

*(iii) If any representation and/or warranty of the Licensor becomes, or is found to have become false, or is false, or is not fulfilled.*

*(iv) In the event Licensor sells the Licensed Premises or any part thereof to any third party in violation of the terms of this Agreement.*

*(v) Except for the circumstances mentioned above the Agreement can be terminated by the either party by giving three month's notice.*

***7.2.2 <u>Consequences of termination:</u>***

*(i) Each party shall immediately pay to the other, full amount of monies as due to the other as per the provisions of this Agreement.*

*(ii) Licensee shall, on the date of termination of this Agreement for any reason whatsoever, be entitled to remove all equipments. articles, items and fit outs in the Licensed Premises that are owned by the Licensee, within a period of 90 days of the termination without any liability to pay any amount towards consideration or any other fee, damages or charges in respect of the use and occupation of the Licensed Premises for the purpose of the aforesaid removal of equipments, articles, items, assets and fit-outs and the Licensor shall not raise any hindrance/objection to the same".*

30. A benami transaction is one where the person in whose name the property vests is not the real owner and the consideration for such property is provided by some other person for whose benefit such property is acquired by the ostensible owner. In this case the ownership pattern is clear, in as much as, 95% share in the property belongs to the assessee company while balance 5% share belongs to Shri Rajiv Rattan. Five percent of the consideration has been reimbursed by Sri Rajiv Rattan to the assessee company and the proof of the same is at page 185 of the paper book. Having acquired the property, the assessee company could have given it on rent to anybody and would have received the fair market rentals of Rs. 90 lakhs or around per month. By giving it to Shri Rajiv

Rattan, nothing turns against the assessee company. More so, because the arrangement is a leave and license and that too only for a period of 10 months. It is not even a rent agreement which could have been for a much longer period or even for an indefinite period. It is not a case where rentals are very nominal and in fact the rentals agreed between the parties are at arm's length.

31. The assessee company has duly recorded the asset as well as the liabilities being the source of acquisition of the property in its audited books of account. With these facts, it cannot be said that the assessee company is not the real owner of the property. It is the company which is enjoying the benefits of the property to the extent of its share in it by way of a rent and the ownership continues to vests with it. The title deed of the property is with the bank and as and when the loan is repaid, the same shall come back to the assessee company and to Shri Rajiv Rattan signifying their share of 95% and 5% respectively. We would also like to reproduce herewith the relevant portion of the judgment of the **Hon'ble Supreme Court** in the case of **Mrs. Bacha F. Guzdar (271 ITR 1) (Supreme Court)** as under:

> *"There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the articles of association, that the profits or any portion thereof should be distributed*

*by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole."*

32. The above judgment recognizes the concept of a company being a separate legal entity from its shareholders. The shareholders are not the owners of the assets of the company. They are only entitled to dividends declared out of the profits earned by the company as per their percentage of holding in the company. Only on dissolution of the company, after meeting all liabilities, the assets of the company are distributed between the shareholders in their shareholding ratio. Hence, it cannot be said that in the case of the company, the shareholders are the owners of its assets.

33. Besides, section 2(62) of the Companies Act 2013, recognizes the existence of a one person company. There is also distinction between a single shareholder and the company in case of "one person company". The Income Tax Act also in the definition of "person" under section 2(31) recognizes "company" as separate legal entity being a person which is distinct from the "individual" shareholder.

34. To the query of the ld. DR as to the source of repairs/renovations of the property, the ld. counsel had also brought in the fact that the same were met by the assessee company which also shows that the assessee company is seeking to maintain and protect its assets out of its own resources. On a query raised by the Bench, the revenue was unable

to show that there was any intention of the assessee to defraud the Department. There can be no allegation as to the intention of the parties to enter into any sham transaction. Under these circumstances, we hold that the transaction cannot be said to be Benami.

35. One of the main objects of the assessee company is to rent and manage properties. The said objects are reproduced here as under:

> *"(A) THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:*
>
> *1. .....*
>
> *2. To construct, acquire, hold/sell Builders, buildings, tenements and such other moveable and immovable Builders and to rent, let on hire and manage them and to act as real estate agent and immovable property dealers".*

36. The Assessing Officer has alleged that the rent received from Shri Rajiv Rattan on account of leave and license agreement is actually the fee charged by the assessee company from Shri Rajiv Ratan for lending its name for the purchase of property and therefore income has to be taxed under head income from other sources. We are not in agreement with the action of the Assessing Officer in treating the rental income as income from name lending for the benefit of other person. The entire sequence of the transaction from acquisition of property to giving on rent at the fair market value is very clear, entered through banking channels; is at arm's length and is backed by duly enforceable agreements. We have already held that this transaction is not Benami as alleged by

Assessing Officer. Hence, the rent received cannot be said to be income from other sources. The limited question before us is as to whether the income recorded and offered by the assessee company is income from business since rent constitutes its business activity or it is income from other sources.

37. The Hon'ble Supreme Court in the case of Rayala Corporation Pvt. Ltd. (386 ITR 500) held as under: -

> *"**10**. Submissions made by the Ld. 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 aspect, we do not find any substance in what has been submitted by the Ld. Counsel appearing for the Revenue.*
>
> ***11**. The judgment relied upon by the Ld. 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.*
>
> ***12**. In view of the law laid down by this Court in the case of Chennai Properties & Investment Ltd. (supra) and looking at the facts of these appeals, in our opinion, the High Court was not correct while deciding that the income of the assessee should be treated as Income from House Property."*

38. In the case of Chennai Properties & Investments Ltd. Vs. CIT (373 ITR 673) the Hon'ble Apex Court considering the Constitution Bench judgment in the case of Sultan Brothers Pvt. Ltd. vs. CIT (51 ITR 353) held as under:

*"**4**. We have heard the Ld. Counsel for the parties on the aforesaid issue. Before we narrate the legal principle that needs to be applied to give the answer to the aforesaid question, we would like to recapitulate some seminal features of the present case.*

***5**. The Memorandum of Association of the appellant-company which is placed on record mentions main objects as well as incidental or ancillary objects in clause III. (A) and (B) respectively. The main object of the appellant company is to acquire and hold the properties known as "Chennai House" and "Firhavin Estte" both in Chennai and to let out those properties as well as make advances upon the security of lands and buildings or other properties or any interest therein. What we emphasize is that holding the aforesaid properties and earning income by letting out those properties is the main objective of the company. It may further be recorded that in the return that was filed, entire income which accrued and was assessed in the said return was from letting out of these properties. It is so recorded and accepted by the Assessing Officer himself in his order.*

***6**. It transpires that the return of a total income of Rs.2,44,030/- was filed for the assessment year in question that is AY 1983-84 and the entire income was through letting out of the aforesaid two properties namely, "Chennai House" and "Firhavin Estate". Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.*

***7**. With this background, we first refer to the judgment of this Court in East India Housing & Land Development Trust Ltd.'s case (supra) which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the*

*house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.*

***8**. Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd. (supra), we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. vs. CIT (1962) 44 ITR 362 (SC). That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorized/classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position of law, ultimately, is summed up in the following words: -*

> *"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."*

***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.'s case (supra) squarely applies to the facts of the present case.*

***10***. *No doubt in Sultan Brothers (P) Ltd.'s case (supra), 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 a 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: -*

> *"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 by 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 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 of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."***

39. The Hon'ble Delhi High Court in the case of Agya Ram vs. CIT (supra) (386 ITR 545) (Del.) held as under:

*"21. Questions (ii) and (iii) are next taken together for consideration. The factors that ought to have been taken note of by the ITAT were that the Assessee had consistently shown the licence fee as business income from AY 1982-83 onwards. The return for AY 1982-83 was picked up for scrutiny and an assessment order passed under Section 143(3) of the Act accepting the stand of the Assessee that the licence fee was in the nature of business income. This stand was continued by the Assessee for all the AYs that followed, including the AYs in question. As already noticed, the CIT(A) elaborately discussed the clauses of the licence deed to come to the conclusion that what was being collected by the Assessee was in fact a licence fee and not rent. The second factor was that the Assessee virtually had no business since 1982-83 and his only source of income by way of business was the licence fee that was collected. The ITAT has in the impugned order not given any reason for disagreeing with the CIT (A) and has simply confirmed the order of the AO that the licence fee constituted income from house property and not business income.*

*22. Learned counsel for the Assessee referred to the decision of the Supreme Court in Universal Plast Ltd. v. Commissioner of Income-Tax (1999) 237 ITR 454(SC) where it is held that no precise test can be laid down to ascertain whether income received by an Assessee from licensing or letting out of asset would fall under the head profits and gains of business or profession since it was a mixed question of law and fact and has to be determined from the point of*

*view of a businessman in that business on the facts and in the circumstances of each case.*

*23. In Chennai Properties & Investments Ltd. v. Commissioner of Income Tax (2015) 373 ITR 673 (SC), the Court accepted the plea of the Assessee in that case that where the main line of business was letting of property then the income therefrom should not be treated as „income from house property" but „business income".*

*24. In Associated Hotels of India Ltd. v. R.N. Kapoor AIR 1959 SC 1262, a distinction was drawn between a licence and a lease. If the document gives only a right to use the property while it remains in the possession and control of the owner thereof it will be a licence. Where the legal possession continues therefore to be with the owner with the licencee making use of the property it could still only be a licence.*

*25. In Quadarat Ullah v. Municipal Board, Bareilly AIR 1974 SC 396, it was observed "if an interest in immovable property, entitling the transferee to enjoyment, is created, it is a lease; if permission to use land without right to exclusive possession is alone granted, a licence is the legal result."*

*26. In the facts and circumstances of the present case, in light of the specific clauses of the licence deed, the Court is satisfied that the income earned by the Assessee from the licence fee could not be characterised as rent and, therefore, income from house property. The Court is of the view that the AO and the ITAT were in error in coming to a contrary conclusion. They appear to have overlooked that the Assessee had consistently treated the licence fees collected as business income since AY 1982-83. In Commissioner of Income Tax v. Neo Poly Pack (P) Ltd. (2000) 245 ITR 492 (Del) in similar circumstances, applying the rule of consistency, the Court declined to frame a question of law urged by the Revenue that the licence fee earned by the owner of the property ought to be treated as income from house property and not business income.*

*27. For all the aforementioned reasons, Question Nos. (ii) and (iii) are also answered in the negative i.e. in favour of the Assessee and against the Revenue. The impugned order of the ITAT and the corresponding order of the AO on the above issues for the AYs in question are set aside."*

40. The Hon'ble Calcutta High Court in the case of Shyam Burlap Co. Ltd. vs. CIT (supra) held as under: -

> *"It is significant that the Assessing Officer and the Tribunal had rejected the contention of the appellant for treating the rental income as income from business as it in the preceding years had throughout declared it as income from house property and there was no change in the facts of the case in this assessment year. Then the issue is whether in the earlier assessment years whether assessee had declared the rental income as business income and was it considered in the light of the Memorandum. The answer is in the negative. Though as noted, in earlier assessment years the appellant had shown rental income as "income from house property", however, in this assessment year it has claimed rental income as business income, in view of the object as set out in clause 4 of the memorandum. Though before the Tribunal the Memorandum was relied on to put forward the case that the income was part of the business and payment of compensation was to earn higher income, it was not at all considered. Since in this assessment year the appellant had claimed rental income as business income, and as previously there was no adjudication or decision considering the Memorandum, and as being the owner of the premises, payment of compensation - the expenditure - was wholly and exclusively for commercial expediency. As the judgment in Chennai Properties and Investments Ltd. (supra) had held "that the objects of the company must also be kept in view to interpret the activities. (paragraph 8), the Tribunal was not justified in disallowing the claim of appellant. In the said circumstances the principle of consistency cannot be made applicable. Again, the Assessing Officer and the Tribunal had rejected the claim of the appellant as there was no change in the facts of the case during the relevant assessment year. Though the appellant had claimed that the rental income earned by the appellant assessable under the heard "business" and the compensation of Rs.53,50,000/- paid by it for obtaining possession from lessee/tenant, so as to earn a higher income, as an admissible revenue deduction, in spite of Memorandum permitting the appellant to carry on business by letting out properties, the Assessing Officer and the Tribunal ruled otherwise."*

41. The Mumbai Bench of the Tribunal in the case of Nisarg Realtors Pvt. Ltd. (195 ITD 402) held as under:

> *"Therefore, there is no doubt that assessee has object of renting out of the properties as per its object in Memorandum of Association. This is also not in dispute before the lower authorities but the lower authorities have held that character of income is not altered because it is received by a company formed with the object of real estate development etc. Ld. Revenue authorities were of the view that as the income is subject to TDS u/s 1941 of the Act characterized as rent, it is chargeable to tax under the head income from house property. We find that provisions of section 1941 of the Act do not determine the characterization of income in the hands of the recipient. In the present case, the decision of the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. (supra) and Rayala Corporation (P) Ltd. (supra) covers the issue in favour of the assessee. Further Hon'ble Bombay High Court in Pr. CIT Vs. City Centre Mall Nashik (P) Ltd. (2020) 121 taxmann.com 87/424 ITR 85 has also held that when main objects of assessee, over and above real estate development as main clause has renting of property therein and assessee is also providing certain other services as mentioned in Annexure B of leave and license agreement, income derived is to be taxed as Business Income and not income from house property. Therefore, looking at the facts of the case and the decision of Hon'ble Supreme Court and Hon'ble Bombay High Court, we hold that income from property earned by the assessee amounting to Rs.3,38,46,924/- is chargeable to tax as business income and not as income from house property. Accordingly, we direct the Ld. Assessing Officer to tax the above income under the head of business income. Accordingly, ground nos. 1 and 2 of the appeal are allowed."*

42. As could be seen from MOA one of the main objects of the assessee company is to construct, acquire hold buildings, tenements and such other movable and immovable property and to rent let on hire and managed immovable property. Therefore, we noticed that undoubtedly the main objects of the assessee company provides to carrying on the

business of letting out of properties and the assessee has let out its property during the year and earned rental income of Rs.4,50,00,000/- which was offered to tax under the head "Income from Business". Applying the ratio of the decisions of the Hon'ble Supreme Court in the case of Rayale Corporation Ltd. (supra) and Chennai Properties Ltd. (supra) and also the other decisions referred to above, we hold that the income earned by the assessee from letting out of property is assessable under the head "Income from Business". The decision of Sultan Brother relied upon by the Ld. AO has already been distinguished by the Apex Court in Chennai Properties (373 ITR 673). As noted above, the property was let out by the assessee as per defined business objectives and lease rent earned by the assessee is rightly disclosed as business income. As we have held that the income from letting out of property is assessable under the head "Income from Business" the expenses incurred by the assessee towards interest and processing charges are allowable as deduction u/s 37(1) of the Act. We sustain the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.

43. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 02/12/2022

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|---|---|
| Sd/- | Sd/- |
| **(G.S. PANNU)** | **(C.N. PRASAD)** |
| **PRESIDENT** | **JUDICIAL MEMBER** |

Dated: 02.12.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**