IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

INCOME TAX APPEAL NO.567 OF 2015

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX
C R BUILDINGS
QUEENS ROAD
BANGALORE

2. DY. COMMISSIONER OF INCOME TAX
CIRCLE 4(1)
BANGALORE

...APPELLANTS

(BY SRI.E.I.SANMATHI, ADVOCATE)

AND:

MR.SYED MOHAMMED SHABBIR
NO.4, III FLOOR
ZENITH CHAMBERS
ANJANEYA TEMPLE STREET
OFF LALBAGH ROAD
WILSON GARDEN

HOSUR ROAD
BANGALORE - 560027
PAN: ALEPS4940C

...RESPONDENT

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:30/04/2015 PASSED IN ITA NO.1264/BANG/2014, FOR THE ASSESSMENT YEAR 2005-2006 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED: 30/04/2015 PASSED BY THE ITAT, 'B' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. ITA NO. 1264/BANG/2014 FOR ASSESSMENT PERIOD 2005-06 AS SOUGHT FOR IN THIS APPEAL AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THIS ITA COMING ON FOR ADMISSION THIS DAY, ***JAYANT PATEL J***., DELIVERED THE FOLLOWING:

JUDGMENT

The appellants-Revenue have preferred the present appeal by raising the following substantial questions of law:

> *"Whether on the facts and in the circumstances of the case, the Tribunal erred in holding that the income of the assessee has to be treated income from house property and not as income from business even when the assessing authority rightly treated income of assessee as business income since assessee had systematically involved in the business of letting out industrial sheds with all facilities and carried out composite activity of constructing sheds and letting out for business purpose alone which was sole intention of assessee?"*

2. We have heard Mr.E.I.Sanmathi, learned Counsel appearing for the appellants-Revenue.

3. The contention raised on behalf of the appellants-Revenue was that as the Assessing Officer and the appellate authority both found that the regular

activity of the assessee was construction and letting out industrial sheds and the rental income derived from the industrial sheds could not be treated as the 'income from house property' and it can only be considered as 'income from business'. He also submitted that the assessee has also taken loan for construction of another property and the interest is also debited. Under these circumstances, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for the sake of brevity) ought not to have held that the income is to be treated as the 'income from house property' and not the 'business income'.

4. The learned Counsel relied upon the decision of this Court in case of ***Commissioner of Income Tax Vs. Velankani Information Systems (P.) Ltd.*** reported at **(2013) 218 TAXMAN 0088 (Karnataka)** and another decision of the Apex Court in the case of ***Chennai***

Properties & Investments Ltd. Vs. Commissioner of Income Tax reported at **(2015) 373 ITR 673 (SC)**.

5. We may record that the Tribunal while dealing with the aforesaid aspect at paragraphs 6.3.1 to 6.3.5 has observed thus:

> *"6.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decisions cited and relied upon. We find from the details placed on record by the assessee that he has been offering to tax the rental income received from the letting out of these properties as 'Income from House Property' since Assessment Year 2003-04 onwards and the same has been accepted by the Department. The learned Authorised Representative has also drawn our attention to pages 54 and 57 of the Paper Book filed on 4.3.2015, which is the assessment order passed under Section 143(3) rws 147 of the Act for Assessment Year 2007-08 dt.21.12.2010 in the assessee's own case, wherein the Department has assessed the rental income received from letting out*

of the assessee's properties as 'Income from House Property'. In this view of the matter from the facts on record it appears to be quite evident that when the intention of the assessee is to earn rental income from letting out of properties, then the same income ought to be assessed as income from house property and not as income from business.

6.3.2 In the case of Chugandas and Co. (supra), the Hon'ble Apex Court observed that "it must therefore be held that even if an item of income is earned in the course of business, it will not necessarily fall within the head 'Profit and Gains from Business' "and held that "if an assessee carries on the business of purchasing and selling buildings, the income earned from the properties so long as they are owned by the assessee will be shown under the head 'Income from House Property' and not under the head 'Profits and Gains from Business."

In the case on hand, even assuming for a movement that revenue is correct in coming to the conclusion that the assessee being in the business of real estate, the intent and purpose of the *investment in the subject building is to earn income by way of profits and gains from business, even then, going by the decision of the Hon'ble Apex Court in the case of Chugandas (supra), the assessee being the owner of the building, the rent that accrues or arises from such building of which he is the owner and while he is the owner, shall be assessed as 'Income from House Property' and not under the head, 'Profits and Gains from Business.'*

6.3.3 The Hon'ble Karnataka High Court in the case of Bhoopalam Commercial Complex and Industries Pvt.Ltd. (supra) following the decision of the Hon'ble Apex Court in the case of Podar Cements P.Ltd.(supra), held that despite the fact that the assessee had as one of its objects the activity of constructing commercial complexes and earning rent therefrom, the fact that the rent is earned from out of letting out of a property, the same has to be necessarily taxed under the head 'Income from House Property' and reversed the order passed by a co-ordinate bench of this Tribunal in the said case.

6.3.4 In the case of Shambhu Investments Pvt.Ltd. (supra), the Hon'ble Apex Court confirmed the decision of the Calcutta High Court, in the same case, which had held that if the intention of the assessee was to earn income by letting out of a property then such income has to be earned as 'Income from House Property.'

6.3.5 In the factual matrix of the case on hand, it is clear that the intention of the assessee is to earn rental income from letting out of the property and therefore the same rental income ought to be assessed as 'Income from House Property' and not as 'Income from Business'. In this context, we find that the decisions of the Hon'ble Apex Court and the Hon'ble High Court of Karnataka relied upon by the assessee, are squarely applicable to the case on hand and therefore hold that the rental income earned by the assessee from out of letting out of property is to be assessed as 'Income from House Property' as declared by the assessee in the return of income and not as 'Income from business' as held *by the authorities below. Consequently, the grounds raised at S.Nos.3 & 4 are allowed".*

The aforesaid shows that in respect of the very assessee for the assessment year 2003-2004 onwards, the very rental income was treated as the 'income from house property'. Not only that, but in respect of the assessment year 2007-2008, the regular assessment proceedings were undertaken and the order under Section 143(3) read with Section 147 of the Income Tax Act, dated 21.12.2010 was passed, whereby the rental income received from letting out the assessee's property was treated as 'income from house property'.

6. Be it recorded that in the present case, the assessment year was of 2005-2006, whereas for the subsequent year as referred to hereinabove for 2007-2008, the Department has accepted the rental income of the assessee as 'income from the house property'.

7. It is not the case of the appellants-Revenue that the aforesaid decision dated 21.12.2010 of the regular assessment for the assessment year 2007-08 has been carried before the higher forum or a different view is taken. Under the circumstances, when the aforesaid stand of the department in respect of the very assessee for the subsequent assessment year is accepted by the Department itself, the Tribunal has rightly found that the income cannot be treated as the 'business income'. It further shows that the Tribunal has relied upon the decision of the Apex Court in case of ***CIT Vs. Chugandas & Co.*** reported at **(55 ITR 17) (SC)**, the decision of Karnataka High Court in case of ***Commissioner of Income Tax Vs. Bhoopalam Commercial Complex & Industries (P) Ltd.*** reported at **(2003) 262 ITR 517** as well as the decision of

Calcutta High Court in case of ***Shambhu Investments Pvt. Ltd.*** reported at **263 ITR 143**.

8. As such, the question for giving treatment to the income of the property of the assesee as that from 'income from house property' can be said as already concluded by aforesaid decision. The additional factual aspect is that for subsequent assessment year, the very property is assessed as the 'income from house property'. Hence it cannot be said that any substantial question of law would arise for consideration, as sought to be canvassed.

9. The decision upon which reliance has been placed by the learned Counsel for the appellants-Revenue in case of ***Velankani Information Systems (P) Ltd.*** (supra) and ***Chennai Properties & Investments Limited*** (supra) cannot be made applicable to the facts of the present case, in view of the peculiar

circumstances in the present case that in respect of the very assessee for the subsequent assessment years, the rental income from the very property of the assessee is treated as the 'income from house property'.

10. Under the circumstances, the appeal is meritless and hence dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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