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Cit Vs. Bhoopalam Commercial Complex and Industries (P) Ltd.

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Court : Karnataka

Decided On : Jan-30-2003

Reported in : [2003]130TAXMAN338(Kar)

Appeal No. : IT Appeal Nos. 111 & 112 of 1999 30 January 2003

Appellant : Cit

Respondent : Bhoopalam Commercial Complex and Industries (P) Ltd.

Advocate for Pet/Ap. : E.R. Indra Kumar, *for the Revenue* A.A. Kulkarni and K.R. Prasad, *for the Assessee*

Judgement :

G.C. Bharuka, J.

These appeals have been preferred by the department under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The substantial question of law arising out of the Tribunal's order - whether the income derived by the assessee from letting out of the house property should be assessed under the head 'Income from house property' under section 22 or 'Income from business' under section 28 of the Act.

2. The relevant facts lie in a narrow compass. The assessee is a private limited company. One of the Directors' of the Company Sri B.R. Kapanipathy had taken

certain extent of lands situate at Bangalore on a long-term lease of 36 years under a registered lease-deed dated 20-12-1972. He executed a registered deed of transfer in favour of the assesses-company transferring his leasehold rights. Subsequently, the assesses-company built commercial complex on the said land and allotted the same to various parties and earned income therefrom.

3. For the year 1985-86 the assessee filed his return of income on 29-10-1985 showing loss of Rs. 1,28,652. The assessee filed the return for the subsequent assessment year 1986-87 on 24-10-1986 again showing a loss of Rs. 75,882. The assessing officer completed the assessments computing the loss at Rs. 1,25,600 and Rs. 74,857 respectively.

4. The Commissioner having felt that the order passed by the Income Tax Officer was prejudicial to the interests of revenue, initiated suo motu revisional proceedings under section 263 of the Act and issued notice to the assessee. Subsequently, after hearing the objections of the assessee, by order dated 20-3-1990 holding that the income returned by the assessee was liable to be assessed under the head 'Income from house property', set aside the assessment orders and directed the assessing officer to make fresh assessments computing the income from rentals received from the commercial complex under the head 'Income from house property.'

5. Aggrieved by the above order of the Commissioner, the assessee went in appeal before the Tribunal. The Tribunal held that in the facts of the case, the income derived by the assessee could have been assessed only as income from business and not under the head 'Income from house property'. According to the Tribunal, since the land over which the property had been built is leasehold land, the assessee cannot be treated as the owner of the land which is a condition precedent for treating the income as income from house property under section 22 of the Act.

6. Taking into account the identical facts as obtained in the case and on review of earlier judgments on the point, a three-Judge Bench of the Supreme Court in the case of CIT v. Podar Cement (P) Ltd. : [1997]226ITR625(SC) has held that :

'We are conscious of the settled position that under the common law, ,owner' means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But, in the context of section 22 of the Income Tax Act, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, 'to tax the income', we are of the view, 'owner' is a person who is entitled to receive income from the property in his own right.'

7. Coming to the facts of the present case, admittedly, the commercial complex has been constructed by the assessee and the rental income is being derived by the assessee alone in its own right. Therefore, for the purpose of section 22 of the Act, as explained and declared by the Supreme Court, the assessee has to be viewed as a owner. That being the legal position, irrespective of the fact that that one of the objects of the assesses-company is to derive income by leasing sites and constructions thereon, the income has to be necessarily assessed under the head 'Income from house property'. The latter aspect is also squarely covered by a decision of three-Judge Bench of the Supreme Court in the case of East India Housing & Land Development Trust Ltd. v. CIT : [1961]42ITR49(SC) wherein it is held:

'...Income-tax is undoubtedly levied on the total taxable income of the taxpayer and the tax levied is a single tax on the aggregate taxable receipts from all the sources; it is not a collection of taxes separately levied on distinct heads of income. But the distinct heads specified in section 6 indicating the sources are mutually exclusive and income derived from different sources falling under specific heads to be computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within a specific head set out in section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

The income derived by the company from shops and stalls is income received from property and falls under the specific head described in section 9. The character of that income is not altered because it is received by a company formed with the object of developing and setting up markets. . . .'

8. The learned counsel for the assessee has placed reliance on the judgment of the Supreme Court in the case of S.G. Mercantile Corpn. (P) Ltd. v. CIT : [1972]83ITR700(SC) . But in our opinion, this judgment has no consequence for resolving the controversy involved in the present case as could be found from the observation of the Supreme Court at page 705 wherein it has been found that neither there was a finding that the appellant was the owner of the property involved therein nor any reference was made to section 9 of the old Act in the assessment proceedings. Learned counsel for the assessee has also relied upon the Division Bench judgment of this court in the case of Sri Balaji Enterprises v. CIT : [1997]225ITR471(KAR) . But in our opinion, this judgment now stands impliedly overruled by the judgment of the Supreme Court in the case of Podar Cement (P) Ltd. (supra).

9. Accordingly, we set aside the order of the Tribunal. Appeals are allowed.

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