

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****Civil Appeal No.6437 of 2016****M/s. Rayala Corporation Pvt. Ltd. ... Appellant(s)****VS.****Assistant Commissioner of Income Tax ... Respondent(s)****WITH****Civil Appeal No.6438 of 2016****WITH****Civil Appeal Nos.6439-6440 of 2016****WITH****Civil Appeal No.6441 of 2016****JUDGMENT****Anil R.Dave, J.**

1. Being aggrieved by the judgment delivered by the High Court of Madras on 4th October, 2013 in Tax Case (Appeal) Nos.91, 99 and 212 of 2012; and 230 and 231 of 2007, these appeals have been filed.

2. The issue involved in all these appeals is common but it pertains to different Assessment Years and therefore, all

these appeals had been heard together. The facts in all these appeals, in a nutshell are as under:

The appellant-assessee, a private limited company, is having house property, which has been rented and the assessee is receiving income from the said property by way of rent. The main issue in all these appeals is whether the income so received should be taxed under the head "Income from House Property" or "Profit and gains of business or profession". The reason for which the aforestated issue has arisen is that though the assessee is having the house property and is receiving income by way of rent, the case of the assessee is that the assessee company is in business of renting its properties and is receiving rent as its business income, the said income should be taxed under the Head "Profits and gains of business or profession" whereas the case of the Revenue is that as the income is arising from House Property, the said income must be taxed under the head "Income from House Property".

3. The learned counsel appearing for the assessee submitted that the issue involved in these appeals is no more *res integra* as this Court has decided in the case of Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC) that if an assessee is having his house property and by way of business he is giving the property on rent and if he is receiving rent from

the said property as his business income, the said income, even if in the nature of rent, should be treated as "Business Income" because the assessee is having a business of renting his property and the rent which he receives is in the nature of his business income.

4. According to the learned counsel appearing for the assessee, the afore-stated judgment in the case of *Chennai Properties (supra)* has referred to all the judgments on the subject and more particularly, the judgment in the case of *Karanpura Development Co. Ltd. v. CIT* [1962] 44 ITR 362 (SC) which has summed up as under:-

"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 dividing 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."

5. The learned counsel also submitted that the assessee is a private limited company and even as per its Memorandum of Association its business is to deal into real estate and also to earn income by way of rent by leasing or renting the properties belonging to the assessee company.

6. The learned counsel also drew our attention to the fact that the High Court and the authorities below had come to a specific finding to the effect that the assessee company had stopped its other business activities and was having only an activity with regard to the leasing its properties and earning rent therefrom. Thus, except leasing the properties belonging to the assessee company, the company is not having any other business and the said fact is not in dispute at all.

7. For the afore-stated reasons, the learned counsel submitted that the impugned judgment delivered by the High Court is not proper for the reason that the High Court has directed that the income earned by the appellant assessee should be treated as "Income from House Property".

8. On the other hand, the learned counsel appearing for the respondent-Revenue made an effort to justify the reasons given by the High Court in the impugned judgment. The learned counsel also relied upon the judgment delivered by this Court in the case of M/s. S.G. Mercantile Corpn. (P) Ltd. v. CIT, Calcutta (1972) 1 SCC 465. According to him, the important question which would arise in all such cases is whether the acquisition of property for leasing and letting out all the shops and stalls would be essentially a part of business and trading operations of the assessee. According to the learned counsel appearing for the Revenue,

leasing and letting out of shops and properties is not the main business of the assessee as per Memorandum of Association and therefore, the income earned by the assessee should be treated as income earned from House Property. He, therefore, submitted that the impugned judgment is just legal and proper and therefore, these appeals should be dismissed.

9. Upon hearing the learned counsel and going through the judgments cited by the learned counsel, we are of the view that the law laid down by this Court in the case of Chennai Properties (supra) shows the correct position of law and looking at the facts of the case in question, the case on hand is squarely covered by the said judgment.

10. Submissions made by the learned 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 and that is of leasing its property and earning rent therefrom. Thus, even on the factual aspect, we do not find any substance in what has been submitted by the learned counsel appearing for the Revenue.

11. The judgment relied upon by the learned 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 (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.

13. We, therefore, set aside the impugned judgments and allow these appeals with no order as to costs. We direct that the income of the assessee shall be subject to tax under the head "Profits and gains of business or profession".

JUDGMENTJ.
[ANIL R. DAVE]

.....J.
[L. NAGESWARA RAO]

New Delhi;
August 11, 2016.