

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.941/PN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Mrs. Savita Namdeo Khutwad,
Koman Niwas, Sonarpool,
Phursungi, Tal. Haveli,
Dist. Pune

.... अपीलार्थी/Appellant

PAN: ABVPK5166H

Vs.

The Income Tax Officer,
Ward 4(3), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Smt. Sumitra Banerji

सुनवाई की तारीख / Date of Hearing : 26.10.2016	घोषणा की तारीख / Date of Pronouncement: 11.11.2016
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This appeal filed by the assessee is against the order of CIT(A)-1, Pune, dated 01.02.2016 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On the fact and in the circumstances of the case and in law of the learned Commissioner of Income Tax (Appeals)-I, Pune has erred in disallowing Income from business (Warehousing Receipts) treat as Income from House property.*
2. *On the fact and in the circumstances of the case and in law of the learned Commissioner of Income Tax (Appeals)-I, Pune has not considered the following expenses.*
 - 1) *Bank Interest on Loan for construction of godown.*
 - 2) *Gram Panchayat Tax paid on godown.*

3. The learned Authorized Representative for the assessee at the outset pointed out that the issue arising in the present appeal is squarely covered by the order of Tribunal in related party's case. He pointed out that the assessee had received the divided area of warehouse on the dissolution of partnership firm as in the case of Mr. Ramdas T. Khutwad and others.

4. Briefly, in the facts of the case, the assessee had declared income of Rs.13,61,470/- in the return of income filed for the instant assessment year. The assessee belonged to a family whose members were engaged in letting out warehouses. The Assessing Officer noted that in the case of family concern i.e. M/s. Jaibhavani Warehousing Co. for the assessment year 2008-09, income from letting out of warehouse was assessed as house property, rejecting the claim of assessee that it was business income. The Assessing Officer also noted that the assessee had neither shown the warehouse nor any income from warehousing in the return of income. Consequently, the income from warehouse charges as shown in TDS records was adopted as income of the assessee at Rs.31,66,875/- and after giving deduction under section 24 of the Act, the gross income was assessed at Rs.22,16,812/-.

5. The CIT(A) upheld the order of Assessing Officer, in view of the similar issue being decided by him in the case of M/s. Jaibhavani Warehousing Co.

and also in the case of Nutan Warehousing Co. by the Pune Bench of Tribunal reported in 106 TTJ 137. The CIT(A) further noted that after dissolution of firm on 31.03.2009 various godowns were distributed among the partners. The assessee also received certain godowns in respect of which the warehouse receipts were to the extent of Rs.31,66,875/-. The CIT(A) upheld the order of Assessing Officer in treating the said income as 'House property income'.

6. The assessee is in appeal against the order of CIT(A).

7. On perusal of record, it transpires that the issue arising in the present appeal is in respect of assessability of warehousing receipts. In view of earlier ratio laid down by the Tribunal in the case of Nutan Warehousing Co. (supra), the issue was decided against the assessee. Similar view was taken in the case of partnership firm M/s. Jaibhavani Warehousing Co., wherein also the income was assessed as 'property income'. The Tribunal in ITA No.1005/PN/2016 in the case of M/s. Jaibhavani Warehousing Co. Vs. ITO relating to assessment year 2008-09 has adjudicated the issue of assessability of income in the hands of partnership firm and also in the hands of partner who received the warehousing area on dissolution of partnership firm i.e. in ITA No.1006/PN/2016 in the case of Mr. Ramdas T. Khutwad Vs. ITO and Ors. The Tribunal vide order dated 14.10.2016 held that the said income is assessable under the head 'Income from business' observing as under:-

"10. On perusal of record and after hearing both the learned Authorized Representatives, the issue arising for adjudication in the present appeal is the assessability of warehousing receipts in the hands of assessee. The claim of assessee was that since it was engaged in the business of providing warehousing facilities and was also providing other facilities and incurring other expenditure for carrying on the said activity of warehousing, then the income was to be assessed under the head 'Income from business'. However, the case of Revenue on the other hand, is that the said income received by the assessee is pursuant to giving the space on hire as per the terms of lease deed and no other activity was being carried out and hence, the same is to be assessed as 'Income from house property'. The Revenue in this regard has

placed heavy reliance on the ratio laid down by the Pune Bench of Tribunal in the case of Nutan Warehousing Company Pvt. Ltd. (supra), which matter travelled up to Hon'ble High Court, which in turn, had set aside the matter to the file of Assessing Officer.

11. After the matter was set aside to the file of Assessing Officer by the Hon'ble High Court in the case of Pune Bench of Tribunal in Nutan Warehousing Company Pvt. Ltd. Vs. DCIT (supra), the matter was decided against the assessee by the Assessing Officer which was confirmed by the CIT(A). However, the Pune Bench of Tribunal in M/s. Nutan Warehousing Company Pvt. Ltd. Vs. DCIT in ITA Nos.1963 to 1968/PN/2013, relating to assessment years 2000-01, 2002-03 to 2006-07, in ITA No.2130/PN/2013, relating to assessment year 2001-02 and in ITA No.361/PN/2014, relating to assessment year 2008-09, vide order dated 30.09.2016 has in turn relied on the latest decision of the Hon'ble Supreme Court in M/s. Rayala Corporation Pvt. Ltd. Vs. ACIT (supra) and have decided the issue in favour of the assessee holding that warehousing receipts are to be taxed as 'business income'. The relevant findings of Tribunal in M/s. Nutan Warehousing Company Pvt. Ltd. Vs. DCIT (supra) are as under:-

"32. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute in the above grounds is regarding the treatment of the lease income from Hindustan Lever Ltd. as 'income from house property' or as 'business income'. We find the Hon'ble High Court while setting aside the issue to the file of the AO has observed as under :

"The question as to whether the income which is received by the assessee from the transaction which has been entered into in respect of the immovable property in question should be treated as income from house property or as income from business would have to be resolved on the basis of the well settled tests laid down in the law in decided cases. What is material in such cases is the primary object of the assessee while exploiting the property. If the primary or the dominant object is to lease or let out property, the income which is derived from the property would have to be regarded as income from house property. Conversely if the dominant intention of the assessee is to exploit a commercial asset by carrying on a commercial activity, the income that is received would have to be treated as income from business. What has to be deduced is to whether the letting out of the property constitutes a dominant aspect of the transaction or whether it was subservient to the main business of the assessee of carrying out warehousing activities.

The first submission which has been urged on behalf of the assessee, to the effect that the decision of the Tribunal rendered on March 19, 2001 for the assessment years 1994-95, 1995-96 and 1996-97 ought to have been considered, but has not been considered by the Tribunal, cannot be brushed aside as without substance. Be that as it may, during the course of the hearing of these proceedings we have considered the earlier judgment of the Tribunal. Ex facie, a perusal of the earlier judgment would show that that the Tribunal has not made a reference to the detailed terms and conditions of the warehousing agreements entered into by the assessee or to the lease agreement by which the factory came to be leased out. Consequently, upon considering the position in this regard counsel appearing on

behalf of the assessee has fairly stated that the assessee would not consider that the earlier decision of the Tribunal be regarded as binding. In so far as the decision which is impugned in these proceedings is concerned, the Tribunal has basically relied upon the lease agreement dated March 18, 2001, between the assessee and Hindustan Lever. It is on the basis of the terms of the lease agreement that the Tribunal arrived at a conclusion that the primary purpose of the assessee was to let out the factory and that the income that was derived therefrom could not consequently be regarded as income from business.

The submission of the assessee is that the terms on which the assessee entered into warehousing agreements have not been considered at all in the decision of the Tribunal. Now, a perusal of the decision of the Tribunal would show that the Tribunal noted two decisions of the Tribunal, the first in Vora Warehousing P. Ltd. v. Asst. CIT [1999] 70 ITO 518 (Mum) (SMC) where the rent which was realized from warehousing activity was held to be assessable as business income and the second in the case of V. N. Rukari v. ITO in ITA No. 84/PN/2001 in which the Tribunal held that the income which was realized from warehousing activity would be assess-able as income from house property. The Tribunal followed a decision of the Madras High Court in CIT v. Indian Warehousing Industries Ltd. [2002] 258 ITR 93 and was of the view that the facts of that case were identical, in holding that the income received from the leasing of the ware-house was assessable as income from house property. Ex facie, therefore, the terms of the warehousing agreement were not considered by the Tribunal. Merely styling an agreement as a warehousing agreement would not be conclusive of the nature of the transaction since it is for the Tribunal to determine as to whether the transaction was a bare letting out of the asset or whether the assessee was carrying on a commercial activity involving warehousing operations.

Since the Tribunal has not considered this aspect of the case, we are of the view that it would be appropriate and proper to set aside the decision of the Tribunal and to remand the proceedings back to the Assessing Officer for a fresh determination and assessment in accordance with law. We order accordingly. Upon remand, it is clarified that the Assessing Officer shall not consider himself to be bound by the decision of the Tribunal dated March 19, 2001 for the assessment years 1994-95, 1995-96 and 1996-97, in view of the concession in those terms which has been made during these proceedings by the assessee. In order to facilitate a fresh exercise being carried out in terms of the order passed by this court, the impugned order of the Tribunal dated August 31, 2006 is set aside. However, it is clarified that all the rights and contentions of the assessee and the Revenue on all aspects of the case on the merits are kept open. The order of remand, it is clarified shall also be with respect to the disallowance that has been effected under section 40A(ii) of the Income-tax Act, 1961. In view of the order of remand, it is not necessary for this court to express any view one way or the other on the questions of law involved. The appeal is accordingly disposed of. No costs."

33. We find the AO after considering the submission of the assessee, which have already been narrated in the preceding

paragraphs, treated the lease rental received by the assessee from the lease of 68,000 sq.ft of the factory to Hindustan Lever Ltd. as 'income from house property' and treated the warehousing activities carried out by the assessee on the remaining warehouses as 'business income' which has been upheld by the Ld.CIT(A).

34. It is the submission of the Ld. Counsel for the assessee that the main objects to be pursued as per the memorandum of association are construction of warehouses for storage of agricultural goods. Provisions of Bombay Warehousing Act, 1959 are applicable to the assessee company. It is also his submission that the AO was required to examine the terms of the lease deed and decide whether leasing activity is subservient to the warehousing activity or not. Further, if going by the version of the AO, 69% of the total receipts/total area is meant for warehousing activity, in that case, the AO should have accepted that leasing activity is subservient to warehousing activity that being the dominant activity of the assessee.

35. From the various details furnished by the assessee in the paper book, we find the main objects to be pursued by the assessee company on its incorporation are as under :

“iii. Objects : The objects for which the Company is established are :

Main Objects Of the company to be pursued by the Company on its incorporation are :

A (1)(a) To carry on the business of Warehousing, cold storage and refrigeration in all its branches and activities and sphere.

(b) To carry on the business of storage of fertilizers, insecticides, quality seeds, agricultural and horticultural equipment, tools and machinery.

(c) To carry on the business of quality seeds and develop quality seeds, acquire suitable lands and carry on agriculture.

(d) To produce material and fertilizers and insecticides and acquire agency in the above lines and act as Commission Agents.

(e) To act as clearing and forwarding agents of the aforesaid products.

(f) To provide facilities and godowns for proper and safe storing of valuable agricultural and horticultural produce and to provide goods and services of all kinds in connection there with.

(g) To provide godowns and warehousing facilities for goods of all description of agricultural and allied products.”

36. Similarly, the objects incidental or ancillary to the attainment of the main objects include the following :

“2. To purchase, erect, establish or otherwise acquire and equip warehousing godowns, additional cold storage plants or unit for the business of the Company as may deem desirable

and to build and erect the necessary structures or buildings to house the same.

.....
.....

18. To let on lease or on hire the whole or any part of the real and personal property of the Company on such terms as the Company shall determine, to enter into such arrangements as the Company may think proper with any public authority for buildings, chawls and tenements as the property of the Company or on the property of others or to let the same either to the employees of the Company or to others and upon such terms as the Company may think proper.”

37. From the statement showing year-wise details of total receipts as per profit and loss account, warehousing charges and service charges from Hindustan Lever Ltd. etc. a copy of which is placed at page 212 of the paper book, we find the details are as under :

F.Y.	Total Rcpts as Per P&L	Warehousing charges	Lease Rent From HLL	% of Lease Rent to Total Receipts	Warehousing charges received from HLL	% of warehsg ch. Received from HLL to the total warehsg ch.
A	B=C+D	C	D	E = (D/B)*100	F	G = (F/C)*100
2000 - 01	10,313,426.00	7,598,434.00	2,714,992.00	26.32	4,836,240.00	63.65
2001- 02	17,686,971.33	11,817,590.33	5,869,381.00	33.18	11,066,970.00	93.65
2002 - 03	19,580,172.66	13,910,172.66	5,670,000.00	28.96	11,390,112.00	81.88
2003 - 04	20,431,251.63	13,647,501.63	6,783,750.00	33.20	11,760,877.50	86.18
2004 - 05	19,776,426.00	12,858,926.00	6,917,500.00	34.98	12,279,750.00	95.50
2005 - 06	21,521,078.50	14,570,078.50	6,951,000.00	32.30	11,342,060.00	77.84

38. A perusal of the above break up of the lease rental income from Hindustan Lever Ltd and various other parties vis-à-vis the main objects of the assessee company show that warehousing activity is the dominant activity and leasing out being incidental is subservient.

39. We find merit in the submission of the Ld. Counsel for the assessee that the assessee has constructed several sheds for industrial and warehouse purposes which proves that the leasing is done for exploitation of the commercial asset. We also find force in the submission of the Ld. Counsel for the assessee that the assessee has not merely leased out the 4 walls of the warehouse. It has also provided essential and necessary services of supervisory, loading and unloading, handling, security, transporting etc. to all the clients including the Hindustan Lever Ltd. on daily basis during working hours. The assessee has incurred expenditure on Electricity, Maintenance, Staff etc. which proves that leasing is a complex activity directly linked with the main warehousing activity. Therefore, it is subservient to the warehousing activity. Further, since plots have been acquired on lease

as well as plots owned by the assessee are used for constructing the warehouses the same clearly proves the commercial use of the warehouse. Further, the assessee is liable to pay service tax on the service of storage and warehousing since service of storage and warehousing has been included as taxable service.

40. We find an identical issue had come up before the Hon'ble Supreme Court in the case of M/s. Chennai Properties (Supra). In that case, the assessee company was incorporated under the Indian Companies Act. Its main object was to acquire the properties in the City of Madras and let out these properties. The assessee had let out the said properties and the rental income received therefrom was shown as income from business in the return filed by the assessee. However, according to the AO since the income was received from letting out of the properties it was in the nature of rental income. He therefore treated the rental income as 'income from house property'. In appeal the Ld.CIT(A) allowed the appeal of the assessee by holding that such rental income is 'income from business'. The Tribunal upheld the action of the CIT(A). On further appeal by the revenue the Hon'ble High Court vide order dated 05-09-2002 allowed the appeal filed by the revenue holding that income derived by letting out of the properties would not be 'income from business' but can be assessed only as 'income from house property'. The assessee filed appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowing the appeal filed by the assessee held that letting of the properties infact is the business of the assessee and therefore the assessee has rightly disclosed income under the head 'income from business'. The relevant observation of the Hon'ble Supreme Court read as under :

"From the aforesaid facts, it is clear that the question which is to be determined on the facts of this case is as to whether the income derived by the company from letting out this property is to be treated as income from business or it is to be treated as rental income from house property.

We have heard the learned 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.

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 Estate" 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 emphasise 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.

It transpires that the return of a total income of Rs.244030 was filed for the assessment year in question that is assessment

year 1983-1984 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.

With this background, we first refer to the judgment of this Court in East India Housing and Land Development Trust Ltd.'s case 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.

Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd., we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal' [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-letting 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 categorised / 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 in 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.”

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 squarely applies to the facts of the present case.

No doubt in Sultan Brothers (P) Ltd.'s case, 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 an 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 be 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.”

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.”

41. We find subsequent to the hearing of the appeal before us the Hon'ble Supreme Court in the case of M/s. Rayala Corporation Pvt. Ltd.

Vs. ACIT vide Civil Appeal No.6437/2016 order dated 11-08-2016 following the decision in the case of M/s. Chennai Properties (Supra) has decided an identical issue by holding that where the business of the company is to lease its property and to earn rent, such rental income has to be treated as income from 'profits and gains of business or profession'. The relevant observations of the Hon'ble Supreme Court reads 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 aforesaid 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".

1. 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.

2. 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".

42. As mentioned earlier, the main objects of the assessee company is to carry on the business of warehousing, cold storage and refrigeration, to provide facilities and godowns for proper and safe storing of valuable agricultural and horticultural produce and to provide godowns and warehousing facilities for goods of all description of agricultural and allied products. Similarly, the other objects of the assessee company also provide to let on lease or hire the whole or any part of the real and personal property of the assessee company. We, therefore, respectfully following the above two decisions of the Hon'ble Supreme Court cited (*Supra*) hold that the lease income received by the assessee on account of let out of the warehouses/godowns as 'profits and gains from business or profession'. We therefore set aside the order of the CIT(A) and direct the AO to treat the lease rentals received by the assessee company from Hindustan Lever Ltd. as 'business income'.

12. In the facts of the present case, the assessee was partnership firm which was constituted vide Articles of Partnership dated 21.11.1997, copy of which is placed at pages 45 to 71 of the Paper Book. The nature of business agreed upon by the partners of said firm is to carry on warehousing activity. The Registrar of Firms has registered the partnership deed vide firm No.P/PA 37086 and the nature of business is to give on hire warehouses to companies, firms, businessmen and farmers for keeping stock / records, etc. The copy of the said certificate is placed at page 44 of the Paper Book. The assessee firm was thus, constituted to carry on the business of warehousing activities. The assessee has been carrying on the activity of warehousing since 1998-99 onwards. The income declared by the assessee under the head 'Income from business' has not been disturbed though the same was processed under section 143(1) of the Act. For the first time, the assessment was made under section 143(3) of the Act in assessment year 2008-09 and pursuant to the same, assessment proceedings for assessment years 2004-05 to 2006-07 were reopened under section 147 of the Act. For assessment year 2007-08, the income declared by the assessee has not been disturbed and even for assessment years 2009-10 and 2010-11, the same has been accepted. The Assessing Officer and CIT(A) had denied the claim of assessee, in view of the ratio laid down by the Pune Bench of Tribunal in the case of *Nutan Warehousing Company Pvt. Ltd. (supra)*, which has now in the second round, been allowed in favour of the assessee. Further, the Hon'ble Supreme Court in *M/s. Rayala Corporation Pvt. Ltd. Vs. ACIT (supra)* had held that in the facts of the said case where the assessee company had only one business and that was of leasing its property and earning rent therefrom; on such factual aspect, it was held that rental income was taxable under the head 'Profits & Gains of business and profession'. It was further held by the Hon'ble Supreme Court that where the business of company was to lease its property to earn rent and therefore the income so earned was to be treated as its 'Business income'. Following the said ratio laid down by the Hon'ble Supreme Court and in view of the ratio laid down by the Pune Bench of Tribunal in *M/s. Nutan Warehousing Company Pvt. Ltd. Vs. DCIT (supra)*, I hold that the warehousing receipts are to

be assessed as 'Income from business' in the hands of assessee. The ground of appeal No.1 raised by the assessee is thus, allowed."

8. The issue is squarely by earlier order of Tribunal in the case of M/s. Jaibhavani Warehousing Co. Vs. ITO (supra) and erstwhile partner Mr. Ramdas T. Khutwad and following the same parity of reasoning, it is held that the income is assessable in the hands of assessee as 'Income from business'. The grounds of appeal raised by the assessee are thus, allowed.

9. In the result, the appeal of assessee is allowed.

Order pronounced on this 11th day of November, 2016.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 11th November, 2016.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. आयकर आयुक्त / The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune