IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri B. Ramakotaiah, Accountant Member

ITA No.445/Hyd/2015
(Assessment Year: 2010-11)

M/s. Mack Soft Tech Private Limited Hyderabad PAN: AAFCM 1546 D	Vs	Dy. Commissioner of Income Tax, Circle 16(2) Hyderabad

For Assessee : Shri C.Subramanyam and Shri V. Siva Kumar
For Revenue : Smt. U. Mini Chandran, DR

Date of Hearing: 06.12.2016
Date of Pronouncement: 16.12.2016

O R D E R

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2010-11. This appeal is against the order of the CIT (A)-4, Hyderabad dated 30.01.2015 confirming the assessment order passed u/s 143(3) r.w.s. 92CA r.w.s. 144C of the I.T. Act. The assessee has raised the following grounds of appeal:

> *"1. The order of the Learned C.I.T (Appeals) is against law, weight of evidence and probabilities of the case.*
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> *2. The Learned C.I.T (Appeals) erred in upholding the assessment of income derived by the assessee from the business of operation and maintenance of information Technology Park as "Income from house property".*

3. The learned CIT(Appeals) ought to have appreciated that the assessee company was allotted/sold land by the APIIC to be used only for the specific purpose of setting up IT facility i.e., IT software, IT enabled service and IT infrastructure and that the assessee has developed an integrated business facility thereon called "Q-city" which has been exploited as a commercial asset in the business carried on by it and accordingly, the learned C.I.T(Appeals) ought to have held that the income derived by the assessee from the IT park is assessable as income from business.

4. The learned CIT erred in not appreciating the fact that the said facility was entitled for deduction U/s.80IA from business income arising from the facility, in respect of which the company had made an application for being recognized as an Industrial Park U/s.80IA to CBOT.

5. The learned C.I.T(Appeals) erred in brushing aside the ratio laid down in the various decision of the Hon'ble ITAT and High Courts relied upon by the assessee and also in laying undue emphasis on the ownership of the property by the assessee in upholding the assessment of the income derived by the assessee from the IT park as income from business.

6. For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed. The appellant craves leave to ad to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary".

2. Brief facts of the case are that the assessee company engaged in the business of Operation & Maintenance of

Information Technology Park, filed its return of income for the A.Y 2010-11 on 28.09.2010 admitting income of Rs. Nil under the normal provisions of the I.T. Act and book profit of Rs."Nil" under the provisions of section 115JB of the Act. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee company was incorporated on 08.08.2003 and has purchased land admeasuring 5.975 acres at Nanakramguda Village, Serilingampally Mandal, R.R. District from Andhra Pradesh Industrial Infrastructure Corporation Ltd (APIICL) at an outright sale and constructed commercial building “Q-City” consisting of two blocks which were leased out to various companies on yearly basis.

3. During the assessment proceedings the assessee produced the detailed break up of income from the lease and operation credited to the P&L a/c treating it as “income from business”. The AO however, asked the assessee to explain as to why such income should not be treated as “income from house property”. The assessee replied that the assessee is in the business of maintenance and operation of the software infrastructure development facility and therefore, the income from letting out of the commercial space with all amenities to I.T. and I.T.E.S. companies is the business income of the assessee. The AO was, however, not convinced with the assessee’s contentions and held that the income from letting out of the building belonging to the assessee is to be assessed to tax as “income from house property”. For coming to this conclusion, the AO has relied upon the judgment of the Hon'ble Madras High Court in the case of CIT

vs. Chennai Properties & Investments Ltd (2004) 266 ITR 685 (Mad HC). Thereafter, the AO also proceeded to disallow the claim of depreciation and expenses debited to the P&L A/c and the business loss carried forward from the earlier year. Aggrieved, the assessee preferred an appeal before the CIT (A), who confirmed the order of the AO and the assessee is in second appeal before us.

4. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, have drawn our attention to the main objects of the assessee which is to carry on business in the field of Software Development, ITES Services, BPO services and developing infrastructure service to the entities engaged in this type of business. The learned Counsel for the assessee also submitted that the Hon'ble Supreme Court in the case of CIT vs. Chennai Properties & Investments Ltd (cited Supra) has set aside the order of the Hon'ble Madras High Court and therefore, the income from letting out of commercial property along with the operations is to be treated as income from business. He also placed reliance upon the judgment of the Hon'ble Supreme Court in the cases of Rayala Corporation P Ltd (2001) 72 Taxmann.com 149 (S.C) and Chennai Properties & Investments Ltd (cited Supra). Copies of the said orders are also filed before us.

5. The learned DR, however, supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we find that the AO has followed the judgment of the Hon'ble Madras High Court in the case of Chennai Properties (Supra) which has been set aside by the Hon'ble Supreme Court holding that the income from letting out of properties which have been acquired for such letting out only had to be treated as "income from business" and not as "income from the house property". Relevant portion of the Hon'ble Supreme Court's order is reproduced hereunder for ready reference:

> *"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. v. 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 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."

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 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."

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".*

7. Similarly, in the case of Rayala Corporation (P) Ltd (cited Supra), the Hon'ble Supreme Court at Para 9 to 11 of its order has held as under:

> ***"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 & Investment Ltd. (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.*

8. In the case before us also, the main business of the assessee is to create the infrastructure and let out the same to earn income therefrom. Therefore, the decisions in the above cases before the Hon'ble Supreme Court are clearly applicable. Respectfully following the same, we allow assessee's appeal and direct the AO to treat the income from letting out and operation of

the property as “income from business” and allow the expenditure and other claims in accordance with the law.

9. In the result, assessee’s appeal is allowed.

Order pronounced in the Open Court on 16th December, 2016.

Sd/-	**Sd/-**
(B. Ramakotaiah)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 16th December, 2016.

Vinodan/sps

Copy to:

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2 Dy. Commissioner of Income Tax, Circle 16(2) Aayakar Bhavan, Basheerbagh, Hyderabad 500001
3 CIT (A)-4 Hyderabad
4 CIT – IV Hyderabad
5 The DR, ITAT Hyderabad
6 Guard File

By Order