

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 3830/Del/2018  
[Assessment Year: 2014-15]**

Pawa Builders Pvt. Ltd., Rohit Malik & Associates, CAs, 1212A, Chiranjiv Tower, 43, Nehru Place, new Delhi-110019 PAN:AAACP4231F	<u>V</u> <u>s</u>	DCIT, Circle-1992), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee represented by:</b>	Dr. Rakesh Gupta, Adv. & Sh. Somil Agarwal, Adv.
<b>Department represented by:</b>	Sh.Ajay Kumar Arora, Sr. DR
<b>Date of hearing</b>	28.12.2022
<b>Date of pronouncement</b>	30.12.2022

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The Assessee has preferred the instant appeal against the order dated 09.03.2018, passed by the Ld. Commissioner of Income tax (Appeals)-7, Noida (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2014-15.

2. In this case, the Assessee during the year under consideration earned its income from renting of property and sale of maintenance services to the tune of Rs. 3.5 crores and Rs. 13.58 lakh respectively. The Assessee was show caused as to why the rental income should not be considered as income from business and profession as per its primary business activity. In reply the Assessee claimed that Assessee company has been offering rent received under "Income from house property" for the last so many years, which has been accepted in the previous assessment years. Therefore, the claim may be allowed. The assessing officer by relying upon the judgment passed in the case of Chennai Properties & Investment Ltd. Vs. CIT (2015) 373 ITR 0673, wherein it was held that "where in terms of memorandum

of association, the main object of Assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property". The Assessing Officer ultimately added the amount of Rs. 3,54,00,000/- rent received by the Assessee in the income of the property as "income from business & profession" by concluding as under:

*"12. It is evident from above facts that letting out property is main objective of the business and expenses in respect of the same has also been debited by the Assessee company in the profit and loss account. Therefore the income from house property is to be considered under the head "Income from Business and Profession". From the above facts it is summarized as under:-*

- a) Main object of the Assessee company is Letting out as evident from MOA*
- b) The Assessee company has not entered into separate agreement in respect of rent and maintenance.*
- c) The Assessee company itself has stated that the Company had acquired lease hold land in A.Y 2000-01. The Company thereafter constructed building on such land which completed in A.Y 2004-05 and capitalized to Fixed assets.*

3. On appeal, the learned Commissioner affirmed the said addition/disallowance by concluding as under:

*3.2 I have carefully considered the assessment order and written submissions furnished by the Ld. AR. The AO disallowed Rs. 1,06,20,000/- by considering the income as "Income from Business and Profession" and not under "Income from House Property". The Ld. AR submitted that the appellant company has received rent only from that portion of the building which has not been occupied for the business purpose and was lying vacant. The appellant company has fulfilled all the conditions laid down in section 22 of the Act to treat the rent received as "Income from House Property". Therefore, when the rent received is specifically taxable under the head "Income from House Property" it cannot be taxed under the head "Business Income"*

*3.3. The objectives as defined in the MOA of the appellant are as follows:-*

- "1. To act as contractors for any individual, Government, Semi-Government, authorities for the construction of buildings, roads, bridges of all descriptions in India or abroad.*
- 2. To purchase or otherwise acquire lands, houses, buildings, sheds and other fixtures on lands and buildings and to let them out on lease, rent, contract or on any agreement.*

3. To construct, erect and maintain, buy and sell lands, houses, apartments to any person, body or company and on such terms and conditions as may be deemed fit by the company.

4. To purchase, sell or otherwise carry on the business of builders, house and estate agents.

5. To carry on the business of builders and colonizers, Landlords or proprietors, occupiers, lesser, managers, contractors and mortgagees with the possession of all kinds of land and buildings.

6. To construct, manage or deal in multi-storeyed buildings, residential and commercial on such terms and conditions as the company may deem fit and proper."

3.4. On a reference to the MoA of the appellant as above, it appears that one of the main objects of the appellant was as under:

"2. To purchase or otherwise acquire lands, houses, buildings, sheds and other fixtures on lands and buildings and to let them out on lease, rent, contract or on any agreement. "

3.5. In the case of East India Housing and Land Development Trust Ltd. the Supreme Court held that the income shall be treated as income from the house property, and rested its decision in the context of the main objective of the company and observed that letting of the property was not the object of the company at all. Therefore, the Supreme Court was of the opinion that the character of income which was from the house property had not altered since it was received by the company, formed with the object of developing and setting up properties.

3.6 In the case of *Karanpura Development Co. Ltd.* the Supreme Court observed that the deciding factor is not the ownership of land or leases but the nature of the activity of the taxpayer and the nature of the operations in relation to them. It was highlighted that the objects of the company must also be kept in view to interpret the activities.

3.7. The Supreme Court, while relying on various decisions of other jurisdictions i.e. Privy Counsel, House of Lords in England and U.S. Courts, observed that 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 a part of a trading operation. In the case *c<sup>2</sup>* 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.

3.8. Applying the aforesaid principle to the facts of the case of *Chennai Properties and Investments Ltd.*, the Hon'ble Supreme Court held that income had to be treated as income from easiness and not as income from house property.

3.9. No doubt in the case of *Sultan Brothers (P) Ltd.*, the Supreme Court had clarified that merely an entry in the object clause showing a particular object would not be the

*determinative factor to arrive at a conclusion whether the income is to be treated as business income. Therefore, such a question would depend upon the circumstances of each case and the Supreme Court is conscious of the aforesaid dicta laid down by the Constitution Bench decision.*

*3.10. In the present case, letting of the properties or renting of the same is the business of the appellant apart from other items. Therefore the AO correctly treated the income under the head income from business and it cannot be treated as income from house property. Respectfully following the Hon'ble Supreme Court's decision above and in view of the objects as defined in the MOA of the appellant, this ground of appeal is dismissed."*

4. Being aggrieved, the Assessee is in appeal before us.
5. At the outset, the learned AR contended that the Assessee since several years has let out the property involved in this case to various tenants who are paying rent to the Assessee, which the Assessee has been offering under the head "income from house property" and such income has all along been assessed under the head "House Property" only, which is evident from the previous

assessment years passed by the different Assessing Officers. Therefore, the rule of consistency is required to be followed.

6. The learned DR did not refute the factual claim of the Assessee, however relied upon the orders passed by the authorities below.

7. We have given thoughtful consideration to the peculiar facts and circumstances and observe as not refuted by the Revenue/Department that fact of the instant year under consideration are exactly similar to the preceding 07 years and there is no change at all. Therefore, in view of the dictum laid down by the Hon'ble Apex Court in the case of Radhasoami Satsang Vs. CIT (1992) 193 ITR 0321 (SC) qua rule of consistency, we are inclined to delete the addition under challenge. We may clarify that in case of change in facts and circumstances, this order shall not be taken as precedence.



8. In the result, Assessee's appeal stands allowed.

Order pronounced in open court on 30.12.2022.

**Sd/-**

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

\*MP\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**

**(N.K.CHOUDHRY)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI