(2014) 04 KAR CK 0091

In the Karnataka High Court

Case No : Income Tax Appeal Nos. 318 to 322 of 2013

Commissioner of Income Tax APPELLANT

Vs

Information Technology Park Ltd. RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2014) 369 ITR 460

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : K.V. Aravind, Advocate for the Appellant; T. Suryanarayana, Advocate for King and Partridge, Advocate for the Respondent

Judgement

B. Manohar, J.—These income-tax appeals are filed by the Revenue under section 260A of the Income-tax Act, 1961 (for short "the Act"), being aggrieved by the common order dated March 8, 2013, passed by the Income-tax Appellate Tribunal, "C" Bench, Bangalore (for short "the Tribunal") made in I.T.A. Nos. 812-816/Bang/2012 whereby the Tribunal dismissed the appeals filed by the Revenue and confirmed the order dated March 28, 2012, passed by the Commissioner of Income-tax (Appeals)-I, Bangalore (hereinafter referred to as "the first appellate authority"), wherein the first appellate authority held that rental income received by the assessee from letting out buildings along with other amenities in software technology park falls under the head of "Business income" and not under the "Income from house property" while setting aside the order passed by the assessing authority for the assessment years 2005-06 to 2009-10. Since the common question of law and facts are involved in these appeals and the common order passed by the Tribunal has been challenged, all these appeals are clubbed together and disposed of by this common order.

2. The above appeals are admitted to consider the following substantial question of law:

"Whether the Tribunal was correct in holding that the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park is chargeable to tax under the head ''income from business'' and not under the head ''income from house property'' as held by this hon''ble court in Commissioner of Income Tax Vs. Bhoopalam Commercial Complex and Industries (P.) Ltd., and by the apex court in East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal, ?"

3. Learned counsel appearing for the parties submitted that the substantial question of law raised in these appeals are fully covered by the judgment reported in Commissioner of Income Tax-III Vs. Velankani Information Systems (P.) Ltd., .

4. Division Bench of this court in the above said judgment at paragraph 26 has clearly held as under (page 160 of 2 ITR-OL):

"If the intention is to exploit commercial property by putting up construction and letting it out for the purpose of getting rental income, then notwithstanding the fact that the furniture and fittings are provided to the lessee, the income from the building fall under the head ''income from house property''. But if the assessee is in the business of taking land, putting up commercial buildings thereon and letting out such buildings with all furniture as his profession or business, then notwithstanding the fact that he has constructed a building and he has also provided other facilities and even if there are two separate rental deeds, it does not fall within the heading of income from house property. Therefore, firstly what is the intention behind the lease and secondly what are the facilities given along with the buildings and documents executed in respect of each of them is to be seen. Thirdly it is to be found out whether it is inseparable or not. If they are inseparable and the intention is to carry on the business of letting out the commercial property and carrying at complex commercial activity and getting rental income therefrom, then such a rental income falls under the heading of profits and gains of business or profession."

We are in respectful agreement with the judgment of the Division Bench of this court. In the instant cases, the assessee-company engaged in the business of developing, operating and maintaining an industrial park and providing infrastructure facilities to different companies as its business. In view of that, the substantial question of law is held against the Revenue. Accordingly, these appeals are dismissed.