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**(2008) 08 BOM CK 0159**  
**In the Bombay High Court**

Mangla Homes (P) Ltd.

APPELLANT

Vs

ITO and Others

RESPONDENT

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**Date of Decision :** 29-08-2008

**Acts Referred:**

Income Tax Act, 1922 — Section 10, 9

**Citation :** (2010) 325 ITR 281 : (2009) 182 TAXMAN 55

**Hon'ble Judges :** Swatanter Kumar, C.J;A.P. Deshpande, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

A.P. Deshpande, J.—This appeal is filed by the assessee taking exception to an order passed by the Tribunal, Mumbai Bench dismissing the appeal directed against the order passed by the Commissioner (Appeals).

2. According to the (sic) appellant is a private limited company incorporated with the object of dealing in properties. The main object of the company as contained in the memorandum of association was to carry on business of dealing and investment in properties, flats, warehouses, shops, commercial and residential houses. The ancillary object was to carry on business of leasing, hire purchase, renting, selling, reselling or otherwise dispose of all forms of moveable or immovable properties and assets including buildings, godowns, warehouses and real estate of any kind. The assessee purchased flats for trading purposes at the cost of Rs. 4 crores. At the time of purchase, the building needed major repairs and according to the assessee as it expected that the prices of flats would go up after completion of repairs it made the purchases. It is then claimed by the assessee that the flat could not be sold because of recession in the market and hence it let out the flats on license basis for temporary period and earned monthly rental income as license fees. The assessee treated the said rental income as income from the business. The authorities below have concurrently found in favour of the revenue that the rental income cannot be treated as income from business and treated it as "income from house property" u/s 22 of

the Income Tax Act.

3. The question thus raised is as to whether the Tribunal is right in so concluding that the rental income is an income from house property. While reaching the said conclusion the Tribunal has relied on a judgment in the case of East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal, . In the said judgment in an identical set of facts with the assessee company having objects amongst others was (i) To buy and develop landed properties and (ii) To promote and develop markets, the Supreme Court held that the income derived by the company from shops and stalls is income received from property and falls under the specific head described in Section 9 being income from the property under the Income Tax Act, 1922. While reaching the said conclusion the Supreme Court has relied upon its earlier judgment reported in the case of United Commercial Bank Ltd. Vs. Commissioner of Income Tax, West Bengal, wherein the apex court had explained after exhaustive review of authorities that under the scheme of Income Tax Act the heads of income, profits and gains enumerated in the different clauses are mutually exclusive and each specific head covering items of income arising from a particular source.

4. Reliance is then placed on a judgment reported in the case of Commercial Properties Ltd. v. CIT ILR 55 Cat 1057 wherein it is held that income derived from rentals by a company whose sole object was to acquire lands, build houses and let them to tenants and whose sole business was management and collection of rents from the said properties, was held assessable u/s 9 and not u/s 10 of the Income Tax Act, 1922. It was observed in that-case that merely because the owner of the property was a company incorporated with the object of owning property, the incidence of income derived from the property owned could not be regarded as altered, the income came from directly and specifically under the head "Property" than income from business. Relying upon the said judgments the authorities below have found that the income received by the appellant assessee from the shop is indisputably an income from property and hence concluded that character of the income is not altered merely because the flat is temporarily leased out. The object of the company would not be relevant while determining the levy of taxes. The learned Counsel for the appellant has questioned the correctness of the said finding by placing reliance on a judgment reported in the case of S.G. Mercantile Corporation P. Ltd. Vs. Commissioner of Income Tax, Calcutta, wherein assessee-company was dealing in property development and subletting of shops and stalls and the question arose as to whether income from subletting is a business income or otherwise. While holding that the income earned from the property is a business income it noted the reasons for the same. .The principal reason was that since the appellant company was not owner of the property or any part thereof there was no question of making the assessment u/s 9 of the Act. It is held that the liability of tax u/s 9 of the Income Tax Act, 1922 would be of the owner of the building or land appurtenant thereto. It is also held that in case the assessee is the owner of the building or land

appurtenant thereto he would be liable to be taxed u/s 9 even if the object of the assessee in purchasing the landed property was to promote and develop the market estate. Thus it can be seen even from the judgment relied upon by the appellant that distinguishing feature in the case of S.G. Mercantile Corporation (P) Ltd. (supra) was that the assessee was not the owner of the property in question. In the case in hand it is an admitted position that the assessee is owner of the property.

The next judgment relied upon by the assessee is reported in the case of Commissioner of Excess Profit Tax, Bombay City Vs. Sri Lakshmi Silk Mills Ltd., . In the said case the assessee who" was engaged in manufacture of silk cloth and dying silk yarn was unable to operate the dying plant on account of difficulty in obtaining silk yarn and hence had let out the dying plant temporarily. It was found that such letting out is part of usual activity of the business. In the facts of the said case the Supreme Court held that the plant does not cease to be commercial asset when let out temporarily and the income earned from such letting out is business income. It is thus clear that what was let out was a commercial asset and the same was used for the same business purpose. It is held that the yield of income by commercial asset is profit of the business. It was also held that the income earned was from the normal activity of the assessee's business. Hence this judgment does not advance the case of the appellant any further. We of the considered view that the assessee's case is squarely covered by the judgment in the case of East India Housing & Land Development Trust Ltd. (supra) on which reliance has been rightly placed by the authorities below in reaching the conclusion that the rental income earned by the assessee was an income from the house property. There being no merit in the appeal same stands dismissed.