
Commissioner of Income Tax and Another Vs Saran Holdings (P) Ltd.

Misc. Appeal No. 240 of 2006

Court: Patna High Court

Date of Decision: April 13, 2011

Acts Referred:

Income Tax Act, 1961 " Section 22, 260A

Citation: (2011) 241 CTR 527 : (2012) 341 ITR 573

Hon'ble Judges: Sudhir Kumar Katriar, J; Samarendra Pratap Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Sudhir Kumar Katriar, J.

The Department of IT has preferred this appeal under s. 260A of the IT Act, 1961 (hereinafter referred to as

"the Act"), and is directed against the order dt. 28th Feb., 2006, passed by the learned Tribunal, Patna, in ITA No. 133/Pat/2004. The learned

Tribunal reversed the order of the learned CIT(A)-II, Patna, and has held that the income from rent of the assessee's property in question should

be treated as business income.

2. Before we proceed further, we would like to state that the matter was earlier taken up on 3rd Feb., 2011, and it was adjourned in the presence

of the learned counsel for the parties. It was taken up on 11th April, 2011, and was heard in part, and has been taken up again today, learned

counsel for the respondent has been absent on both these occasions.

3. The appellants have framed the following substantial questions of law :

(1) Whether on the facts and circumstances of the case the Tribunal has erred in law in reversing the order of CIT(A) and holding rental income

from letting out commercial space in the building known as ""Kumar Towers"" is taxable as income from business relying on a decision of another

Bench of the Tribunal in the case of Mamta Properties ?

(2) Whether in absence of any finding regarding any activity of business carried on the Tribunal should have held that the rental income from

property owned by the respondent is taxable as income from property under s. 22 of the IT Act, 1961 ?

(3) Whether the Tribunal failed to appreciate that the decision of the Tribunal relied is distinguishable on facts in so much so the respondent is

deriving rental income from commercial space let out and not from godown ?

(4) Whether the Tribunal's order is contrary to the decision of Supreme Court and various High Courts on identical facts. The Hon"ble Supreme

Court in the case of East India Housing & Land Development Trust Ltd. exactly identical facts had held that the income realized from tenant of the

shop and stall are income received from property as distinct from business which has been followed in Commissioner of Income Tax Vs. Surat

Textile Market Co-op. Shops and Warehouse Society Ltd.,

(5) Whether the decision of the Tribunal is contrary to the view expressed by Hon"ble Supreme Court and is fit to be set aside ?

4. A brief statement of facts essential for the disposal of the appeal may be indicated. The present appeal is with respect to the asst. yr. 1996-97.

The assessee is a company and owns flats in a multi-storied complex known as "Kumar Tower", Boring Canal Road, in the township of Patna.

The assessee let out the same to others on monthly rental. It submitted returns showing the rental income from business. Learned AO did not

accept the returns, and assessed the same as income from house property within the meaning of s. 22 of the Act, by order dt. 4th Aug., 2003,

passed by the learned Asstt. CIT, Circle II, Patna. Aggrieved by the order, the assessee preferred appeal which was dismissed by the learned

CIT(A)-II, Patna, by order dt. 7th Dec., 2004, and held that the assessee's income has to be treated from house property. Aggrieved by the

order of the learned CIT(A), the assessee preferred appeal before the learned Tribunal which has been allowed, and it has been held that income

from rent of the property in question be treated as business income. The learned Tribunal has relied on its earlier order dt. 31st Jan., 2002, passed

by it in ITA No. 112/Pat/2002, Mamta Properties (P) Ltd. Hence this appeal at the instance of the Revenue.

5. We have perused the materials on record and considered the submissions of learned counsel for the appellants. The admitted position is that the

assessee is the owner of the property, and has let out the same to different persons on rent. On the own showing of the assessee, he is not in

possession of the property and is not doing any business there. In our view, such a situation is covered by s. 22 of the Act which is headed

Income from house property"". The same is to the effect that the annual value of the property consisting of any buildings or lands appurtenant

thereto of which the assessee is the owner shall be chargeable to income tax under the head ""Income from house property"", except such portions

of such property as the assessee may itself occupy for the purpose of any business or profession carried by it the profits of which are chargeable to

income tax. In other words, the income from all house property shall be treated as income from house property, except those which are in

occupation of the assessee itself for the purpose and is being used for business or profession. In the present case, admittedly the property is not in

the possession of the assessee, let alone the question of doing any business there, and has let out the same to others for rent. We are clearly, of the

view that income from the property in question has to be taxed under the head "Income from house property". We are therefore, of the view that

the learned Tribunal has erred in holding the income from the property in question has to be treated as income from business. We agree with the

order of the learned AO, which has been rightly upheld by the learned CIT(A).

6. Before we part with the records, we must record our feeling of displeasure in the manner in which the learned Tribunal has dealt with the issue.

Para 4 of the order of the learned Tribunal decides the issue mainly by placing undue reliance on its earlier order in the case of Mamta Properties

(P) Ltd. (supra). The learned Tribunal has made no attempt to find out the similarities between the two cases, and the circumstances in which issue

in Mamta Properties (supra) was adjudicated.

7. In the result, this appeal is allowed. The order dt. 28th Feb., 2006, passed by the learned Tribunal is hereby set aside, and that of the learned

CIT(A) II, is hereby restored. The substantial questions of law are answered in favour of the Revenue, and against the assessee. In the facts and

circumstances of the case, there shall be no order as to costs.