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I-4 and 5  
% 31.08.2010

Present: Mrs. Mahua Kalra and Mr. Mayank Nagi, Advocates for the appellants.  
Ms. Rashmi Chopra, Advocate for the respondent.

+ CM No.15678/2010 in ITA No.673/2009 and 15677/2010 in ITA No.674/2009

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By means of these applications, the applicants/appellants want to amend the proposed questions of law. Since the matter is still at admission stage and even notice has not been issued, we allow the amendment as prayed for.

Applications stand disposed of.

ITA No.673/2009 and CM No.6845/2009 (stay) and ITA No.674/2009 and CM No.6847/2009 (stay)

The appellants herein are the co-owners of basement of property No.B-1/8, Pusa Road, New Delhi, which they purchased from the erstwhile owners Mr. Bhupinder Singh Kocher and Mr. Sham Lal Khurana. At the time of purchase, the said basement was already in occupation of one M/s. Nanz Food Products Ltd. It was by virtue of Commission Agreement dated 18.10.1993 between M/s. Nanz Food Products Ltd. and the erstwhile



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assesses/appellants continued with the said arrangement with M/s. Nanz Food Products Ltd. and got the commissions. The assessing officer in respect of assessment years 1997-98 and 1998-99 has treated the aforesaid income as "Income from House property" rejecting the claim of the assesses to treat the same as "Income from Business". This finding of the assessing officer was reversed by CIT(A), but the ITAT has restored the finding of the A.O. and upset that of CIT(A). The operative portion of the order made by ITAT reads as under:-

*"3. We have heard both sides and gone through the records. We have also taken into consideration a paper book filed by the assessee wherein he has enclosed the copies of agreements and the returns of income filed for the earlier years wherein the commission income was assessed as income from business. In our view the order of the CIT(A) cannot be sustained. After all the assessee has received the sums in question under agreement to let the property. The income is in respect of the ownership of the property and the owner of the said property is clearly assessable under the head income from house property. U/s 22 the annual value of the property consisting of any buildings or lands appurtenant thereto but of which the assessee is owner other than the said portions of the property as he may occupy for his own business are chargeable to income tax under the head income from house property. Charge u/s 22 is compulsory though the property is owned and let by company for doing business. The nomenclature which the parties put to a transaction cannot decide the head of*



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*business or in earlier years the department chose to wrongly assess a business income cannot be taken to be a ground to hold the issue in favour of the assessee. The Id. CIT(A) has seriously erred in law in not properly directing the assessment of income under proper head as required by the statute. We have no hesitation in reversing his order. The appeals of the Revenue for the years under consideration are allowed."*

We do not find any error in the approach of the Tribunal and are of the opinion that no question of law arises.

Dismissed.

  
A.K. SIKRI, J.

  
REVA KHETRAPAL, J.

AUGUST 31, 2010

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