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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd November, 2012

\+ ITA 319/2012

GARG DYEING & PROCESSING INDUSTRIES ..... Appellant
Through: Mr. Rajiv Saxena with Mr. Rajat Joseph, Advs.

versus

ASSTT COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr. Sanjeev Sabharwal, sr. standing counsel with Mr. Puneet Gupta, jr. standing counsel

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J: (OPEN COURT)

CM 8651/2012

In view of the averments made in the application the delay in filing the appeal is condoned.

Application is disposed of.

ITA 319/2012

On 30.08.2012 the following substantial question of law was framed by this Court :

"Was the Tribunal correct in holding that the rent received by the appellant was assessable as 'income from other sources'?"

2. The assessee is an individual carrying on business in the name and style of Garg Dyeing and Processing Industries. In respect of the assessment year 2007-08, he filed a return of income on 31.10.2007, which was first processed under Section 143(1), but later picked up for scrutiny. In the course of the assessment proceedings under Section 143(3), the assessing officer examined the contention of the assessee that the rental income of ₹1,76,40,000/-, fell to be assessed under the head "income from house property". He perused the rental agreements and found that the rent consisted of three components i.e. (1) rent for building, (2) rent for the furniture, fittings and fixtures and (3) charges for the maintenance of the above. Since the rent was composite, he was of the view that it was assessable under the head "income from other sources" under Section 56 of the Act and consequently the deductions claimed by the assessee under Section 24 were not allowable. The assessee had contended that the rent received was not composite and it was the prevailing practice that commercial buildings were generally let out with additional facilities such as furniture and fixtures, air conditioner, electricity backup, false ceilings, generators, water tanks etc. The AO considered the assessee's claim and held that under the agreements with M/s Proton Links Systems Pvt. Ltd. and M/s In Touch, the premises were let out on condition that the assessee was to provide certain facilities such as reception area with sofas, reception desk, work stations of quality, furniture for offices and conference rooms etc. Apart from these there were also specifications for sound-proofing for windows, blinds, phone wiring, electrical wiring, generators, etc. He therefore, took the view that the provisions of Section 56(2)(iii) were applicable and that the letting out of the machinery,

plant and furniture and the letting out of buildings were inseparable and therefore the rental income was chargeable to tax under the residual head. According to him, it was the intention of the parties that the letting should be a composite letting. He relied on the judgment of the Supreme Court in the case of ***Sultan Brothers Pvt. Ltd. Vs. CIT***, (1964) 51 ITR 353 and several other decisions cited in the assessment order. In this view of the matter, he brought the rental income of ₹1,76,40,000 to tax under the head "income from other sources" with the result that the deductions under Section 24 claimed by the assessee on the footing that the rental income was assessable under the head "income from house property" stood disallowed. The net result was an addition of ₹52,92,000/-.

3. The assessee filed an appeal to the CIT(Appeals) and reiterated the stand taken by him before the assessing officer. The CIT(Appeals) affirmed the order of the assessing officer and dismissed the assessee's appeal. The assessee appealed further to the Tribunal in ITA No.4652/Del/2010. The Tribunal examined the issue in great detail in the light of the various authorities cited by the assessee. In respect of the rent received from Haldirams, the Tribunal took the view that the assessee simply let out the ground and first floors in the building and the lessee was given a right to use the common facilities such as staircases, corridors and lifts which are normally permitted to be used by any lessee for enjoying the demised premises in a proper and efficient manner. The Tribunal further found that no machinery, plant or furniture was leased to Haldirams. It, therefore, held that the letting out of a part of the building to Haldirams was a clear case of exploitation of the premises by the assessee as owner thereof. Accordingly, the Tribunal agreed with the assessee that the

rental income from Haldirams should be brought to tax under the head "income from house property" as per Section 22. The assessee is not aggrieved by this part of the decision of the Tribunal. He is, however, aggrieved by the other part of the order whereby the Tribunal held that the rental income from other lessees was held assessable under the head "income from other sources" and not under "income from house property". The Tribunal found that the letting out to these entities consisted of the space, fittings and fixtures, air conditioning plant, ceiling lights, furniture and fixtures etc. The Tribunal eventually held as follows:

> *"5.9 From the table, it will be further seen that leases to Hutchison and Proton Links consist of the space, fittings and fixtures, air-conditioning plant, ceiling lights and furniture and fixtures. In respect of Trinet, it is mentioned that only fixture and fittings have been leased out. The AO on the other hand, mentions about the lease to 'M/s In Touch' and that lease terms are similar to the lease terms in case of Proton Links. From the lease deed with Trinet filed before us PB page nos. 59-62), it is seen that the said premises were leased w.e.f. 9.1.2006 along with fixtures & fittings as per annexure 'A'. This annexure was not filed either before the AO or enclosed in the paper book. Therefore, the AO's finding that the subject matter of the lease is similar to the subject matter of lease in the case of Hutchison and Proton Links is confirmed by taking an adverse view, as the relevant annexure has not been filed. Thus, these three cases are of composite leases in which a consolidated rent has been fixed. In the case of Sultan Brothers (supra), the Hon'ble Court had posed two questions. The first one is whether the subject matter of lease should be enjoyed together? The case of the ld. counsel before us has been that the premises were suitably furnished and amenities required by the lessees were installed. Therefore, it is clear that it is not a case of leasing building separately and other assets separately. Accordingly, it is held that the intention was to let the building, plant, fittings and furniture etc. together. The*

> *second question is-whether the intention is to make letting of tow practically one letting? It is seen that a consolidated lease deed has been drawn in which a consolidated lease rent has been fixed. Therefore, there is a consolidated lease of various assets. It is also a matter of fact on record, accepted by the ld. counsel, that one would not have been let without the other as fittings etc. were made in accordance with desires of the lessees. Therefore, we are of the view that the facts of the case are square covered by this decision of the Constitution Bench. Accordingly, the lease rent has to be assessed under the residuary head. It may be mentioned here that the assessee has claimed depreciation in respect of all assets which are subject matter of lease with these three parties. This conduct also shows that the assessee wanted to use the assets as business assets."*

The claim of the assessee was thus rejected by the Tribunal.

4. The assessee filed an application (MA 238/Del/2011) contending that the order of the Tribunal contained mistakes apart from the record which needed to be corrected. This application was partly accepted by the Tribunal in the sense that it only corrected that part of its order in appeal in which there was reference to an admission which had not been made by the assessee. The Tribunal, on being convinced that there was no such admission, rectified that part of the order. As regards the decision regarding the head of income under which the rental income fell to be assessed, the Tribunal did not modify or alter its earlier order passed in the appeal in any manner. Thus, no relief was obtained by the assessee from the Tribunal.

5. The contention urged on behalf of the assessee in support of the appeal is that the fittings and fixtures and other installations in the let out premises were installed only at the desire of the lessee and in such circumstances, the income

should properly be assessed under the head "income from house property" as mandated by Section 22 of the Act. The relevant portions of the lease documents were read out to us to drive home the point. We do not think that anything turns on the fact as to at whose instance the machinery, plant or furniture were installed in the leased premises. The real test which has been applied by the Tribunal, and rightly so is to see whether the letting is a composite or inseparable letting and if it is so, the rent falls for being assessed under the residual head of income and not under the head "property". The order of the Tribunal and the finding that the letting out of the plant, machinery or furniture and the premises constituted a single, composite and inseparable letting is based on the tests laid down by the constitution bench of the Supreme Court in the case of *Sultan Bros. Pvt. Ltd.* (supra). Sarkar, J, speaking for the Court set out the principles that are applicable for deciding whether the letting is an inseparable letting in the following words:

> *"What, then, is inseparable letting? It was suggested on behalf of the respondent Commissioner that the sub-section contemplates a case where the machinery, plant or furniture are by their nature inseparable from a building so that if the machinery, plant or furniture are let, the building has also necessarily to be let along with it. There are two objections to this argument. In the first place, if this was the intention, the section might well have provided that where machinery, plant or furniture are inseparable from a building and both are let, etc. The language however is not that the two must be inseparably connected when let but that the letting of one is to be inseparable from the letting of the other. The next objection is that there can be no case in which one cannot be separated from the other. In every case that we can conceive of, it may be possible to dismantle the machinery or plant or fixtures from where it was implanted or fixed and set it up in a new building. As regards furniture, of course, they simply*

rest on the floor of the building in which it lies and the two indeed are always separable. We are unable, therefore, to accept the contention that inseparable in the sub-section means that the plant, machinery or furniture are affixed to a building.

It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions: Was it the intention in making the lease—and it matters not whether there is one lease or two, that is, separate leases in respect of the furniture and the building—that the two should be enjoyed together? Was it the intention to make the letting of the two practically one letting? Would one have been let alone and a lease of it accepted without the other? If the answers to the first two questions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of section 9 and putting it under section 12 as a residuary head of income. It then becomes a new kind of income, not covered by section 9, that is, income not from the ownership of the building alone but an income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it."

6. It is only by applying the aforesaid tests to the facts of the present case that the Tribunal held that the letting in the present case was a composite one. In so concluding the Tribunal contrasted the terms under which the ground and first floors of the building were leased to Haldirams. What was let out to Haldirams was the bare space with only a right given to the lessee to use the common facilities such as lift, lobby, staircases, corridors etc. in order that the property can be enjoyed effectively; there was no letting out of machinery, plant or furniture to Haldirams. However, in the disputed cases there was a

letting of the fixtures, fittings, air-conditioning plant, furniture etc. together with the building and both were inseparable. This is what the Tribunal has found. It further found that the intention of the parties was that there was to be a single inseparable letting as evidenced by a composite lease deed for which a consolidated lease rent was fixed. In these circumstances, we are of the view that the substantial question of law has to be answered in the affirmative and against the assessee.

7. Ld. counsel for the assessee took us through the judgment of the Supreme court in ***Shambhu Investments Pvt. Ltd. Vs. CIT*** (2003) 129 Taxman 70. Since there is no independent reasoning in the judgment which merely dismissed the civil (appeals), we were taken through the judgment of the Calcutta High Court in ***CIT Vs. Shambhu Investment TVT Ltd.*** (2001) 249 ITR 47, which was the judgment affirmed by the Supreme Court. It seems to us that the Calcutta High Court was persuaded to hold, on the facts of that case, that the rental income was not assessable as property income on the basis that the primary object of the assessee was to exploit the immoveable property by way of complex commercial activities and therefore, the rental income should be assessed as business income. The controversy in the case before the Calcutta High Court was whether the rental income can be treated as property income or as business income. The provisions of Section 56(2)(iii) were not required to be considered. The controversy before us is different namely, whether the rental income is to be assessed as property income or "income from other sources". Therefore, it cannot be said that the judgment of the Calcutta High Court or the judgment of the Supreme Court which confirmed the judgment of the Calcutta High Court are authorities for the proposition that is being

canvassed before us on behalf of the assessee. Here, the question that arises for decision is whether the letting was inseparable and therefore Section 56(2)(iii) was rightly invoked by the assessing officer. That question did not fall for decision either before the Calcutta High Court or before the Supreme Court in the judgments cited above.

8. We accordingly answer the substantial question of law in the affirmative, against the assessee and in favour of the revenue. The appeal filed by the assessee is accordingly dismissed with no order as to costs.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

NOVEMBER 22, 2012
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