IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.664 of 2007

The Commissioner of Income Tax
Salem. .. Appellant /Appellant

Vs

M/s.A.V.K.Constructions Pvt. Ltd.
C-4, Brindavan Road, AVK Nagar
Salem - 636 004. .. Respondent /Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal SMC-III "D" Bench, Chennai dated 11.11.2005 made in I.T.A.No. 225/Mds/2005 for the assessment year 1998-99.(Against ITA NO.9/04-05 dated 24.11.2004 on the file of the commissioner of income tax (Appeals) Salem against PAN /GIR NO 1DCAO043 on the file of the Assistant Commissioner of Income Tax Company cicle, Salem)

For Appellant : Mr.N.Muralikumaran
Sr.Standing Counsel (IT)

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, SMC-III "D" Bench, Chennai dated 11.11.2005 made in I.T.A.No. 225/Mds/2005 for the assessment year 1998-99, raising the following substantial question of law:

"If the intention of a person is to exploit the property as such and derive therefrom by subleasing the property would such income be treated as income from property or not?"

2. The Revenue is the appellant. The relevant assessment year is 1998-99. The assessee took on lease a property and sublet a portion of the same. The Assessing Officer, by assessment order dated 30.1.2004 treated the income derived therefrom as "income from house property". Being

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aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 24.11.2004, allowed the appeal directing the Assessing Officer to treat the said income as "business income" and the same was, on appeal, confirmed by the Tribunal by order dated 11.11.2005. Hence, the present appeal raising the substantial question of law referred to above.

3. The issue involved in this appeal is, whether the lessee of a property can be construed as an owner of the property merely because the lessee has sublet the property.

4.1. The computation of income from house property is dealt with under Sections 22 to 27 of the Income Tax Act (for brevity "the Act").

4.2. The "income from house property" is defined as under in Section 22 of the Act:

> Section:22. Income from house property.-The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".
>
> (emphasis supplied)

5. Section 27 of the Act defines the "owner of house property" as hereunder:

> Section:27. "Owner of house property", "annual charge" etc., defined.--For the purposes of sections 22 to 26--
>
> (i) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;
>
> (ii) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;
>
> (iii) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;
>
> (iiia) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building

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or part thereof ;

(iiib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof ;

(iv) "annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government;

(v) "capital charge" means a charge to secure the discharge of a liability of a capital nature;

(vi) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

(emphasis supplied)

6. In the instant case, concededly, the lease agreement dated 1.4.1996 entered into between the assessee and Mr.S.K.Karunanidhi was for a period of 11 months with an option to the lessee to retain the possession thereof for a further period of two years on a monthly rent of Rs.10,000/- payable in each month in advance on or before 5th day thereof. Therefore, as per Section 27(iiib), the assessee, by virtue of its right by way of a lease from month to month or for a period not exceeding one year, as referred to above, is excluded from the definition of owner of the house property. If that be so, the case of the assessee is not attracted by Sections 22 to 26 of the Act.

In the result, finding no substantial question of law, this appeal is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1.The Assistant Registrar,
  Income Tax Appellate Tribunal
  Madras Bench SMC-III(D), Chennai.

2.The Commissioner of Income
  Tax (Appeals), Salem.

3.The Commissioner of
  Income Tax, Salem.

4.The Assistant Commissioner of
  Income Tax, Company Circle
  Salem.

1 cc to M/s N.Muralikumaran Advocate SR.NO.37074

SMV(co)
RD 3.7.07

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