

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**&**

**HON'BLE SHRI JUSTICE GAJENDRA SINGH**

**ON THE 16<sup>th</sup> OF APRIL, 2024**

**INCOME TAX APPEAL No.180 of 2023**

**BETWEEN:-**

**THE PRINCIPAL COMMISSIONER OF INCOME TAX-I, AAYKAR BHAWAN, WHITE  
CHURCH ROAD, INDORE (MADHYA PRADESH)**

**.....APPELLANT**

***(MS. VEENA MANDLIK – ADVOCATE.)***

**AND**

**M/S. M.P. ENTERTAINMENT AND DEVELOPERS PVT. LTD., 4<sup>TH</sup> FLOOR, C-21  
MALL, PLOT NO.94-104 AND 300-303, SCHEME NO.54, PU-4, A.B. ROAD, INDORE  
PAN AAECM8668D (MADHYA PRADESH)**

**.....RESPONDENT**

***(NONE PRESENT.)***

**INCOME TAX APPEAL No.216 of 2023**

**BETWEEN:-**

**THE PRINCIPAL COMMISSIONER OF INCOME TAX-I, AAYKAR BHAWAN, WHITE  
CHURCH ROAD, INDORE (MADHYA PRADESH)**

**.....APPELLANT**

*(MS. VEENA MANDLIK – ADVOCATE.)*

**AND**

M/S. M.P. ENTERTAINMENT AND DEVELOPERS PVT. LTD., 4<sup>TH</sup> FLOOR, C-21 MALL, PLOT NO.94-104 AND 300-303, SCHEME NO.54, PU-4, A.B. ROAD, INDORE PAN AAECM8668D (MADHYA PRADESH)

.....RESPONDENT

*(NONE PRESENT.)*

**INCOME TAX APPEAL No.217 of 2023**

**BETWEEN:-**

THE PRINCIPAL COMMISSIONER OF INCOME TAX-I, AAYKAR BHAWAN, WHITE CHURCH ROAD, INDORE (MADHYA PRADESH)

.....APPELLANT

*(MS. VEENA MANDLIK – ADVOCATE.)*

**AND**

M/S. M.P. ENTERTAINMENT AND DEVELOPERS PVT. LTD., 4<sup>TH</sup> FLOOR, C-21 MALL, PLOT NO.94-104 AND 300-303, SCHEME NO.54, PU-4, A.B. ROAD, INDORE PAN AAECM8668D (MADHYA PRADESH)

.....RESPONDENT

*(NONE PRESENT.)*

**INCOME TAX APPEAL No.218 of 2023**

**BETWEEN:-**

THE PRINCIPAL COMMISSIONER OF INCOME TAX-I, AAYKAR BHAWAN, WHITE CHURCH ROAD, INDORE (MADHYA PRADESH)

.....APPELLANT

*(MS. VEENA MANDLIK – ADVOCATE.)*

**AND**

M/S. M.P. ENTERTAINMENT AND DEVELOPERS PVT. LTD., 4<sup>TH</sup> FLOOR, C-21 MALL, PLOT NO.94-104 AND 300-303, SCHEME NO.54, PU-4, A.B. ROAD, INDORE PAN AAECM8668D (MADHYA PRADESH)

.....RESPONDENT

*(NONE PRESENT.)*

**Heard and reserved on: 05.04.2024**

**Order passed on: 16.04.2024**

*This appeal (s) coming on for admission this day, Justice Vivek Rusia passed the following:*

**ORDER**

The Principal Commissioner of Income Tax-1, Indore has filed the appeal (s) under Section 260-A of the Income Tax Act, 1961 (herein after referred to as the Income Tax Act) being dissatisfied with consolidated order dated 21.11.2022 passed by the Income Tax Appellate Tribunal (ITAT), Bench at Indore in Income Tax Appeal bearing numbers ITA/344/Indore/2017 for Assessment Year 2013-14, ITA/118/Indore/2017 for Assessment Year 2012-13, ITA/117/Indore/2017 for Assessment Year 2011-12 and ITA/203/Indore/2018 for the Assessment Year 2014-15 respectively.

**Income Tax Appeal No.180 of 2023**

2. The Assessee – Company, M/s. M.P. Entertainment & Developers Private Limited filed e-return of Income Tax for the Assessment Year 2013-14 on 29.09.2013 declaring total loss at minus Rs.3,32,47,258/- (rupees three crore thirty two lakh forty seven thousand two hundred fifty eight only). The case of the assessee came under the scrutiny through Computer Assisted Security Selection

(CASS) and assessment under Section 143 (3) of the Income Tax Act was completed by Assessing Officer (AO) on 30.03.2016 at Rs.43,65,20,099/- (rupees forty three crore sixty five lakh twenty thousand ninety nine only).

**Income Tax Appeal No.216 of 2023**

3. The Assessee – Company, M/s. M.P. Entertainment & Developers Private Limited filed e-return of Income Tax for the Assessment Year 2012-13 on 29.09.2012 declaring net loss at minus Rs.4,26,92,922/- (rupees four crore twenty six lakh ninety two thousand nine hundred twenty two only). The case of the assessee came under the scrutiny through Computer Assisted Security Selection (CASS) and assessment under Section 143 (3) of the Income Tax Act was completed by Assessing Officer (AO) on 31.03.2015 at Rs.58,42,522/- (rupees fifty eight lakh forty two thousand five hundred twenty two only).

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4. The Assessee – Company, M/s. M.P. Entertainment & Developers Private Limited filed e-return of Income Tax for the Assessment Year 2011-12 on 31.03.2012 declaring total income of Rs.00.00/- (rupees nil). As per computation total loss at minus Rs.1,02,098/- (rupees one lakh two thousand ninety eight only) under normal provisions of the Income Tax Act and book loss at minus

Rs.1,81,15,601/- (rupees one crore eighty one lakh fifteen thousand six hundred one only) was claimed under Section 115-JB of the Income Tax Act.

5. The case of the assessee came under the scrutiny through Computer Assisted Security Selection (CASS) and assessment under Section 143 (3) of the Income Tax Act was completed by Assessing Officer (AO) on 29.03.2014 at Rs.4,71,42,454/- (rupees four crore seventy one lakh forty two thousand four hundred fifty four only).

### **Income Tax Appeal No.218 of 2023**

6. The Assessee – Company, M/s. M.P. Entertainment & Developers Private Limited filed e-return of Income Tax for the Assessment Year 2014-15 on 19.11.2014 declaring net loss at minus Rs.3,46,49,041/- (rupees three crore forty six lakh forty nine thousand forty one only). The case of the assessee came under the scrutiny through Computer Assisted Security Selection (CASS) and assessment under Section 143 (3) of the Income Tax Act was completed by Assessing Officer (AO) on 30.12.2016 at Rs.16,41,60,940/- (rupees sixteen crore forty one lakh sixty thousand nine hundred forty only).

7. In all the Assessment Years, the Income Tax Assessing Officer recorded common findings. The respondent – Assessee Company constructed a shopping-cum-entertainment Mall in the name and style as “Malhar Megha Mall” and

declared the nature of business as “to carry on the business of purchase for development of the land, estates structure and rented income from immovable properties”. The Assessing Officer (A.O) observed that during these Assessment Years, only a construction of portion of Mall was completed and assessee started deriving the income by renting the shops and other space within the Mall. The assessee has shown all its income / loss from the business activities. Therefore, as per opinion of the A.O., the income should have been bifurcated under the heads of “income of house property” and “income from business and profession”. In ITA No.180 of 2023, the A.O. vide assessment order dated 30.03.2016 restricted the claim of depreciation at the rate of 51.6% of the occupied area on the Mall and allowed the depreciation of Rs.1,79,76,364/- (rupees one crore seventy nine lakhs seventy six thousand three hundred sixty four only).

**8.** Being aggrieved by the aforesaid assessment order passed by the Assessing Officer, respondent – assessee preferred an appeal before the Commissioner of Income Tax (CIT) (Appeals)-III, Indore and vide order dated 28.02.2017, the CIT (Appeals) allowed all the appeals of the assessee and deleted both the additions by holding that any income from leasing or letting out the properties in such Mall are essentially required to be computed only as an income from the business under Section 28 of the Income Tax Act and it cannot be treated as income from the

house property. Accordingly, the CIT (A) deleted the income from the house property of Rs.50,21,35,712/- (rupees fifty crore twenty one lakh thirty five thousand seven hundred twelve only) and also allowed the depreciation of Rs.3,48,31,840/- (rupees three crore forty eight lakh thirty one thousand eight hundred forty only).

9. Being dissatisfied with the order passed by the CIT (A), the Income Tax Department preferred a revenue appeals before the ITAT, Indore. The learned Appellate Tribunal relied on the judgment passed by the Apex Court in case of **Kamani Properties Limited** v. **CIT** reported in (1971) 82 ITR 0547 (SC), **M/s. Rayala Corporation Private Limited** v. **ACIT** reported in (2016) 386 ITR 500 (SC), wherein the decision of **M/s. Chennai Properties & Investments Limited** v. **CIT** reported in (2015) 373 ITR 673 (SC) was affirmed and held that where the letting out the property is the main object of a company, its income is to be computed under the head “income from business” and it cannot be treated as “income from house property”, affirmed the order passed by the CIT (A) and dismissed the appeals. Hence, these appeals before this Court.

10. Ms. Veena Mandlik, learned counsel appearing for the appellant – Department submitted that the CIT (A) as well as ITAT both were not justified in considering the nature of the receipts i.e. rental and wrongly treated it under the

head of “income from the business and profession”, and not as “income from the house property”. The ITAT was not justified in confirming the order passed by the CIT (A), without appreciating the judgment passed in case of **Shamboo Investment Private Limited** v. **CIT** reported in (2003) 263 ITR 143 (SC).

11. During the arguments, Ms. Veena Mandlik has placed reliance on a judgment passed in case of **Raj Dadarkar and Associates** v. **ACIT-CC-46** reported in (2017) 14 SCC 476 in which the judgment passed in case of **Chennai Properties and Investment Limited, Chennai** v. **Commissioner of Income Tax, Central-III, Tamil Nadu** reported in (2015) 14 SCC 793 and **Rayala Corporation Private Limited** v. **Assistant Commissioner of Income Tax** reported in (2016) 15 SCC 201 have been held inapplicable in the matter building constructed by Maharashtra Housing & Development Authority and shown the income from the shop and stall under Head of “profit and gain of business or profession”. The re-assessment order was framed computed the income from the shops and stalls under the Head of “income from the house property” of the Income Tax Act and the same was upheld up to the Apex Court.

12. Finally, Ms. Veena Mandlik submitted that the learned ITAT has wrongly placed reliance on a judgment in case of **M/s. Rayala Corporation Private**

**Limited** (supra) and **Chennai Properties & Investment Limited** (supra) by upholding the orders passed by learned CIT (A).

13. The present appeals are barred by 171 days, 198 days, 198 days and 198 days respectively, hence an application for condonation of delay is filed. Keeping in view the reasons mentioned in the application which is supported by the affidavit of the Officer-in-Charge of the case, the delay in filing the appeal (s) is hereby condoned.

14. We have perused the records and considered the above submissions.

15. The A.O. determined Rs.50,21,35,712/- (rupees fifty crore twenty one lakhs thirty five thousand seven hundred twelve only) as “house property income” for the Assessment Year 2013-14 and determined “business / professional income” at Rs.6,63,59,504/- (rupees six crore sixty three lakhs fifty nine thousand five hundred four only) for the same Assessment Year. The CIT (A) has held that rental income derived by the respondent – assessee from leasing out the properties in the mall falls under the head of “income from business” and not under the head of the “income from the house properties”. It has been held so because all the properties including the right of leasing were owned by the appellant. The same were put to use for the purpose of business or ready to put to use, as the main business of the assessee. Thereafter, in revenue appeals filed by the Department,

learned ITAT has discussed this issue in detail after considering the documents filed by the respondent – assessee. The learned ITAT found that the main object of the assessee is the business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theater, shop, shopping mall etc. as per Memorandum of Article and Association, which is liable to be categorized as income derived from the shopping mall under the head of “income from business” under Section 28 of the Income Tax Act. The assessee owned a building in the name of Mall and getting it furnished and thereafter let out to various persons with all furniture, fixtures, light or air conditioner for being used as table space by executing a rent agreement.

16. In the case of **Sultan Brothers Private Limited** v. **CIT** reported in (1964) 5 SCR 807, the Apex Court held that each case has to be looked at from the businessman’s point of view to find out whether the letting was the doing of business or exploitation of the property by the owner, it is not possible to say that particular activity is a business because it is concerned with an asset with which the trade is commonly carried on. In case of **Chennai Properties and Investments Limited** (supra), the Apex Court found that the entire income of the appellant was through letting out of the two properties it owned and there was no

other income of the assessee except the income from letting out the said properties, which was the business of the assessee.

**17.** The same situation was in the case of **Rayala Corporation Private Limited** (supra). The Apex Court while holding that the income shall be treated as “income from the house property”, rested its decision in the context of main object of the company and took note of the fact that letting out the property was not the object of the company at all. Hence, the character of the income which was from the house property had not been altered, because it was received by the Company from the object of the developing and setting up of the properties. The aforesaid two judgments were distinguished in the case of **Raj Dadarkar and Associates** (supra), because the assessee therein did not produce sufficient material on record to show its entire income or substantial income was from letting out the properties which was the principal business activities of the appellant i.e. Raj Dadarkar and Associates.

**18.** In the present case, the A.O. did not find any material against the respondent – assessee to come to the conclusion that sub-leasing of the premises was only a part of its predominant object of the assessee. The respondent’s right from the construction of mall till the matter was taken into scrutiny had been offering income from the business of constructing, owning, acquiring, developing,

managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theater, shop, shopping mall etc., sub-licence by it under the head “profit and gain of business or profession” of the Income Tax Act. Therefore, the CIT (A) as well as ITAT have rightly set aside the order of A.O.

**19.** The Apex Court in case of **Raj Dadarkar and Associates** (supra) has held that ITAT being a last forum insofar as factual determination is concerned, these findings have attained finality. No material has been produced even before us to show how the aforesaid findings are perverse. The order passed by learned A.O. nowhere shows that the entire income or substantial income of the assessee was from letting out of the properties, which is admittedly not the principal business activity of the assessee. Therefore, we do not find any perversity in the findings recorded by the ITAT as well as the CIT (A) and also do not find any substantial question of law involve in these appeals.

Pending interlocutory application, if any, stands disposed off.

Let a copy of this order be also kept in connected appeals.

**(VIVEK RUSIA)**  
**JUDGE**

**(GAJENDRA SINGH)**  
**JUDGE**