आयकर अपीलीय अधिकरण "एफ" **न्यायपीठ मुंबई में।**

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

श्री आर.सी.शर्मा, लेखा सदस्य **एवं** सुश्री सुषमा चावल, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI R.C. SHARMA, AM AND Ms. SUSHMA CHOWALA, JM

आयकर अपील सं./I.T.A. No.4977/Mum/2006

आयकर अपील सं./I.T.A. No.3033/Mum/2010

(**निर्धारण वर्ष /** Assessment Years: 2003-04 & 2005-06)

M/s. Bhuvan Leasing and Infrastructures LLP (Formerly Ocean City Trading India P. Ltd.) A-49/1360, MIG Colony, Adarsh Nagar Co-op Hsg. Society Ltd., Prabhadevi Worli, Mumbai 400025 स्थायी लेखा सं./PAN : AAACO1795K	**बनाम**/ Vs.	Income Tax Officer 7(1)2 Aayakar Bhavan Mumbai 400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Manoj Mishr

प्रत्यर्थी की ओर से/Respondent by : Shri Rakesh Joshi

सुनवाई की तारीख /Date of Hearing : 03.06.2015

घोषणा की तारीख /Date of Pronouncement : 10.06.2015

आदेश / O R D E R

Per Sushma Chowla, J.M.

Both these appeals filed by the assessee are against the respective orders of CIT(A) relating to assessment years 2003-04 and 2005-06 against the order passed under section 143(3) of the Act.

2. The Hon'ble High Court in Income Tax Appeal 2415 of 2009, vide judgement dated 12.03.2010 had restored the issue back to the file of the Tribunal to adjudicate the issue raised by the assessee vide ground 3 of the appeal. In view thereof the only issue to adjudicated in assessment year 2003-04 is on account of ground of appeal No. 1, which reads as under: -

"1. The CIT(A) erred in confirming the action of the assessing officer ("AO") in assessing the leave and licence income of Rs.54,67,500 under the head "income from other sources" instead of income under the head "profits and gains of business or profession", under which furnished premises were given on Leave & Licence to the Licensee.

He further erred in making the following observation in his order:

"The transaction of leasing and sub-leasing undertaken by the appellant is an isolated transaction and the same is not carried on by the appellant on regular or systematic basis." (para 3.2, page 3).

Further, the assessee in ITA No. 3033/Mum/2010 had raised similar issue vide ground of appeal No. 1, which reads as under: -

"1. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Assessing Officer in treating the Business Income as Income From Other Sources without considering the facts & circumstances of the case."

The Assessee is also in appeal in assessment year 2005-06 on another issue as per ground of appeal No. 2, which reads as under: -

"2. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Assessing Officer in disallowing the claim of expenses on account of Staff Recruitment & staff Training Expenses of Rs.15,27,872/- without considering the facts & circumstances of the case."*

3. Both the appeals relating to the same assessee on similar issue were heard together and are being adjudicated by this consolidated order for the sake of convenience.

4. The issue arising in the present appeal is in relation to assessability of leave and licence income received by assessee and whether the same has to be assessed as profit and gains of business or as income from other sources. The Tribunal, in the first round of appeal, vide order dated 31st October, 2008 had appreciated the facts of the case wherein the assessee under an agreement dated 16.11.2000 styled as leave and licence agreement granted licence to M/s. American Express Bank Ltd. to use the premises of which it was the lessee. The licence fee was fixed at ₹13,66,875/- as quarterly licence fee. The said premises along with fixtures and fittings were licensed to the party for a period of three years commencing from 01.01.2001 and expiring on 31.12.2003. The Assessee had declared the said licence

fee as income from business and claimed certain expenses against it. On the other hand, the AO has show caused the assessee as to why the same should not be assessed as income from other sources. The explanation of the assessee in this regard was that under clause 53, 109, 129 and 131 of the object clause of Memorandum of Association of assessee, assessee was permitted to pursue business of taking on lease and earn income from the same. Another plea raised by the assessee was that it had taken on lease commercial assets which in turn were leased out to derive income and the said income was to be assessed as business income. Both the AO and the CIT(A) treated the said income as income from other sources as the assessee was merely subletting the property and there was no business activity involved in such subletting.

5. The Tribunal, vide order dated 31st October, 2008, upheld the orders of the authorities below holding that assessee had not been able to demonstrate as to how the activity of subletting was done in a systematic and organized manner, so as to constitute carrying on of business. Another point noted by the Tribunal in assessee's case was that the Director's report dated 26.08.2003 quoted that the licence agreement with American Express Bank came to an end on 31.03.2003 after which a new licence agreement had been entered into by the assessee with the British Deputy High Commission, Mumbai. As per the Tribunal this was an act of subletting by the assessee and even the list of fixtures and fittings provided to the licensee in the premises do not find place in the leave and licence agreement and even otherwise provisions of such items would not make the income in question as business income.

6. The Hon'ble High Court (supra), on an appeal filed by the assessee, noted that assessee had returned the income from assessment year 1993-94 to 2000-01 treating rental/incensing income as assessable under the head 'profits and gains of business', which in turn was accepted by the Revenue. It is also noted by the Hon'ble High Court that assessment for assessment years 1993-94 to 2001-02 were completed under section 143(3) of the Act and the income was assessed in the hands of the assessee as income from business. In the absence of any distinguishing features brought in the case, the Hon'ble High Court directed the

Tribunal to reconsider its decision having due regard to the circumstances of the case. The relevant findings of the Hon'ble High Court are as under: -

> *"2. The appeal pertains to assessment year 2003-04. The issue before the Tribunal on the first question was whether income received from licensing of immovable property belonging to the assessee can be assessed as income from business or as income from other sources. The assessee submitted that from assessment years 1993-94 to 2000-01 the returned income treating the rental/licensing income as assessable under the head of profit and gains of business was accepted by the Revenue. For assessment years 1993-04 and 2001-02 the assessments were completed under section 143(3) whereby the Assessing Officer had accepted the submission that the licence fees received by the assessee were business income. The Court is informed that this was brought to the notice of the Tribunal. The assessee submits that no distinguishing features were brought before the Tribunal by the Revenue to justify a different treatment for the assessment year in question. In these circumstances, we are of the view that the Tribunal may be requested to reconsider its decision having due regard to the circumstances which are pointed out. We, however, clarify that we have expressed no opinion on the merits and all the contentions are kept open. For the aforesaid reasons, we quash and set aside the order and remand the matter on the first question."*

In view of the directions of the Hon'ble High Court the ground of appeal No. 1 was fixed before the Tribunal for adjudication.

7. The learned A.R. for the assessee pointed out that the lease income earned by the assessee from year to year was being assessed as income from business and this fact was brought before the Tribunal also. However, the Tribunal held that the said income was assessable under the head 'income from other sources'.

8. The next plea of the assessee was that in the absence of any change of facts there was no merit in adopting lease income as income from other sources as it is income from business assessed in the hands of the assessee from year to year. It was further pointed out by the learned A.R. for the assessee that in assessment years 1993-94 and 2001-02, assessment was completed under section 143(3) of the Act wherein similar income from leave and licence agreement was assessed as income from business. The learned A.R. for the assessee brought to our attention copy of assessment order relating to assessment year 1993-94 along with assessment order relating to assessment year 2001-02 placed at pages 32 to 49 of the paper book. The learned A.R. for the assessee further referred to the observation

of the Tribunal in para 4 in which it was accepted that as per the object clause of Memorandum Association of the assessee, the assessee, in order to its business activities can take on lease and earn income on releasing the same. It was further pointed by him that the Hon'ble Supreme Court in the case of Chennai Properties & Investment Ltd. vs. CIT reported in 56 taxmann.com 456 on similar facts, laid down the proposition that where as per the object clause in the Memorandum of Association, was to acquire and hold properties which in turn were let out, then the income arising from such letting out was assessable in the hands of the assessee as income from business.

9. On the other hand, the learned D.R. for the Revenue placed reliance on the order passed by the CIT(A).

10. We have heard the rival contentions and perused the record. In the facts of the present case assessee, as per its object clause in the Memorandum of Association, was permitted to perform business of taking on lease and earning income from the same. It had taken premises on lease which in turn was sublet to M/s. American Express Bank. The issue arising before us is in relation to assessability of such lease income earned by the assessee. The claim of the assessee before the authorities below and even before us is that such income being in continuation of its object as per the Memorandum of Association, is to be assessed as business income in its hands. Whereas the case of the Revenue is that assessee was engaged in subletting of the property, which in turn it had obtained on lease and hence the income arising there from is assessable in the hands of the assessee as income from other sources, since the assessee was not the owner of the property. The assessee had entered into lease agreement with American Express Bank in the earlier year and admittedly the rental income declared by the assessee was assessed as business income in the hands of the assessee after allowing the related business expenditure claimed. The said decision was accepted by the authorities below from assessment year 1993-94 onwards for which the assessment was completed under section 143(3) of the Act and copy of the assessment order is filed at pages 32-42 of the paper book. Similarly, for assessment year 2001-02 the assessment was completed under the head income from business in the assessment order passed

under section 143(3) of the Act, which in turn is placed at pages 43 to 49 of the paper book. The assessee continues to earn income from same lease agreement as in the past and the income declared during the year under consideration was received from American Express Bank, which will also be sub-lessee in the earlier years. The Hon'ble High Court, while adjudicating the appeal of the assessee, had noted all the above said facts and also noted that there were no distinguishing features before the Tribunal to justify in giving a different treatment for the assessment year in question, whereas similar income was assessed as income from business in the hands of the assessee in the prior years. On verification of the records available we find that in assessment years 1993-94 and 2001-02 the income had been assessed under the head income from business. Though the Hon'ble High Court had restored the issue back to the file of the Tribunal but with the direction that the said issue be decided with regard to the circumstances of the case.

11. In the facts of the present case assessee had leased out the premises to American Express Bank Ltd. w.e.f. October 1992. The said lease agreement continued upto 31.03.2003 and was in application during the financial year 2002-03, i.e. in the year which is in appeal before us. The said leasing of the premises by the assessee was as per the objects provided in Memorandum of Association. A perusal of the earlier order passed by the Tribunal in assessee's own case reflects that the Tribunal, vide para 4 of its order had acknowledged that under clause 53, 109, 129 and 131 of the object clause (other objects) of Memorandum of Association of the assessee, assessee was permitted to pursue the business of taking on lease and earning income from the same. Where it is the intention of the assessee to lease out various premises and then sublet the same on leave and licence basis to different parties, then such activity carried on by the assessee in line with its objects is business activity undertaken by the assessee. The income arising from such exploitation of the assets which had been taken by the assessee on lease and had been further sublet by it is a systematic and organized activity of carrying on its business. Undoubtedly, assessee was not the owner of the premises but was only a lessee of the premises, which in turn had been sublet by the assessee with the

intention of exploiting the same and the receipts arising there from are assessable in the hands of the assessee as income from business and the necessary related expenditure has to be allowed as deduction in the hands of the assessee.

12. The Hon'ble Supreme Court in the case of Chennai Properties and Investment Ltd. (supra) has appreciated the facts before it, wherein the assessee had acquired properties in the city of Madras and in turn let out those properties and the rental income received by it was shown as income from business, it was held that where main object of the assessee company as per its Memorandum of Association was to acquire properties and to let out those properties as well as make advances upon the security of land and building, then it was held that "*what we emphasis is that holding the aforesaid properties and earning income by letting out these properties is the main objective of the company*". The Hon'ble Supreme Court, however, noted that in the return of income the entire income which had accrued and assessed in the hands of the assessee was from letting out of the said property and there was no other income arising to the assessee. The Hon'ble Supreme Court made reference to the ratio laid down by the Constitution Bench of the Apex Court in the case of Sultan Brothers (P) Ltd. vs. CIT [(1964) (5) SCR 807] and the ratio laid down in the case of Karanpura Development Co. Ltd. vs. CIT reported in 44 ITR 362 (SC) and observed as under: -

> *"8. Before we refer to the Constitution Bench judgment in the case of Sultan Brothers (P) Ltd., we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in 'Karanpura Development Co. Ltd. v. Commissioner of Income Tax, West Bengal' [44 ITR 362 (SC)]. That was also a case where the company, which was the assessee, was formed with the object, inter alia, of acquiring and disposing of the underground coal mining rights in certain coal fields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coal fields and then sub-leasing them to collieries and other companies. Thus, in the said case, the leasing out of the coal fields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining C.A. No. 4494/2004 etc. 5 Page 6 leases was shown as business income. Department took the position that it is to be treated as income from the house property. It would be thus, clear that in similar circumstances, identical issue arose before the Court. This Court first discussed the scheme of the Income Tax Act and particularly six heads under which income can be categorised / classified. It was pointed out that before income, profits or gains can be brought to computation, they have to be assigned to one or the other head. These heads*

are in a sense exclusive of one another and income which falls within one head cannot be assigned to, or taxed under, another head. Thereafter, the Court pointed out that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities. In support of the aforesaid proposition, number of judgments of other jurisdictions, i.e. Privy Counsel, House of Lords in England and US Courts were taken note of. The position in law, ultimately, is summed up in the following words: -

> *"As has been already pointed out in connection with the other two cases where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The diving line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned."*

13. The Apex court also noted the fact that in Sultan Brothers (P) Ltd. (supra) the Constitution Bench had clarified that merely an entry in the object clause showing a particular object would not be determinative factor to arrive at a conclusion whether the income has to be treated as income from business and such question would depend upon the circumstances of each case, i.e. whether a particular business is letting out or not. After noting down the above said decisions the Hon'ble Apex Court held that the circumstances of the case have to be considered and in view of the facts before it and its circumstances the Hon'ble Supreme Court held that letting of the properties was the business of the assessee and assessee, therefore, rightly disclosed the income under the head 'income from business'.

14. The facts before us are similar to the facts before the Hon'ble Supreme Court in Chennai Properties & Investment Ltd. As pointed out by us herein above assessee, in furtherance of its object of Memorandum of Association, had leased out the premises, which in turn was subleased on leave and licence basis, thus the intention of the assessee was to exploit the asset leased by it, by way of letting out the same, then such letting out activity is in furtherance of assessee's intention to carry out the business in a systematic and organized manner. Consequently we hold that the rental income declared by the assessee is to be assessed as income from house property. Another aspect to be kept in mind is that similar income

offered by the assessee on account of similar rent received from same tenant in earlier years were assessed as income from business in the hands of the assessee. Another aspect to be kept in mind is that during the year under consideration, i.e. at the close of the year on 31.03.2003 the agreement with American Express Bank had come to an end and the assessee entered into a fresh agreement with British High Commission again establishes the case of the assessee, that it is involved in a systematic and organized activity of leasing out its premises, which in turn are not owned by the assessee. In the totality of the above facts and circumstances we hold that the lease rent received by the assessee is assessable as income from business in the hands of the assessee and the related expenditure has to be allowed in the hands of the assessee. The AO shall accordingly compute the income in the hands of the assessee in line with our directions after affording reasonable opportunity of hearing to the assessee. This ground of appeal, which was restored back to the file of the Tribunal by the Hon'ble High Court is allowed.

15. The issue in ground of appeal No. 1 raised by the assessee in ITA No. 3033/Mum/2010 is identical to the issue in ground No. 1 before the Tribunal in ITA No. 4977/Mum/2006 and our decision in ITA No. 4977/Mum/2006 is applicable mutatis mutandis to ground of appeal No. 1 in ITA 3033/Mum/2010, hence the said ground is allowed.

16. Now coming to the ground of appeal No. 2 raised by assessee in ITA No. 3033/Mum/2010. The learned A.R. for the assessee fairly pointed out that the issue arising in the present appeal is squarely covered against the assessee in view of the order of the Hon'ble High Court in the case the assessee.

17. We find that similar issue of disallowance of recruitment and staff training expenses and salary paid to Shri Naval Kumar arose before the Tribunal in assessee's own case relating to assessment year 2003-04. The Tribunal vide para 12 of its order held as under: -

> *"12. We have considered the rival submissions. Mr. Naval Kumar was sent abroad in education in November, 2000. As early as 19th June 2000, the Board considered the falling and competitive industry of textile business and decided to diversify into electronic media and computer related activity for printing. In this Board resolution, there is no mention with regard to carrying*

out any printing with regard to towels exported by the Assessee. The board resolution clearly indicates that the assessee wanted to pursue a new line of business with no indication of its relevance to the existing line of business. It was pursuant this board resolution that Mr. Naval Kumar was sent to USA to pursue his education. As rightly contended by learned Departmental Representative that there was no evidence as to show what was the nature of course that was to be pursued by Mr. Naval Kumar in USA. The certificate for eligibility for non-immigrant student status mentions that Mr. Naval Kumar was to pursue a course in Rochester Institute of Technology, U.S.A. with Computer science as a major subject. This document is at page No. 79 of the assessee's paper book. This does not give any indication as to what is the nature of course that was to be pursued by Mr. Naval Kumar. In its letter dated 28.11.2005, the assessee has explained before the Assessing Officer that there was good scope for towel with printed images and that one M/s. Max Imaging Systems Ltd., UK was doing the digital printing on assesses' towel and such product commands good market abroad. It has been further explained by the assessee that because of getting the printing done by Max Imaging Systems Ltd., UK, cost of the towel was high and therefore to have in-house printing Mr. Naval Kumar was sent for training abroad. The assessee has filed various correspondences between itself and overseas buyers and Max Imaging Systems Limited. These documents are at page No. 112 to 181 of the assessee's paper book. The correspondence, which is after November, 2000 when Mr. Naval Kumar was sent to USA, in our view will not help the case of the assessee. The position as it prevailed prior to Mr. Naval Kumar being sent to abroad alone have to be looked into. Documents at page No. 137 to 182 related to the period prior to Mr. Naval Kumar being sent abroad. In these correspondences, there is nothing to indicate that towels were sent abroad for printing and because of high cost of printing abroad, the assessee could not explore or do export business. Correspondences only show that towels were being sent abroad and printing was done on the same through Max Imaging Systems Ltd., UK. The plea of the assessee that because of the high cost of printing abroad, it explored possibility of sending Mr. Naval Kumar aboard for training in printing technology; and that the same would benefit the business of the assessee, in our view has not been established by the assessee. The plea of the assessee remains unsubstantiated. As already stated the purpose for which a person was to be sent abroad as expressed in the board resolution dated 19.6.2000 and the explanation of the assessee before the Assessing Officer in its letter dated 28.11.2005 is different. The plea taken in letter dated 28.11.2005 is an after thought and a vain attempt to substantiate the claim for deduction. As far as the action of the Revenue in allowing the very same expenses in A.Y. 2001-02 is concerned, we notice that the explanation given by the assessee before the Assessing Officer does not highlight all the aspects which have been brought out by the Assessing Officer in the order of the assessment in the present A.Y. It is well settled that principles of res-judicata does not apply in income tax proceedings. The assessee has to establish that the expenditure claimed by him is wholly and exclusively for the business which it was carrying on. Decision in the case of

Sakal Papers Pvt. Ltd. (supra) is on different facts and the submissions of learned Departmental Representative in this regard have to be accepted. On an overall appreciation of the evidence and explanation submitted on behalf of the assessee, we are of the view that the assessee has failed to explain and substantiate that the expenditure on staff training and salary pad to Mr. Naval Kumar was wholly and exclusively for the purpose of business of the assessee. We, therefore, confirm the orders of revenue authorities and dismiss Ground N. 2 & 3 of the assessee."

18. The Hon'ble High Court (supra) approved the order of the Tribunal observing as under: -

"3) On the second question, we do not find any reason to interfere with the decision of the Tribunal, having regard to the factual position. As noted in the order of the Tribunal, the assessee was not able to substantiate that sending Shri Naval Kumar for training abroad was for the benefit of the business of the assessee. Counsel appearing on behalf of the assessee fairly placed on record the judgments of the Division Bench in the case of M/s. Echjay Forging Ltd. V/s. The Asstt. Commissioner of Income Tax & Anr. [Income Tax Appeal No. 584 of 2009] decided on 12th June, 2009 where this Court affirmed the decision of the Tribunal for similar reasons."

19. The issue raised before us is similar, i.e. on account of staff recruitment and staff training expenses of ₹15,27,872/- incurred on Shri Naval Kumar. Following the same parity of reasoning, we uphold the order of the CIT(A) and dismiss ground No. 2 of the assessee.

20. In the result, Ground of appeal No. 1 in ITA No. 4977/Mum/2006 is allowed and the appeal in ITA No. 3033/Mum/2010 is partly allowed.

Order pronounced in the open court on 10th June, 2015 .
आदेश की घोषणा खुले न्यायालय में दिनांकः 10.06.2015 को की गई ।

Sd/-	Sd/-
(आर.सी.शर्मा)	(सुश्री सुषमा चावल)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

मुंबई Mumbai; दिनांक Dated 10th June, 2015

n.p.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "F" Bench, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai