# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## INCOME TAX APPEAL NO. 685 OF 2007

National Leasing Limited,
2301-A, Vikas Tower, Walkeshwar Road, Walkeshwar,
Mumbai – 400006. … Appellant

*Versus*

The Assistant Commissioner of Income, Circle 3(6),
Mumbai-400020. …Respondents

WITH
INCOME TAX APPEAL NO. 702 OF 2015

National Realty Pvt. Ltd. … Appellant

*VersusINCOME TAX APPEAL NO. 685 OF 2007*

The Assistant Commissioner of Income, Circle 5(2), …Respondents
Aayakar Bhavan, M.K. Road, Mumbai-400020.

WITH
INCOME TAX APPEAL NO. 338 OF 2015

National Realty Pvt. Ltd. [Formerly, National Leasing Ltd.], 2301A, Vikas Towers, Walkeshwar Road. Mumbai – 400006. … Appellant

*Versus*

The Deputy Commissioner of Income, Circle 5(2),
Aayakar Bhavan, M.K. Road, Mumbai-400020. …Respondent

WITH
INCOME TAX APPEAL NO. 337 OF 2015

National Realty Pvt. Ltd. [Formerly, National Leasing Ltd.], 2301A, Vikas Towers, Walkeshwar Road. Mumbai – 400006. … Appellant

*Versus*

The Deputy Commissioner of Income Tax, Circle 5(2),
Aayakar Bhavan, M.K. Road, Mumbai-400020. …Respondent

WITH
INCOME TAX APPEAL NO. 339 OF 2015

National Realty P. Ltd. [Formerly, National Leasing Ltd.], 2301A, Vikas Towers, Walkeshwar Road. Mumbai – 400006. … Appellant

*Versus*

The Deputy Commissioner of Income Tax, Circle 5(2), Aayakar Bhavan, M.K. Road, Mumbai-400020. …Respondents

WITH
INCOME TAX APPEAL NO. 764 OF 2007

National Leasing Ltd.,
2301-A, Vikas Tower, Walkeshwar Road, Walkeshwar,
Mumbai – 400006. … Appellant

*Versus*

The Assistant Commissioner of Income, Circle 3(6), Mumbai-400020. …Respondents

WITH
INCOME TAX APPEAL NO. 558 OF 2007

National Leasing Ltd.
2301-A, Vikas Tower, Walkeshwar Road, Walkeshwar,
Mumbai – 400006. … Appellant

*Versus*

The I.T.O. Ward-3(5), Mumbai …Respondents

WITH
INCOME TAX APPEAL NO. 559 OF 2007

National Leasing Ltd.
2301-A, Vikas Tower, Walkeshwar Road, Walkeshwar,
Mumbai – 400006.INCOME TAX APPEAL NO. 685 OF 2007 … Appellant

*Versus*

The I.T.O. Ward-3(5), Mumbai …Respondents

WITH
INCOME TAX APPEAL NO. 686 OF 2007

National Leasing Ltd.
2301-A, Vikas Tower, Walkeshwar Road, Walkeshwar,
Mumbai – 400006. … Appellant

*Versus*

The I.T.O. Ward-3(2), Mumbai …Respondents

---

Mr. Rohaan Cama a/w. Mr. Pheroze Mehta, Abinash Pradhan, Ms. Garima Agrawal and Mr. Yash Dedhia i/b. Wadia Ghandy & Co. for the appellants in ITXA/685/2007.
Mr. Rohaan Cama a/w. Mr. Abinash Pradhan, Ms. Garima Agrawal and Mr. Yash Dedhia i/b. Wadia Ghandy & Co. for the appellants in ITXA/686/2007.
Mr. Pheroze Mehta a/w. Mr. Abinash Pradhan, Ms. Garima Agrawal and Mr. Yash Dedhia i/b. Wadia Ghandy & Co. for the appellant in ITXA/558 and 559 of 2007.
Mr. Suresh Kumar for the respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
Reserved on: 9 October 2024
Pronounced on: 21 October 2024

JUDGMENT (Per G. S. Kulkarni, J.)

1. This batch of appeals under Section 260A of the Income Tax Act 1961, filed by the common appellant are directed against orders passed by the Income Tax Appellate Tribunal (for short '**the Tribunal**'). The question of law which arises for consideration in these appeals, is whether the rent income derived by the appellant (for short '**the assessee**') from its properties was assessable under the head 'Income from house property' or as claimed by the assessee under the head 'Income from Profits and Gains of Profession or Business'.

2. The nine assessment years in question relevant to each of these appeals and the date of the impugned orders passed by the Tribunal are as follows:-

| Sr.No. | Income Tax Appeal No. | Assessment Year with regard to which the Appeal is filed | Impugned Order passed by the Appellate Tribunal |
|---|---|---|---|
| 1. | ITXA/686/2007 | 1989-1990 | Dt. 22/02/2006<br>Assessed it as "income from house property" |
| 2 | ITXA/558/2007 | 1990-1991 | Dt. 22/02/2006<br>Assessed it as "income from house property" |
| 3 | ITXA/559 /2007 | 1991-1992 | Dt.22/02/2006<br>Asessed it as "income from house property" |
| 4 | ITXA/685/2007 | 1992-1993 | Dt. 22/02/2006<br>Assessed it as "income from house property" |
| 5 | ITXA/764/2007 | 1995-1996 | Dt. 22/02/2006<br>Assessed it as "income from house property" |
| 6 | ITXA/702/2015 | 2005-2006 | Dt. 28/08/2014<br>Assessed it as "income from house property" |
| 7 | ITXA/338/2015 | 2006-2007 | Dt. 28/08/2014<br>Assessed it as "income from house property" |
| 8 | ITXA/337/2015 | 2007-2008 | Dt. 28/08/2014<br>Assessed it as "income from house property" |
| 9 | ITXA/339/2015 | 2008-2009 | Dt.28/08/2014<br>Assessed it as "income from house property" |

3. The facts in relation to each of the aforesaid period not being different, for convenience we refer to the facts as set out in the lead appeal [Income Tax Appeal No.685 of 2007].

4. The assessee was incorporated in the year 1983 under the Companies Act, 1956, with the main object to carry on the business of leasing of immovable properties including land and buildings, plant and machinery etc. as discernible from its memorandum of association, a copy of which is part of the paper-book.

5. It is assessee's case that since inception, the assessee is engaged in the business of purchasing and renting properties, as also the entire income of the assessee is based on the income received from leasing its properties. It had no other source of income. It is stated that since 1989 till date, the assessee has leased about 85 properties. The business model of the assessee is stated to be such, that it obtains loan from financial institutions for the purchase of properties, it purchases properties and then provides the same on lease. The lease income is thus the only income of the assessee.

6. The assessee contended that from the year 1983 to 1989, its lease income as derived from its properties was assessed by the respondents under the head "Income from Profits and Gains of Profession or Business".

7. For the Assessment Year 1989-90, the assessee filed its return of income under Section 139 of the Income Tax Act, 1961 (for short "**the Act**"), under the

head "income from house property". On 30 January 1992, the Assessing Officer issued a notice to the assessee under Section 143(2) and 142(1) of the Act to show cause as to why the annual letting value of the leased premises should not be the higher figure. The assessee responded to the said show cause notice, by its letter dated 17 February 1992, disputing such contentions (although such issue is not the subject matter of the lead appeal). On 30 March 1992 the Assessing Officer passed an Assessment Order for assessment year 1989-90 (relevant to the lead appeal) under Section 143(3) of the Act whereby the Assessing Officer *inter alia* calculated the annual value of the property on the basis of gross rent instead of actual rent issued by the assessee as shown in its returns. The assessee being aggrieved by the assessment order filed an appeal before the Commissioner of Income Tax (Appeal) (for short "**CIT(A)**") *inter alia* on the ground that the Assessing Officer ought to have calculated the annual value of the property on the basis of the actual rent / license received by the assessee.

8. It is the assessee's case that while the assessee's appeal before the CIT(A) was pending, the assessee filed its revised Returns computing the lease / rental income under the head "income from profits and gains of business". On 9 November 1993, the assessee filed additional grounds of appeal before CIT(A) contending that the income of the assessee should be taxed under the head "profits or gains from business or profession".

9. Further it is the assessee's case that for the AY 1990-91, AY 1991-92 and AY 1992-93, the Assessing Officer assessed the income of the assessee under the head "income from house property", such assessment orders were also assailed before the CIT(A) and thereafter, before the Tribunal are the subject matter of the other connected appeals being decided by this judgment.

10. The assessee has contended that there is something peculiar inasmuch as for the AY 1993-94, 1994-95, 1996-97, 1997-98, 1998-99 and 1999-2000, which is for six assessment years, the Assessing Officer assessed the income of the assessee arising from the rent income from leasing of the property, under the head "income from profits and gains from business". It is stated that however on 4 October 2000, the CIT(A) passed an order under Section 250 of the Act wherein, it was *inter alia* held that additional grounds cannot be raised by the assessee at the appeal stage to raise a contention that the income of the assessee was required to be taxed under the head "profits or gains from business or profession". Even on merits, the income of the assessee was to be assessed as "income from house property" and not "income from profits and gains of business".

11. In the aforesaid circumstances, in December 2000, the assessee challenged the order passed by the CIT(A) dated 4 October 2000 in an appeal before the Tribunal. It is stated that, however, peculiarly for the assessment

years 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05, the Assessing Officer assessed the income of the assessee under the head "income from profits and gains of business" without there being any change of circumstances in regard to the assessee's income, being an income derived only from the leasing of the properties.

12. The Tribunal, considering the contentions as urged on behalf of the parties, by the impugned order, has held that the income of the assessee from leasing of the properties fell under the head "income from house property" and not income from business. Such conclusion is reached by the Tribunal, premised on a decision of the Supreme Court in **East India Housing and Land Development Trust Limited Vs. Commissioner of Income Tax, West Bengal, Calcutta**[1] (for short, "**East India Housing**"). These orders passed by the Tribunal are subject matter of challenge in the present appeals.

13. As noted hereinabove, a similar view has been taken by the Tribunal in respect of other assessment years and subject matter of companion appeals by an order dated 30 June 2008. This Court by an order dated 30 June 2008 passed on the lead appeal had admitted the appeal on the following questions of law :

> "(a) Whether, in the facts and the circumstances of the case, and in law, the Tribunal erred in arriving at the conclusion that the income earned by the Appellant was assessable under the head "Income from house property" in very cryptic and arbitrary manner?

**1** (1961) 42 ITR 49

(b) Without prejudice to the above, whether, on the facts and the circumstances of the case, and in law, the Tribunal was right in concluding that the income earned by the Appellant from its properties was assessable under the head "Income from house property" as against under the head "Profits and gains of business or profession" as contended by the Appellant?

(c) whether, on the facts and the circumstances of the case, and in law, the Tribunal was correct in deciding the issue relating to the head under which the income received by the appellant was to be taxed by solely relying on the judgment of the apex court in East India Housing and Land Development Trust V/s. CIT – (1961) 42 ITR 49 (SC) and ignoring other judgments given by the same court which are to the contrary effect?"

14. Mr. Cama, learned counsel for the assessee has made the following submissions:-

i. The Tribunal could not have passed the impugned order solely on the basis of the decision of the Supreme Court in **East India Housing** (supra), which in the facts and circumstances of the case, was not applicable to the assessee's case. Mr. Cama submits that in **East India Housing** (supra), the assessee was formed with the object of promoting and developing markets, and to derive rent from shops and stalls, was not the business of the assessee, and in such context, the Supreme Court held that the income which was derived by the assessee from shops and stalls could not be taxed under Section 10 of the Act as "profits and gains of business" and need that such income was liable to be taxed as "income from property" under Section 9 of the Act.

ii. In the present case, the memorandum of association of the assessee clearly demonstrates that the main objects of the assessee was to carry on business in realty, real estates, builders and developers of residential and commercial building and complexes and to carry on the business of leasing of real estates including residential houses and services apartment, commercial properties and complex which is stated to be the only business of the assessee. It is submitted that when this factual position is not disputed by the Revenue, it was a clear case that income derived by the assessee from lease of house property could not be treated as income from house property.

iii. It is next submitted that the present case would stand squarely covered by the decision of the Supreme Court in **M/s. Chennai Properties & Investments Ltd., Chennai vs. The Commissioner of Income Tax, Central-III, Tamil Nadu**[2], inasmuch as, in such decision the Supreme Court also dealing with the prior decision in **East India Housing** (supra), has held that the test would be to examine the objects of the assessee, to ascertain its business and taking note of the fact that letting of the properties in fact was not the object of the company. It is submitted in **East India Housing** the Supreme Court, held that the main object of the **East India Housing** (supra) was not to derive "income from

2 (2015) 14 SCC 793

house property" but of buying and developing landed property and promoting and developing markets. It is, therefore, submitted that the Tribunal in deciding the case by purely relying on the decision in **East India Housing** (supra) was an untenable approach in law.

iv. Mr. Cama has also submitted that in any event for several assessment years i.e. for Assessment Years 1993-94, 1994-95, 1996-97, 1997-98, 1998-99 and 1999-2000, the Assessing Officer has consistently taken a view that the income as derived by the assessee from letting out the house properties was "income from profits and gains of business", hence, on such ground applying the principles of consistency, the impugned order is rendered bad and illegal. It is submitted that in fact the Revenue itself having accepted such position for almost 11 assessment years, it now cannot turn around and contest the present appeal on the ground that the Tribunal was justified in passing the impugned order. In support of such contention, Mr. Cama has placed reliance on the decision of the Supreme Court in **M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax**[3] and the decision in **Godrej & Boyce Manufacturing Company Ltd. vs. Dy. Commissioner of Income Tax, Mumbai & Anr.**[4] which were also

**3** (1992) 1 SCC 659

**4** (2017) 7 SCC 421

referred in a recent decision of this Court in **Pr. Commissioner of Income Tax-3 vs. Banzai Estates P. Ltd.**[5] in the context of principles of consistency. Mr. Cama, accordingly, submits that the appeal is to be decided in favour of the assessee and against the Revenue.

15. On the other hand, Mr. Suresh Kumar, learned counsel for the respondents would submit that the Tribunal has adopted an appropriate approach in applying the principles of law as laid down by the Supreme Court in the case of **East India Housing** (supra). It is his submission that in the present case, although the main object of the assessee is to carry on the business of leasing of properties and there is no other business, however, as held by the Supreme Court in **East India Housing** (supra), the assessee ought not to claim that the income derived from its business needs to be treated as income from business. According to Mr. Suresh Kumar, the assessee's endeavour to distinguish the decision of the Supreme Court in the **East India Housing** (supra) should not be accepted. It is also respondents' contention that the present case would not fall within the parameters of what has been decided by the Supreme Court in **M/s. Chennai Properties & Investments Ltd.** (supra). Mr. Suresh Kumar however has fairly conceded that for several assessment years (6 + 5 years) as noted above, the Assessing Officer is regarding such

**5** 2024 SCC OnLine Bom 2504

income of the assessee as "income from profits and gains of business" and not "income from house properties".

16. In this circumstances, Mr. Suresh Kumar would submit that the questions of law as framed by this Court are required to be answered against the assessee.

## ANALYSIS AND CONCLUSION

17. We have heard learned counsel for the parties. We have also perused the record. At the outset, we may observe that the premise on which the Tribunal has proceeded to hold that the income derived by the assessee from leasing / renting out house properties, is by applying the decision of the Supreme Court in **East India Housing** (supra), the relevant observations in that regard are required to be noted which reads thus:

> "2. Two Issues have arisen in these appeals namely - (i) whether rental income received by the assessee from the properties leased out should be assessed as "*Business Income*" or as "*Income From House Property*" and (ii) what should be the Annual Letting Value (ALV) for the purpose of Section 23 of the Income Tax Act, 1961 (Act) if income is assessable as "*Income From House Property*".
>
> 3. As far as the first issue is concerned, It is squarely covered by the Judgment of the Hon'ble Supreme Court in the case of East India Housing and Land Development Trust V/s CIT, 42 ITR 49, wherein it has been held that rental income from immovable properties is to be assessed under the specific head l.e., "Income From House Property" if such asset Is owned by the assessee even though the assessee may be in the business of real estate. The Learned Counsel for the Assessee could not make any other submissions In view of the above Judgment of the Supreme

> Court. Therefore, we hold that the rental income from Immovable property owned by the assessee is assessable under the head From House Property".

18. In the aforesaid circumstances, the primary question before the Court is whether the approach of the Tribunal was correct in categorising that the assessee's case would be squarely hit by the law as laid down by the Supreme Court in **East India Housing** (supra).

19. We may observe that it is a settled principle of law that the Assessing Officer, in assessing the income of assessee, is required to be conscious about the nature of the assessee's business and apply his mind to the source of income, for the income being taxed as the law mandates.

20. In the present case, it appears to be not in dispute that the only source of income for the assessee was the income derived from rent or amounts as received by the assessee from letting out its properties. The record indicates that the Assessing Officer in the present case has not disputed the nature of the business of the assessee and more importantly, the income offered to tax in respect of all the relevant assessment years,( subject matter of different appeals) is derived from letting out various properties, and which is the business activity of the assessee, to earn such income, through its business, as seen from the main objectives, outlined in the memorandum of association.

21. It is hence, not the case that the business of the assessee is of a nature that the income from house property is required to be treated as an incidental income not derived from its main business, when it is derived from its main business of letting out its properties. In our opinion, there is certainly a difference between the two situations, firstly where the main object of the assessee is to earn income from letting out properties, and secondly, where the assessee incidentally earns income apart from its main business i.e. from letting out its house properties, both these situations are totally distinct.

22. Insofar as the decision of the Supreme Court in **East India Housing** (supra) is concerned, in the said case, the Supreme Court was concerned with the appellant / assessee whose main business was "to buy and develop landed properties and to promote and develop markets", for which it had purchased some land in the town of Calcutta and set up the market on such land, on which shops and stalls were constructed and incidental to such business, it had received some income from tenants. In such case, the case of the assessee was to the effect that because it was a company formed with the object of promoting and developing markets, its income derived from shops and stalls was liable to be taxed under Section 10 of the Income Tax Act as "profit or gains of business" and that the income was not liable to be taxed as "income from property" under Section 9 of the Act. The Supreme Court examined the nature of the assessee's business and in doing so observed that the assessee was

required to obtain license from the Corporation of Calcutta and to perform other acts in conformity with the provisions of the Act, and for that purpose the assessee had to maintain staff and to incur expenditure. It was observed that for such reason, the income derived from letting out property belonging to the appellant did not become "profit or gains from business", within the meaning of Sections 6 & 10 of the Income Tax Act. The Supreme Court observed that if the income from a source falls within a specific head as set out in Section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. The Supreme Court observed that the income derived by the company from shops and stalls was income received from property falling under the specific head described in Section 9. It was held that the character of the income was not altered because it was received by a company formed with the object of developing and setting up markets. The relevant observations of the Supreme Court are required to be noted which reads thus:

> "**2.** The appellant contends that because it is a company formed with the object of promoting and developing markets, its income derived from the shops and stalls is liable to be taxed under Section 10 of the Income Tax Act as "profits or gains of business" and that the income is not liable to be taxed as "income from property" under Section 9 of the Act. The appellant is undoubtedly under the provisions of the Calcutta Municipal Act, 1951, required to obtain a licence from the Corporation of Calcutta and to maintain sanitary and other services in conformity with the provisions of that Act and for that purpose has to maintain a staff and to incur expenditure. But on that account, the income derived from letting out property belonging to the appellant does not become "profits or gains" from business within the meaning of Sections 6 and 10 of

the Income Tax Act. By Section 6 of the Income Tax Act, the following six different heads of income are made chargeable, (*1*) salaries, (*2*) interest on securities, (*3*) income from property, (*4*) profits and gains of business, profession or vocation, (*5*) income from other sources and (*6*) capital gains. This classification under distinct heads of income, profit and gain is made having regard to the sources from which income is derived. Income Tax is undoubtedly levied on the total taxable income of the tax payer and the tax levied is a single tax on the aggregate taxable receipts from all the sources : it is not a collection of taxes separately levied on distinct heads of income. But the distinct heads specified in Section 6 indicating the sources are mutually exclusive and income derived from different sources falling under specific heads has to be computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within a specific head set out in Section 6, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

**3.** The income derived by the company from shops and stalls is income received from property and falls under the specific head described in Section 9. The character of that income is not altered because it is received by a company formed with the object of developing and setting up markets. In the *nited Commercial Bank Ltd., Calcutta* v. *CIT* [(1958) SCR 79] this Court explained after an exhaustive review of the authorities that under the scheme of the Income Tax Act, 1922, the heads of income, profits and gains enumerated in the different clauses of Section 6 are mutually exclusive, each specific head covering items of income arising from a particular source.

**4.** In *Fry* v. *alisbury House Estate Ltd.* [LR (1930) AC 432] a company formed to acquire, manage and deal with a block of buildings having let out the rooms as unfurnished offices to tenants was held chargeable to tax under Schedule A to the Income Tax Act, 1918 and not Schedule D. The company provided a staff to operate the lifts and to act as porters and watch and protect the building and also provided certain services, such as heating and cleaning to the tenants at an additional charge. The taxing authorities sought to charge the income from letting out of the rooms as receipts of trade chargeable under Schedule D, but that claim was negatived by the House of Lords holding that the rents were profits arising from the ownership of land assessable under Schedule A and that the same could not be included in the assessment under Schedule D as trade receipts.

**5.** In *Commercial Properties Ltd.* v. *CIT* [(1928) 3 ITC 23] income derived from rents by a company whose sole object was to acquire lands, build houses and let them to tenants and

> whose sole business was management and collection of rents from the said properties, was held assessable under Section 9 and not under Section 10 of the Income Tax Act. It was observed in that case that merely because the owner of the property was a company incorporated with the object of owning property, the incidence of income derived from the property owned could not be regarded as altered; the income came more directly and specifically under the head property than income from business.
>
> **6.** The income received by the appellant from shops is indisputably income from property : so is the income from stalls from occupants. The character of the income is not altered merely because some stalls remain occupied by the same occupants and the remaining stalls are occupied by a shifting class of occupants. The primary source of income from the stalls is occupation of the stalls, and it is a matter of little moment that the occupation which is the source of the income is temporary. The Income Tax Authorities were, in our judgment, right in holding that the income received by the appellant was assessable under Section 9 of the Income Tax Act."

23. We may observe that the decision in **East India Housing** (supra) was considered by the Supreme Court in the decision in **Chennai Properties & Investments Ltd.** (supra) wherein the appellant – assessee was a company incorporated under the Companies Act with main objective, as contained in the Memorandum of Association, to acquire the properties in the city of Chennai, and to let out those properties. The assessee rented out such properties and the rental income received therefrom was shown as income from business in the return filed by the assessee. The Assessing Officer, however, refused to tax the same as business income. According to the Assessing Officer, since the income was received from letting out of the properties, it was in the nature of rental income. The Assessing Officer, thus held that it would be treated as income from house property, and taxed the same accordingly under

such head. The assessee's appeal against the assessment order before the CIT(A), was allowed, wherein the CIT(A) held such income to be 'income from business', and observed that it should be treated as such and taxed accordingly. Aggrieved by such order passed by the CIT(A), the department filed an appeal before the Tribunal, which declined to interfere with the order of the CIT (A) and dismissed the appeal. The department thereafter approached the High Court assailing the concurrent orders passed by the CIT(A) and the Tribunal. The department's appeal was, however, allowed by the High Court, when it held that the income derived by letting out of the properties would not be income from business, but could be assessed only as "income from house property". The High Court's decision primarily rested on the premise of the decision of the Supreme Court in **East India Housing** (supra). It is in such circumstances, the question which fell before the Supreme Court was as to whether the income derived by the company from letting out the property, is to be treated as income from business or it should be treated as rental income from house property. The Supreme Court, in answering such question, noted the Memorandum of Association of the appellant which mentioned the main objects as well as incidental or ancillary objects of the assessee. The main object being to acquire and hold the properties known as "Chennai House" and "Firhavin Estate" both in Chennai and to let out those properties, as well as make advances upon the security of lands and buildings or

other properties or any interest therein. The Court observed that holding such properties and earning income by letting out those properties was the main objective of the company and accordingly, the entire income which was accrued and assessed in the return was from letting out those properties, when there was no other income of the assessee except the income from letting out of these two properties. It is in this context, referring to the decision in **East India Housing** (supra), the Supreme Court observed that East India Housing was a case where the assessee-company was incorporated with the object of buying and developing landed properties and promoting and developing markets. It was thus observed that the main objective of the said company was to develop the landed properties into markets and it had so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. It is on such backdrop, the question which fell for consideration of the Court was whether the rental income that was received by the assessee was to be treated as "income from house property" or "income from business". In such context, the Court held that in East India Housing the income was treated as "income from house property", as the Court tested the same in the context of the main objective of the company, when it held that letting out of the property was not at all the object of East India Housing, and it is on such basis the character of that income which was from the house property was not altered because it was

received by the company formed with the object of developing and setting up properties. The Supreme Court also referred to the decision in **Karanpura Development Co. Ltd. v. Commissioner of Income Tax**[6] observing that what was imperative was to consider the nature of the activities of the assessee and the nature of the operations in relation thereto. The Court thus observed that the objects of the company must be kept in view, to interpret the activities. The Court referring to the decision of the Constitution Bench of the Supreme Court in **Sultan Bros. (P). Ltd. vs. CIT**[7], observed that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at the conclusion, whether the income is to be treated as 'income from business', and such question would depend upon the circumstances of each case viz. whether a particular business is letting or not. The Supreme Court in Chennai Properties and Investment Ltd. (supra) referring to such settled position in law, in the facts and circumstances of the case, held that letting of properties was in fact the business of the assessee, and the assessee therefore rightly disclosed the income under the head 'income from business'. The Supreme Court held that such income of the assessee cannot be treated as 'income from the house property'. Accordingly, the judgment of the High Court was set aside. The relevant observations of the Supreme Court are required to be noted, which read thus:

---

**6** (1962)44 ITR 362 (SC)

**7** (AIR 1964 SC 1389)

"6. The memorandum of association of the appellant Company which is placed on record mentions the main objects as well as the For such reasons, apparently there was an error on the part of the tribunal in holding that the assessee's income is required to be treated as income from house property and not the income from business.

7. It transpires that the return of a total income of Rs 2,44,030 was filed for the assessment year in question that is Assessment Year 1983-1984 and the entire income was through letting out of the aforesaid two properties, namely, "Chennai House" and "Firhavin Estate". Thus, there is no other income of the assessee except the income from letting out of these two properties. We have to decide the issue keeping in mind the aforesaid aspects.

**8.** With this background, we first refer to the judgment of this Court in *East India Housing and Land Development Trust Ltd. Case* [*East India Housing and Land Development Trust Ltd.* v. *CIT*, (1961) 42 ITR 49 (SC)] which has been relied upon by the High Court. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question which arose for consideration was: whether the rental income that is received was to be treated as income from the house property or the income from the business? This Court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that letting out of the property was not the object of the company at all. The Court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.

**9.** Before we refer to the Constitution Bench judgment in *Sultan Bros. (P) Ltd.* [*Sultan Bros. (P) Ltd.* v. *CIT*, AIR 1964 SC 1389 : (1964) 5 SCR 807] , we would be well advised to discuss the law laid down authoritatively and succinctly by this Court in *Karanpura Development Co. Ltd.* v. *CIT* [(1962) 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 coalfields and it had restricted its activities to acquiring coal mining leases over large areas, developing them as coalfields and then sub-leasing them to collieries and other companies.

Thus, in the said case, the leasing out of the coalfields to the collieries and other companies was the business of the assessee. The income which was received from letting out of those mining leases was shown as business income. The 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: (*Karanpura Development case* [(1962) 44 ITR 362 (SC)] , ITR p. 377)

> "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."

**10.** After applying the aforesaid principle to the facts, which were there before the Court, it came to the conclusion that income had to be treated as income from business and not as income from house property. We are of the opinion that the aforesaid judgment in *Karanpura Development Co. Ltd. Case* [(1962) 44 ITR 362 (SC)] squarely applies to the facts of the present case.

**11.** No doubt in *Sultan Bros. (P) Ltd. Case* [*Sultan Bros. (P) Ltd.* v. *CIT*, AIR 1964 SC 1389 : (1964) 5 SCR 807] , Constitution Bench judgment of this Court has clarified that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at the

conclusion whether the income is to be treated as income from business and such a question would depend upon the circumstances of each case viz. whether a particular business is letting or not. This is so stated in the following words: (AIR p. 1391, para 7)

> "*7.* … We think each case has to be looked at from a businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly carried on. We find nothing in the cases referred, to support the proposition that certain assets are commercial assets in their very nature."

**12.** We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at the irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the head "income from business". It cannot be treated as "income from the house property". We, accordingly, allow this appeal and set aside the judgment [*CIT* v. *Chennai Properties & Investments Ltd.*, (2004) 186 CTR 680 (Mad)] of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."

24. Adverting to the law as laid down in **Chennai Properties & Investments Ltd.** (supra), it is clear that what must be borne in mind for the Court is to consider the main objective of the assessee as contained in the Memorandum of Association, and 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 is the main objective of the company which

needs to be the focal point, to consider the business of the assessees in considering whether any income derived from such properties is the "income from profits and gains of business or profession" or the same would be required to be regarded as "income from house property". In the present case, the income of the assessee is derived from letting out of the properties, which in fact, is the principal business of the assessee as seen from its main objectives of the assessee as contained in its memorandum of association, therefore, the assessee was correct in accounting such income under the head 'income from profits and gains of business', and not as 'income from house property'. For such reasons, there was an apparent error of law in the Tribunal holding that the assessee's income is required to be treated as "income from house property" and not the "income from profits and gains of business".

25. We may also, illustratively, refer to the Assessment Order dated 6 December 2018 passed for the Assessment Year 2014-15 in which the Assessing Officer categorised the assessee's income as "income from business". The following observations in the Assessment Order are required to be noted which read thus:-

> 3. The assessee company was involved in the business of leasing of properties, furniture, fixtures, other assets, during the year under consideration. During the course of the assessment proceedings, the assessee has submitted various particulars including, computation of income along with P&L Account, and Balance Sheet with annexures. The assessee was asked to produce particulars relating to its heads of Income and his clarification with regard to the direction given the Hon'ble ITAT in his case. The assessee has submitted, during the course of the assessment proceedings, a revised computation of income,

> by virtue of which the income earned during the year has been treated as business income, instead of as income from house property, as claimed in the return of income. The assessee has relied on the decision of the Hon S.C. in the case of Chennai Properties & Investment Ltd., (373 ITR 673), in support of its claim of treating its income as business income."

26. We also find substance in the contention as urged by Mr. Cama that the Assessing Officer, for almost 11 Assessment Years has consistently held that such income of the assessee is required to be treated as "income from business" and not the "income from house property". This has been the consistent approach of the department, therefore, the principles of consistency, as the law recognizes are required to be accepted. In this context, Mr. Cama has rightly referred to the decision in **M/s. Radhasoami Satsang, Saomi Bagh, Agra** (supra) wherein the Supreme Court has accepted the rule of consistency as a settled principle of law. In a recent decision of this Court in **Banzai Estates P. Ltd.** (supra), a Division Bench of this Court of which one of us ( G. S. Kulkarni, J. ) was a member, while referring to the decision in **M/s. Radhasoami Satsang, Saomi Bagh, Agra** (supra) as also the decision in **Bharat Sanchar Nigam Ltd. & Anr. Vs. Union of India & Ors.**[8] made the following observations:-

> "13. In the prior Assessment Years, the Assessing Officer had accepted the assessee's treatment of such income as an income from house property, which is one of the factors which has weighed with the Tribunal to allow the Appeals filed by the assessee, on the principle of consistency. We are of the opinion that such principles are appropriately applied by the Tribunal. The Supreme Court has held it to be a settled principle of law that although strictly speaking res judicata does not apply to income tax proceedings, and as such, what is

**8** [2006]282 ITR 273 (SC)

> decided in one year may not apply in the following year. Thus, when a fundamental aspect permeating through different assessment years has been treated in one way or the other and that has been allowed to continue such position ought not be changed without any new fact requiring such a direction. (See: M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax [1992] 1 SCC 659). The decision of the Supreme Court in M/s. Radhasoami Satsang (Supra) has been referred in a decision of a recent origin in Godrej & Boyce Manufacturing Company Ltd. vs. Dy. Commissioner of Income Tax, Mumbai, & Anr.[2017] 7 SCC 421
>
> 14. We may also usefully refer to a decision of this Court in the case of Principal Commissioner of Income-tax v. Quest Investment Advisors (P.) Ltd. [2018] 96 Taxmann.com 157 (Bom), in which this Court referring to the decision of the Supreme Court in Bharat Sanchar Nigam Ltd. 4 Anr. vs. Union of India & Ors. [2006] 282 ITR 273(SC), which followed the decision in Radhasoami Satsang Sabha (supra) accepted the rule of consistency. The following observations of the Supreme Court are required to be noted:-
>
> > "15. The question in Radhasoami Satsang v. Commissioner of Income-tax [1992] 1 SCC 659; [1992] 193 ITR 321 (SC) (also cited by the State of U. P. was whether the Tribunal was bound by an earlier decision in respect of an earlier assessment year that the income derived by the Radhasoami Satsang, a religious institution, was entitled to exemption under sections 11 and 12 of the Income-tax Act, 1961. The court said:
> >
> > "We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year, unless there was any material change justifying the Revenue to take a different view of the matter."

27. Thus, even on the ground of consistency, the case of the Revenue in supporting the orders passed by the Tribunal cannot be accepted.

28. In the light of the above discussion, the appeals need to succeed. The impugned orders passed by the Tribunal are set aside to the extent we hold that

the rent income derived by the assessee from lease of its properties was assessable as income from profits and gains of business. The questions of law as framed by this Court are answered in favour of the assessee and against the revenue.

29. The appeals are accordingly allowed in such terms. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)