

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5931 OF 2007  
(Arising out of S.L.P.(C) No.4385/2007)

Dy. Commissioner of Income Tax, Kanpur ...Appellant

Versus

M/s. Divya Investment Pvt.Ltd. ...Respondent

## ORDER

Leave granted.

Respondent is a private limited company. It carries on the business, inter alia, of hire-purchase. Respondent took on lease a land with existing structure. The lease deed was entered into on October 30, 1986. The lease was for ten years. Respondent demolished the structure and constructed a multi-storeyed building which was let out to Canara Bank and others. Respondent received hiring charges and maintenance charges from the lessees. Thereafter, the respondent filed its returns for the Assessment Year 1997-98. The Assessment Officer (AO) held that it was an income from house property and not from business as claimed by the assessee in its returns. The assessment order was confirmed by the CIT (A) and cases for earlier assessment years from 1992-2000 were ordered to be reopened by issuance of notice under Section 148 of the Income Tax Act.

...2/-

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Aggrieved by the decision of the CIT (A), the matter was carried in appeal to the Tribunal. Vide order dated 17th June, 2005, the Tribunal held that hire charges received by the assessee were liable to be assessed as business income and not as income from property. Against the above notices under Section 148 reopening the assessments, the assessee, however, filed Writ Petition No.656/2001. The assessee also filed separate writ petition for each of the assessment year in which reopening was ordered. Those assessment years are 1992-93, 1995-96, 1996-97, 1998-99 and 1999-2000.

By the impugned judgment, the High Court has held in all the

writ petitions that the income should be treated as business income and not as income from house property as held by the Tribunal. In this connection, we quote herein-below the relevant passage from the impugned order:

"In respect of one assessment of one assessment year of the same petitioner, viz. 1997-98, the income Tax Appellate Tribunal, Lucknow, by its judgment dated 17.6.2005 has held that the income should be treated as income from business and not as income from house property. Being a superior authority the Tribunal's view would be binding on all subordinate departmental authorities and, therefore, so long as this view of the Tribunal stands and is not reversed either by the Tribunal or by superior Court, all subordinate authorities of the Income Tax Department will continue to follow the view in accordance with the settled law in respect of the petitioner for the other assessment years, unless there is a factual departure in the situation in future, i.e. after the assessment year 1997-98."

...3/-

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In our view, without expressing any opinion on the merits of the case, we may state that the writ petitions were totally misconceived and not maintainable in law. The Tribunal had taken the view that income was from business for Assessment Year 1997-98. It was not open to the High Court to direct by an omnibus order that all subsequent years are connected years and that income be treated only as business income. Under the Income Tax Act, the unit of assessment is a "year". This is not a case of block assessment.

Be that as it may, we once again reiterate that the parties should have been relegated to move the Tribunal by filing an appeal under Section 260A of the Income Tax Act. It was not open to the High Court to entertain the writ petitions. Further, it is not clear as to whether the respondent-assessee had filed revised returns pursuant to the notices under Section 148 of the Income Tax Act, 1961.

Before concluding we may clarify that in this case there were two separate proceedings involved, viz., order of CIT(A) plus proceedings under section 148. Unfortunately, all proceedings are clubbed in the writ petitions. We do not know the exact status of those proceedings. If the assessee is objecting to the reopening of assessment, then, it was required to file revised returns. We express no opinion in that regard. Similarly if the decision of the CIT(A) is sought to be challenged for a given year, then,

the assessee ought to have filed appeals under Section 260A before the Tribunal. However, since writ petitions were pending in the High Court, we direct that if such appeals are required to be filed, then they shall be filed within four weeks from today in which they shall not be dismissed on the ground of delay.

Subject to above, this Civil Appeal is disposed of with no order as to costs.

.....J.  
(S.H. KAPADIA)

.....J.  
(B. SUDERSHAN REDDY)

New Delhi,  
December 13, 2007.  
ITEM NO.30

COURT NO.8

SECTION IIIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4385/2007

(From the judgement and order dated 05/07/2006 in WP Nos.656 & 456-459/2002 of the HIGH COURT OF JUDICATURE AT ALLAHABAD)

DY. COMMISSIONER OF INCOME TAX, KANPUR

Petitioner(s)

VERSUS

M/S. DIVYA INVESTMENT PVT. LTD.

Respondent(s)

Date: 13/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA  
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Gopal Subramaniam, ASG  
Mr. D.K. Singh, Adv.  
Mr. Rajat Pahwa, Adv.  
Mr. Pradeep Shukla, Adv.  
Mr. Sanjay Kumar, Adv.  
Mr. B.V. Balaram Das, Adv.

For Respondent(s) Mr. Rajiv Dutta, Sr.Adv.  
Ms. Garima Prashad, Adv.

UPON hearing counsel the Court made the following  
ORDER

Leave granted.

The Appeal is disposed of, in terms of the signed order. No  
order as to costs.

(N. Annapurna)  
Court Master

(Madhu Saxena)  
Court Master

(Signed order is placed on the file)