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

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA No.2993/M/2012
Assessment Year: 2007-08

ITA No.3167/M/2009
Assessment Year: 2005-06

M/s. Sion Finance & Leasing Pvt. Ltd., Plot No.112, Sion Koliwada Road, Sion, Mumbai-400 022 **PAN: AAACS9380E**	Vs.	Asstt. Commissioner of Income Tax – 7(2), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Subhash Shetty, A.R.
Revenue by : Shri U. Justin, D.R.

Date of Hearing : 14.11.2017
Date of Pronouncement : 20.12.2017

O R D E R

Per D.T. GARASIA, Judicial Member:

The above tilted appeals have been preferred by the assessee against the order dated 23.12.2011 & 27.02.2009 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2007-08 & 2005-06 respectively.

2. The short facts of the case are that the assessee is a private limited company. The assessment year in appeal is the Assessment

Year 2007-08. The relevant previous year was the Financial Year ended 31.3.2007. The assessee filed its return showing the total income at Rs.1,02,99,334/-. The entire income was computed under the head Business Income. There was no other source of income under the said computation. This computation made and the return filed was in terms as filed consistently year after year and as such accepted by the Income Tax department. The assessee as a company has the objects of carrying on business. It treated the properties it took on lease and constructed by itself as business assets. It returned the income there from as business income and claimed depreciation on the assets also. It also had the source of revenue by way of Insurance commission and Interest on loans granted from time to time, the company's main business being the financing and leasing activities. During the year, the Assessing Officer (hereinafter referred to as the AO) was of a view that the income derived by letting out properties by the assessee was to be taxed under the head Income from House Property and not under Business Income. The assessee has received the rent as under:

S.No.	Name	Floor	Amount	Alleged Nature of ownership
1	Life Insurance Corporation of India, Plot No.112, Sion Koliwada Road, Sion, Mumbai-400 022	Ground floor Mezzanine	8300652	Allegedly Sub Lease
2	Canara Bank Plot No.112, Sion Koliwada Road, Sion, Mumbai-400 022 **Less:** lease Rent for the month March 06 already offered to tax in the Asst. Year 06-07	First floor/Second floor	10130120 779240	Owner

	Less: Lease Rent Paid to Sion Garage Pvt. Ltd. for part of the premises leased to LIC		146064 9204816	Owner
3	Sadguru Terrace Garden Plot No.112, Sion Koliwada Road, Sion, Mumbai-400 022		30000	Owner
			17535468	

The assessee's case is that assessee is not the owner of the property but LIC is the owner of the and it has leased out this property to the assessee and the assessee has received the rent from this above property. It was a private limited company carrying on the business of finance and leasing and in the course thereof had taken a property being ground and mezzanine floor constructed on Plot No.112 at Sion and further leased out. On leased out property assessee claimed that he is not the owner but he is a tenant of LIC and he has made constriction on it. The assessee's case is that assessee is not the owner of the property but LIC is the owner of the property, therefore, as per the memorandum of association assessee is the Private Limited Company, therefore, income from this leased property should be taken as income from business and not income from house property.

3. The AO and the Ld. CIT(A) dismissed the appeals for both the years.

4. During the course of hearing, the Ld. A.R. submitted that the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. vs. CIT (2015) 373 ITR 673 (SC) held in favour of

the assessee which was delivered on 09.04.2015 and the assessment order was passed on 18.12.1997. Therefore, the AO had no chance to verify this judgment. Moreover, Ld. A.R. submitted that the Ld. CIT(A) and the AO without verifying the records have decided the appeal. Therefore, matter may be restored to AO to decide it afresh as per the decision of Hon'ble Supreme Court (supra).

5. On the other hand, the Ld. D.R. submitted that LIC has leased out the property to the assessee for 99 years. Therefore, assessee is deemed owner of the property. When assessee is deemed owner of the property the rental income from this property is not a business income but it is a rental income only. Therefore, AO and the Ld. CIT(A) are justified and matter should not be restored to AO.

6. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the Hon'ble Supreme Court judgment was delivered on 9th April 2015. We find that the Hon'ble Supreme Court's judgment is relating to income from housing is taxable as business income or rental income. But every case has to be seen in respect of the facts. We find that in the instant case the LIC has leased out this property to assessee for 99 years. Therefore, assessee is deemed owner of the property. Moreover, property in question is residential premises and has been given on rent to different parties and assessee is earning rental income from commercial activities. Therefore, AO is directed

to consider the same and decide the matter afresh after considering the decision of Hon'ble Supreme Court.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 20.12.2017.

Sd/-	**Sd/-**
(N.K. Pradhan)	**(D.T. Garasia)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 20.12.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.