



CORAM M.S. Sonak &  
Jitendra Jain, JJ.  
DATED: 24 February 2025

**ORAL JUDGMENT (Per M.S.Sonak, J.) :-**

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The petitioner-assessee questions the impugned order dated 2 September 2022, made by the Income Tax Appellate Tribunal (ITAT) under Section 254(1) of the Income Tax Act, 1961 (the Act), for the assessment year 2004-05.
4. The conspectus of facts in which the above challenge arises is set out briefly hereafter:
  - a) The petitioner is engaged in the marketing, selling, and distributing various consumer products, including laundry and hair care products. The petitioner is the owner of a building named P.G.Plaza situated in the suburban area of Mumbai;
  - b) The petitioner has let out a portion of the above building to third parties, and rent received from such third parties was offered to tax under the head '*profits and gain from business and profession*';
  - c) Procter & Gamble Hygiene and Healthcare Company Limited (PGHH), a sister concern of the petitioner, jointly occupied the balance area of the building along with the petitioner;
  - d) The petitioner contended that PGHH and the

petitioner had a cost-sharing agreement for personnel, administration, and other common costs. It was also agreed that Rs.90 per sq.ft. would be paid as usage charges for the use of the building premises.

e) The petitioner's case was that this agreement was fully implemented except for the clause relating to the usage charges, which was never acted upon by and between the parties. Instead, the common costs were shared, and the excess costs incurred were reimbursed;

f) An assessment order was made on 31 December 2009 under Section 143(3) of the Act in which the notional rent at Rs.90 per sq.ft. was taxed as *"income from house property"*. The petitioner appealed, but this appeal was dismissed by CIT (Appeals) on 20 February 2014.

g) The petitioner challenged the order dated 20 February 2014 before the ITAT on 12 May 2014 by raising several grounds. This appeal was disposed of on 6 June 2016 by the ITAT.

h) In its order dated 6 June 2016, the ITAT held that the amount receivable by the petitioner from PGHH was taxable as *"income from other sources."* To arrive at this conclusion, the ITAT relied on an order in the case of PGHH for the assessment years 1995-95 to 2000-01.

i) The petitioner filed Miscellaneous Application (MA) No.369/Mum/2016 under Section 254(2) before the ITAT, contending that [1] real income theory was applicable in this matter; [2] Grounds 4 and 5 relating to the allowability of expenses were not adjudicated, and [3]

reference was incorrectly made to the petitioner-assessee instead of PGHH while considering the tribunal's order for the earlier years;

**j)** The revenue appealed the ITAT's order dated 6 June 2016 to this Court under Section 260-A of the Act. Simultaneously, the revenue also filed MA No.209/Mum/2017 under Section 254(2) inter alia on the ground that the tribunal's orders in the case of PGHH could not have been regarded as precedents, and, therefore, the ITAT should not have followed the same and held that the income receivable from PGHH by the petitioner-assessee was income from other sources;

**k)** By order dated 28 July 2017, the ITAT allowed both MA and the entire order dated 6 June 2016 was recalled. Directions were issued to hear the petitioner's appeal against the order dated 20 February 2014 afresh or *de novo*;

**l)** The petitioner instituted Writ Petition No.2738 of 2017 before this Court challenging the ITAT order dated 28 July 2017 to the extent it had allowed the revenue's MA No. 209/Mum/2017;

**m)** The Writ Petition No.2738 of 2017 was allowed by this Court by order dated 9 March 2018. The ITAT's order dated 28 July 2017, to the extent it had allowed the revenue's MA No.209/Mum/2017, was set aside. The matter was remanded to ITAT to decide the issues raised by the petitioner in main appeal and not adjudicated by the Tribunal, i.e. whether the real income theory would apply

and adjudication of grounds 4 and 5. In effect, therefore, the issues which survived before the ITAT were whether any notional income could be added given the finding that the income receivable from PGHH was "*income from other sources*" and, further, whether any expenses could be deducted from such notional income;

n) In the meantime, the revenue's appeal under Section 260-A against the ITAT order dated 6 June 2016 was admitted by this Court. Thus, the issue as to whether the income receivable by the petitioner from PGHH could be classified as "*income from other sources*" or "*income from house property*" is pending before this Court in the revenue's appeal against the ITAT's order dated 6 June 2016.

o) Upon remand, however, the ITAT, by the impugned order dated 2 September 2022, re-adjudicated the entire matter and held that the amounts receivable from PGHH were to be taxed as "*income from house property*". Given this finding, the ITAT also held that the real income theory was not applicable since this was a case of "*income from house property*". Grounds 4 and 5 were, however, sent to the assessing officer for verification.

p) The petitioner, aggrieved by the aforesaid impugned order dated 2 September 2022, has instituted this petition;

5. Mr. Pardiwalla, learned senior counsel for the petitioner, submitted that the issue of whether the income receivable from PGHH amounted to "*income from other sources*" or "*income from house property*" had attended finality qua the

ITAT, given the ITAT order dated 6 June 2016 and this Court's order dated 9 March 2018 allowing the petitioner's Writ Petition No.2738 of 2017. He submitted that the only issue that had survived before the ITAT was whether the real income theory would apply, given the ITAT's finding that the income receivable to be taxed as "*income from other sources*". He submitted that the ITAT exceeded its jurisdiction by once again reviewing its earlier order dated 6 June 2016, even though this Court had clarified that the MA under Section 254(2) of the Act is not akin to a substantive review. Mr. Pardiwalla submitted that on this short ground, the impugned order dated 2 September 2022 deserves to be set aside.

6. Mr. Mishra learned counsel for the respondent defended the impugned order by submitting that the MA filed by the revenue had questioned the finding about the income being from other sources. He submitted that once the ITAT concluded that this was the case of "*income from house property*", there was no bar to considering the notional income expressly permitted under the Act. He, therefore, submitted that there was no jurisdictional error in the impugned order to warrant any interference by this Court.

7. Mr Mishra submitted that, in any event, this Court admitted the revenue appeal, and therefore, the finding about the nature of income derived by the petitioner from PGHH could not be said to have attained any finality. For these reasons, Mr. Mishra submitted that this petition can be dismissed.

8. The rival contentions now fall for our determination.

9. Based on the facts we narrated above, we are satisfied that, at least *qua* the ITAT, the finding that income receivable from PGHH was "*income from other sources*" had attained finality. The issue of whether this finding was correct is pending before this Court in the revenue's appeal admitted on 26 August 2019.

10. The ITAT, in deciding the assessee's appeal on remand, could not have re-visited the above issue and held that the income receivable by the petitioner-assessee from PGHH amounted to "*income from house property*". This was more so considering this Court's order dated 9 March 2018 in Writ Petition No.2738 of 2017, in which this Court had categorically held that the MA under Section 254(2) of the Act was not akin to a substantive review.

11. In effect, the impugned order indicates that the ITAT has reviewed its judgment and order dated 6 June 2016, despite an appeal against that judgment and order already being admitted by this Court at the revenue's request. While disposing of an application under Section 254(2) of the Act, the ITAT lacked the jurisdiction to review its order. The application under Section 254(2) of the Act must be resolved in accordance with the discipline outlined in that provision. This was more so because on an earlier occasion, in this very matter, the ITAT had exceeded its jurisdiction, and its order dated 28 July 2017 had to be judicially reviewed by this Court in Writ Petition No 2738 of 2017.

12. In any event, after this Court disposed of Writ Petition No.2738 of 2017 by its order dated 9 March 2018, the only

issue which survived before the ITAT was whether the real income theory would apply given the ITAT's finding on the nature of the income from PGHH. While deciding this issue or rather this ground raised by the petitioner-assessee, it was not open to the ITAT to review its judgment and order dated 6 June 2016 and hold that the income receivable by the petitioner-assessee from PGHH was income from house property. On the above ground, we are satisfied that the impugned order dated 9 February 2022 warrants interference and needs to be quashed and set aside.

13. The ITAT's jurisdiction under Section 254[2] of the IT Act is limited. It is not akin to a substantial review. This Court clarified this position in an earlier round when the ITAT had similarly exceeded its jurisdiction. The issue of whether the income receivable by the petitioner from PGHH was income from house property or income from other sources was writ large before this Court in the Revenue's pending appeal. The ITAT, exercising powers under section 254[2] of the IT Act, could not have reviewed its earlier finding on this issue. The ITAT's impugned order dated 2 September 2022 deserves to be set aside accordingly.

14. However, we clarify that this judgment and order would in no way interfere with this Court deciding on whether the income receivable from PGHH should be classified as "*income from house property*" or "*income from other sources*" in revenue's appeal No.1052 of 2017 under Section 260-A of the Act. We have interfered with the ITAT's order not on the merits but because we were satisfied that the ITAT exceeded its

jurisdiction under Section 254(2) in deciding such an issue.

15. Accordingly, we set aside the ITAT's order dated 2 September 2022 and once again remand the matter to the ITAT to decide grounds Nos.1, 4, and 5 in the petitioner's appeal before the ITAT, appeal No.3531 of 2014. The Rule is made absolute without costs order.

16. The parties must now appear before the ITAT on 8 March 2025 and file an authenticated copy of this order.

**(Jitendra Jain, J)**

**(M.S. Sonak, J)**