

Rent from letting out of flat with amenities was income from house property in absence of any business activity

Summary – The Agra ITAT in a recent case of Meeraj Estate & Developers., (the Assessee) held that where assessee entered into an agreement to let out a floor with various amenities, in view of fact that assessee did not involve in any kind of recurring, systematic and organized business activity and, moreover, in respect of maintenance and upkeep of floor, it appointed only one person, Assessing Office was justified in treating rental income assessable as 'income from house property' and services receipts as 'income from other sources'

Facts

- During relevant assessment year, the assessee entered into three separate agreements with the GAIL.
- In terms of first agreement, the assessee let out a floor to GAIL. In the second agreement the assessee-firm agreed to furnish the said floor with air condition system and other miscellaneous amenities. The third agreement required assessee to maintain and upkeep the premises to the satisfaction of GAIL.
- The assessee filed its return declaring income from said agreements under head 'business income'.
- The Assessing Officer opined that it was not the case of composite rent where rent was received on account of letting out the properties and services provided to lessee. This was the case where receipts were clearly identifiable and attributable to three agreements entered into separately.
- The Assessing Officer thus concluded that income from first and second agreements was taxable under head 'income from house property' whereas income arising from third agreement was to be taxed as 'income from other sources'.
- The Assessing Officer further rejected alternative contention of assessee that in earlier assessment year income in question had been taxed under head 'business income', taking a view that doctrine of estoppel did not apply to assessment proceedings.
- The Commissioner (Appeals) upheld the order of Assessing Officer.
- On second appeal:

Held

- The contention of the assessee on the issue has got two aspects, first one is that the Assessing Officer has already taken a view while completing assessment under section 143(3) for assessment year 2005-2006 that income is assessable under the head income from business, therefore, to maintain consistency a different view cannot be taken in the year under consideration and second aspect of the contention is merit of the case.
- It is well-settled that the principle of *res judicata* or *estoppel*, which applies to decision of civil courts, has no application to decisions of income-tax authorities so as to preclude the determination

of a question in a previous assessment order from being reopened in proceedings relating to a subsequent assessment.

- The reasons are that the purpose and the subject-matter of the proceedings in a subsequent year are not the same as those in a previous year. Because as a general rule the principle of *res judicata* is not applicable to decisions of Income-tax authorities, an assessment for a particular year is final and conclusive between the parties only in relation to that year.
- Decisions given in an assessment for an earlier year are not binding either on the assessee or the department in a subsequent year.
- On perusal of the order of the Assessing Officer for assessment year 2005-2006, it was found that the Assessing Officer has accepted claim of the assessee without examining the relevant records and without recording facts of the issue. The order of the Assessing Officer for assessment year 2005-2006 is not in accordance with law.
- Merely accepting assessee's claim without examining records and material, it cannot be said that the order of the Assessing Officer has to be followed in subsequent year. The principle of consistency suggests that if any authority after examining records and material and after recording facts comes to conclusion or takes a particular view on the issue by a speaking order in accordance with law only such view is to be followed on account of principle of consistency.
- A blind order, not taking any view, not examining records and material, such order is not required to be followed on principle of consistency. If anything was going wrong in the past that wrong thing need not to be followed in subsequent year. The wrong thing has to be corrected on notice of the same.
- In the instant case, there were sufficient materials and changes before the Assessing Officer for the year under consideration to decide the issue.
- In the light of said material changes in facts and circumstances, revenue authorities are correct in not following the order of the Assessing Officer for assessment year 2005-06.
- Coming to merit of the case, it is well-settled that for the purpose of calculation of tax on income it is necessary to decide the head under which the income is assessable. A particular income is either exigible to tax under the taxing statute or it is not. If it is not, the Income-tax Officer has no power to impose tax on the said income.
- Income-tax is undoubtedly levied on the total taxable income of the taxpayer 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 the Act 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, the fact that it may indirectly be covered by another head will not make the income taxable under the latterhead.

- The case of assessee is that the receipts is business receipts and, therefore, assessable under the head income from business. Now question is what is business? In terms of section 2(13), 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.
- The word 'business' postulates the existence of certain elements in the activity of an assessee which would invest it with the character of business. In each case the question whether or not the assessee carried on business must necessarily be approached in the light of intention of the assessee, having regard to the legal requirements which are associated with the concept of business.
- In taxing statutes, the word 'business' is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure.
- Whether or not a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transaction must ordinarily be entered into with a profit motive. Such motive must pervade the whole series of transactions effected by the person in the course of his activity.
- To infer from a course of transactions that it is intended thereby to carry on business ordinarily the characteristics of volume, frequency, continuity and regularity indicating an intention to continue the activity of carrying on the transactions must exist. But no test is decisive of the intention to carry on the business. In such cases general line of enquiry is to see whether a transaction that is said to have given rise to a taxable profit bears any of the "badges of trade".
- Where the subject of letting out is the tenements, etc., as tenements, the income derived is from house property and is assessable under section 22. But if the subject-matter of hiring out is a complex one, being not mere tenements as tenements but added with certain other articles, rights, asserts, etc., the question arises whether the income derived is from house property, business or other sources.
- For the purpose of income to be of revenue nature it must arise from the various sources which have been given under the Act. One of such sources is business income, there may be other sources of income like salary, other sources, etc., but the volume, frequency, continuity, regularity and the intention of the assessee to carry on business income. When the business itself has not come into existence, it cannot be considered to be a business income and, therefore, cannot be a revenue receipt.
- In the instant case the assessee is the owner of the property. The partner of the assessee-firm admitted that the property was purchased to let out on rent to GAIL. The relevant clauses of different agreements show that the intention of the assessee was to let out the property to earn the rent.

- The assessee has claimed that income is assessable under the head "income from business" but the assessee has failed to discharge the onus by furnishing evidence and material that the assessee was doing business.
- No systematic set up has been established for doing business activities. The assessee has failed to point out the volume, frequency, continuity and regularity of the transactions of purchase and sale in clause of goods. On perusal of income and expenditure account it was found that the assessee was not doing any activities of which income is assessable under the head 'income from business'.
- In the case under consideration the Assessing Officer has examined all the agreements and found that the first agreement i.e. lease agreement clearly shows that the property was obtained to give on rent.
- On examination of the second agreement, the Assessing Officer noticed that this second agreement was in fact consequence of the first agreement and was executed after 14 days of first agreement.
- On perusal of books of account, the Assessing Officer noticed that the assessee did not provide day-to-day services as no such expenses had been found incurred by the assessee. The Assessing Officer found that the assessee did not involve in any kind of recurring, systematic and in organized manner business activities.
- From the third agreement, the Assessing Officer noticed that this agreement was in respect of maintenance and upkeep of the building, floor, furniture and fixtures, the assessee had deputed only one person to look after the premises.
- The Commissioner (Appeals) has also examined the relevant provisions of section 22 and their conditions considering facts of the case under consideration. The Commissioner (Appeals) found that the material on record itself goes to show so as to what kind of organisation and continuous activity was carried on by the assessee to claim the receipt as business receipt.
- The Commissioner (Appeals) has also rejected assessee's contention to follow the order of the Assessing Officer for earlier year on the ground that if the Assessing Officer committed a patent mistake, no principle of consistency can bind the assessee or revenue to go on repeating the same mistake once committed.
- The assessee has failed to furnish any material to controvert the facts noted by the revenue authorities. After considering totality of the facts of the case and orders of the revenue authorities and contention of the assessee, the Commissioner (Appeals) has rightly confirmed the action of the Assessing Officer in treating rental income assessable as income from house property and services receipts as 'income from other sources'.
- Thus, the order of the Commissioner (Appeals) is confirmed on the issue. The Assessing Officer is directed to give consequential effects and calculate total taxable income in accordance with law.