

## Resident assessee can claim losses incurred from house property located abroad in return filed in India

**Summary – The Chandigarh ITAT in a recent case of Sumit Aggarwal, (the Assessee) held that an option is available to the resident-assessee to file return of income either under the Indian tax laws or under the treaty - If assessee files the return of global income in India, the Revenue is bound to give effect to such return - Therefore, losses from house property located abroad was to be included in the income of resident-assessee.**

### Facts

- The assessee filed his return of income after including losses from house property located abroad. He purchased this property in Australia which was already on rent. He obtained a loan from ANZ Bank, Australia ('ANZ') to purchase the property.
- The loss was computed under the head house property due to payment of interest to ANZ.
- During appellate proceedings, the CIT(A) referred to the decision of Apex Court in case of *CIT v. PVAL Kulandagan Chettiar* [2004] 137 Taxman 460 (SC) and held that as far as rent income from Australia was concerned, the assessee was required to file the return in Australia and such income could not be included in Indian income. Therefore, negative income could not be assessed in India.

### The Tribunal held in favour of assessee as under:

- In view of Section 5 of the Income-tax Act ('the Act') in case of a resident, income accruing or arising outside India had to be assessed in India. The Sec 90(2) of the Act clearly provides that wherever DTAA is applicable to assessee he has an option to apply either Indian Tax Laws or provisions of DTAA, whichever are more beneficial to him.
- Therefore, the assessee had an option to file return of income under the Indian tax laws where DTAA was applicable.
- In the instant case, the assessee had exercised the option of filing return under Indian laws, thus, the same could not have been refused simply because DTAA was applicable.
- The decision in case of *PVAL Kulandagan Chettiar* (supra) was distinguishable because in that case the assessee was a resident of India and Malaysia. It was due to financial connection of the assessee with Malaysian property it was held that income from Malaysian rubber plantation was taxable only in Malaysia.
- The assessee had right to file the return of global income in India and the Revenue was bound to give effect to such return. The CIT(A) was not correct in holding that income from house property in Australia was not assessable in India. Accordingly, the order of the CIT(A) was to be set aside and the Assessing officer was to be directed to include the loss from such house property in the hands of the assessee.