

Case remanded to decide if letting out of commercial complexes were business income or income from house property

Summary – The High Court of Karnataka in a recent case of Chamundi Industrial Estate, (the Assessee) held that where material placed on record did not clearly show that assessee was in business of acquiring properties and letting them out or that assessee had other properties, matter was to be remanded back to Assessing Officer to verify whether rental income from commercial complex comes under head 'business income' or under 'house property'.

Facts

- The assessee received certain income from letting out the commercial complex. He claimed it under the head 'income from business'.
- The Assessing Officer and the Commissioner held that income received by the assessee from letting out the commercial complex could be brought to tax under the head 'income from house property' and that the maintenance charges could be brought to tax under the head 'income from other sources'.
- On appeal, the Tribunal reversed the finding and held that the income earned by the assessee from letting out the commercial complex should be brought to tax under the head 'income from business'.
- On appeal to the High Court:
 - *Assessee's point*
 - Reference was made to two other properties claiming that they were also let out as assessee's profession or business.
 - *Revenue Point*
 - Parties argued that material did not clearly show that assessee had other properties and assessee was in business of acquiring and letting properties.

Held

- The parties have stated that since the material placed on record does not clearly show that the assessee had other properties and that they are in the business of acquiring the properties and letting them out, this matter may be remanded to the Assessing Officer to verify and/or to examine the case of the assessee, whether they are in the business of taking land and putting up commercial buildings thereon and letting out such buildings as their profession or business.
- Hence, the following order was passed:
 - (i) The order passed by the Tribunal as well as the orders passed by the authorities below are set aside. The matter is restored to the file of the Assessing Officer.

- (ii) The Assessing Officer, shall examine the case of the assessee afresh, in the light of the judgment of this Court in *CIT v. Velankani Information Systems (P.) Ltd.* [\[2013\] 218 Taxman 88/35 taxmann.com 1 \(Kar.\)](#) case and while doing so, shall allow the parties to place additional material/evidence on record in support of their contentions.
 - (iii) The Tribunal while deciding the matter afresh, shall bear in view the substantial question of law framed:

"Whether the Tribunal was right in holding that income received from letting out the commercial complex cannot be brought to tax under the head 'income from house property' and the maintenance charges cannot be brought to tax under the head 'income from other sources' and the entire income should be brought to tax under the head 'income from business'?"
 - (iv) All contentions of the parties are kept open. No costs.
- Appeal was disposed of accordingly.