

Sum received from letting out an office space with facilities of cafeteria and conference room was business income

Summary – The Pune ITAT in a recent case of Surya Incubation Clusters (P.) Ltd., (the Assessee) held that where assessee earned licence fee by letting out office space alongwith other facilities such as cafeteria, conference rooms LCD projectors etc., it being a case where property had been exploited by undertaking complex commercial activities, amount in question was to be taxed as business income.

Facts

- The assessee company was incorporated with specific objective of providing state of the art office space along with other facilities specially useful for the newly start up business units. In pursuance of this object the assessee company developed a commercial complex.
- The assessee company thus started earning income by way of license fee by giving out the use of office space along with other facilities. The income so earned by the assessee was offered to tax as business income.
- The Assessing Officer took the view that the main/dominant object emerging from the leave and license agreement with the users of the office space in the impugned property reflected that it was an arrangement for leasing out of the property on a monthly rent. According to the Assessing Officer, it was a normal rental arrangement and merely because assessee was also providing certain other services like, security, electrical installations, gensets, furniture, etc., the arrangement could not be seen independent of the main activity of renting out of the property. Therefore, according to the Assessing Officer, such income was liable to be assessed under the head 'income from house property' and not as 'business income'.
- The Commissioner (Appeals) however, accepted the assessee's plea and held that the income earned by letting out the property was assessable as 'business income'.
- On revenue's appeal:

Held

- It is a trite law that merely because an income arises from exploitation of immovable property, it would not *ipso facto* be assessable under the head 'income from house property'. What is required to be appreciated is the peculiar facts and circumstances of each case to decide whether a particular rental income is assessable under the head 'house property' or not.
- In the present case, the Commissioner (Appeals) has brought out from the Memorandum of Association of the assessee that the main object of assessee company was to provide young technocrats and start-up business owners with various facilities, including 'office infrastructure facilities', development facilities, etc. under one roof called 'incubation clusters'. In such 'incubation clusters', assessee's objective was to provide all logistics support services like state of the art office

space, discussion rooms, board rooms, equipments, computers, internet connection, phone lines, printers, messaging services, printing services, communication facilities, etc.

- The leased out facilities include office space, wooden fixtures for work static cupboards, electrical fittings and 24 hour generator back-up, use of conference rooms, Rest rooms, security services, cafeteria/pantry etc., on the aforesaid basis, the Commissioner (Appeals) has arrived at a factual finding that the income is not earned simply by renting out an office space, but it has been earned by renting out space along with providing facilities/complex services as stated above. The Commissioner (Appeals) has also appreciated that though the leave and license agreement mentioned a consolidated figure by way of 'license fee', so however, the invoices raised by the assessee show separate billings for the use of cabins, computer terminals, electrical fittings, UPS, network services, net-switch charges, etc.
- In the background of the aforesaid factual matrix, it is quite clear that it is not a case where the license fee had been earned from merely letting out of office space, but has been earned as a result of undertaking composite activities, comprising of leasing of office space and providing services of cafeteria/pantry, conference rooms and equipments such as LCD projectors, PA system etc., use of computer terminals, electrical fittings, UPS, network services and net-switch charges, etc.
- The providing of such services along with the office space could not be regarded as exploitation of the immovable property for earning rentals but it was a case where the commercial property had been exploited by undertaking complex commercial activities and therefore such income had to be held assessable as 'business income'.
- Having regard to the material and facts on record, the Commissioner (Appeals) made no mistake in holding that the impugned 'license fee' received from the users of the office infrastructure facilities was assessable as 'business income' and not under the head 'income from house property'. The aforesaid decision of the Commissioner (Appeals)'s thus affirmed.
- In the result, the appeal of the revenue is dismissed.