

Sum received for permitting installation of Telecom Tower on terrace is taxable as income from house property

Summary – The High Court of Delhi in a recent case of Niagara Hotels & Builders (P.) Ltd., (the Assessee) held that where assessee owning terrace floor of a building, gave same on licence to a telecom company for installing tower/antenna, licence fee was to be taxed as income from house property

Facts

- The assessee was the absolute owner of terrace floor of property. It entered into a 'leave and licence agreement' with 'A' Ltd. By virtue of the said agreement, the assessee-company gave on 'licence' the terrace floor as the 'space' for mounting a tower/mast and antenna. The assessee received certain amount as monthly licence fee which was declared as 'Income from House property'.
- The Assessing Officer held that since the property was reflected as a 'commercial asset', income derived therefrom was to be assessed as business income.
- The Commissioner (Appeals) opined that the assessee had to exploit the property as owner only and it was not an interim arrangement to let out the property pending final sale. The dominant object of the letting out was to enjoy and utilize the property as owner. No complex commercial activity was involved in the process of earning rental income. He, thus, accepted the assessee's claim.
- The Tribunal took a view that terrace does not have any appurtenant land. Therefore, the agreement of renting and hiring terraces was in essence an agreement of hiring space and not building and land appurtenant thereto. The Tribunal thus, brought rental income to tax as 'income from other sources'.
- On appeal:

Held

- The crucial test was as to whether the letting out has a definite nexus with the business of the assessee. In the opinion, of instant court the approach of both the Assessing Officer and the Tribunal in the case at hand has been totally misdirected. Wrong classification of the licensed space in the books of account as stock-in-trade cannot change the character of the transaction concerning its eventual exploitation. The use of the expression 'leave and licence' in the agreement entered with 'A' Ltd. (Telecommunication) may be debatable. The fact remains that the use of the terrace floor has been handed over to the licensee not only for setting up the tower/mast on which antenna was to be mounted but also for construction of a room where the watch/ward staff can be stationed and space used for storage purposes.

- In the case at hand, the building the top terrace of which was the subject of focal attention here has been developed for its various portions to be sold or let out with no possibility of the terrace floor being subjected to such utilization. The assessee continues to be the owner of the terrace floor and no other purpose to be served by such property except the exploitation of the licensed space for gaining the income, that cannot be treated as either income from business or income from other sources. it was to be taxed as income from house property.
- The Court did not approve of the logic employed by Tribunal in rejecting the claim of it being income from house property. The terrace floor cannot exist in the air. It was part of the building which has been constructed on the land beneath the super-structure. It is, therefore, not correct to hold that the terrace does not have any appurtenant land. Therefore, the Court rejected the conclusion of the Tribunal that the agreement of renting and hiring terrace is in essence for hiring space and not hiring building or land appurtenant thereto.
- For the above reasons, the impugned order passed by the Tribunal was set aside and the view taken by the Commissioner (Appeals) was restored.