

Rental income from guest houses is taxable under the head business income and not as house property

Summary – The Hyderabad ITAT in a recent case of Heritage Hospitality Ltd., (the Assessee) held that where in terms of memorandum of association, main object of assessee-company was to carry on business of hotels, resorts, boarding, lodges, guest houses, etc., and it earned only rentals for occupation of premises on daily basis, said income would be taxed as business income and not as income from house property

Facts

- The assessee was in the business of running guest houses. It had entered into agreements with various companies for accommodating their employees from time to time in these rooms and received rental receipts. Such incomes had been accepted up to assessment year 2006-07 as 'income from business'.
- For relevant assessment year, the Assessing Officer opined that assessee had let out the property and did not have any license to run the catering part and on enquiry, it was found out that the assessee was not running a kitchen but providing food by outsourcing, on cost to cost basis. He held that the income received by the assessee should be brought to tax as 'income from house property'.
- The Assessing Officer also noted that TDS by various companies was made under section 194-I and, consequently, the rentals received were to be assessed as 'income from house property'. The Assessing Officer also opined that in case assessee's incomes were to be assessed as 'business income', the expenditure could not be allowed fully. Therefore, he had substantially disallowed the amounts on a protective basis.
- The Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On appeal :

Held

- There is no dispute with reference to certain facts; (i) assessee owns the property on which it is running the hospitality business; (ii) assessee has not let out property *per se* but has entered into agreement for providing accommodation to the software engineers of various companies in its property; (iii) the agreement indicate that the charges are payable on occupancy basis on per day basis without any food, except providing coffee and tea and light snacks; (iv) the receipts which are received are for occupancy only of the seven rooms assessee is owning. There is no let out of any property as such, but the amounts were paid by the said companies as rent for occupation of the property. It is also not in dispute that in earlier years, assessee's receipts were accepted under the head 'business'. Moreover, assessee's memorandum of association indicates that main object of the company is to carry on the business of hotels, resorts, boarding, lodges, guest houses, etc.

- The Supreme Court in the case of *Chennai Properties & Investments Ltd. v. CIT* [\[2015\] 56 taxmann.com 456/231 Taxman 336/373 ITR 673](#) has held that where in terms of Memorandum of Association, main object of the assessee-company was to acquire properties and earn income by letting out the same, the said income is to be brought to tax as 'income' from business and not as 'income from house property'. Since no property was let out and assessee received only rentals for occupation of the premises on a daily basis, Assessing Officer's contention that income has to be assessed under 'house property' has no basis at all.
- Provisions of section 194-I may be applied for any rental income paid, but as seen from the definition of 'rent' in section 194-I, rent includes any payment by whatever name called, for use of buildings including factory buildings, equipment, furniture or fittings. Even if machinery was leased, the consequent rent comes under the definition. But machinery lease cannot be considered under 'income from house property'. That indicates that just because TDS was made under section 194-I, it cannot be treated as 'house property income' as the rent definition includes lease of equipment, lease of furniture, fittings which cannot be considered as 'house property'. Assessing Officer's opinion that since TDS made under section 194-I, incomes are to be assessed under head 'income from house property' cannot be accepted. Moreover, even if assessee has let out property but when the memorandum of association permits the business of letting out of properties as such, the income cannot be brought to tax as 'income from house property' as held in the abovesaid case of *Chennai Properties & Investments Ltd. (supra)*. Therefore, both on facts of the case and also on law, as established by the Supreme Court in the abovesaid case, receipts of assessee cannot be brought to tax under the head 'house property'. The same is to be assessed under the head 'Profits and gains of business or profession' only.