

Income from sub-letting held as house property income as sub-letting wasn't business activity of lessor

Summary – The Mumbai ITAT in a recent case of Prolific Consultancy Services (P.) Ltd., (the Assessee) held that where assessee earned income from sub-lease of property, since neither main object nor business activity of assessee was to take on lease and sub-let properties, amount in question was rightly assessed as income from house property

Facts

- In the course of appellate proceedings, the Tribunal held that income earned by assessee from sub lease of property was to be assessed as income from house property.
- The assessee filed instant petitions seeking rectification of Tribunal's order contending that in the light of the decision of the Supreme Court in the case of *Chennai Properties & Investments Ltd. v. CIT* [2015] 56 taxmann.com 456/231 Taxman 336/373 ITR 673 of 2004 the rental income earned by the assessee from sub lease of the property was required to be assessed as 'business income'.

Held

- There is no disagreement to the contention of the assessee that the law declared by the Supreme Court is the law of the land and the same is binding on all subordinate Courts including the Tribunal. Further, the Supreme Court in the case of *Chennai Properties & Investments Ltd. (supra)* has held that from the facts and circumstances of the case before them, an irresistible conclusion was that the letting of the property was in fact the business of the assessee. However, the facts of the case of '*Chennai Properties & Investment Ltd.*' (*supra*) were entirely different as that of the case of the assessee.
- In case of *Chennai Properties & Investments Ltd. (supra)* in the memorandum of association of the appellant company, it was mentioned that the main object of the appellant company was to acquire and hold the property and to let out those properties as well as make advance upon the securities and lands and buildings or other properties or any interest therein. The Supreme Court emphasized that holding the aforesaid properties and earning income by letting out those properties was the main objective of the company. Thus, Supreme Court treated the income of the assessee in that case as 'business income' of the assessee.
- In the instant case, the Tribunal noted that the income from sub lease of the premises was to be assessed as rental income of the assessee. This Tribunal also took note of the services provided by the assessee along with renting of the building. The Tribunal also held that the said services rendered by the assessee was not part of any organized activity with a view to earn such income and held that the income from services on the facts of the case has to be assessed as income from other

sources and all expenses incurred by the assessee for earning of such income has to be allowed as deduction under section 57.

- It was also held that if any expenditure in relation to services which is also included in relation to expenses on repair and maintenance of the portion of the building let out, such expenses have to be excluded as the same were already covered in the statutory allowance under section 24(c) while computing the house property income.
- The above narrated part of the order of the Tribunal reveals beyond doubt that the Tribunal has well considered the proposition of law that if an income is earned from the business activity of letting out of the properties or the commercial exploitation of the property by way of organized activities of taking properties on lease and letting out *etc.* then the income is to be assessed as business income of the assessee as held subsequently by the Supreme Court in the case of '*Chennai Properties & Investments Ltd.*' (*supra*).
- The Tribunal in its wisdom has held that the facts of the case of the assessee do not suggest that the assessee was in the business of commercial exploitation of the property or leasing out of the properties and held that the income earned by the assessee from the sub lease of the premises was simple case of letting out of the property and thus income there from was assessable under the head 'Income from the house property'.
- The main object of the assessee in this case is providing advisory, consultancy and technical services in the area of real estate and properties such as architectural, civil construction, maintenance and related services. None of the above objects suggest that letting out of the premises was the business activity of the assessee. The premises in question even have not been developed by the assessee. The premises in question has been taken on lease by the assessee and further subletted. In the case in hand it is neither the object nor the business activity of the assessee company to take on lease and sub let the properties.
- The Tribunal, as the facts were available before it, has given a categorical factual finding. There is no mistake apparent on record in this case as the said case law is not applicable because the factual finding given by the Tribunal is contrary to the facts of the cases before the Supreme Court as relied upon by the assessee.
- The Tribunal, *vide* impugned order, has not only considered the submissions of the assessee but has given a categorical finding on all of the issues which were raised before the Tribunal by the assessee.
- It is well settled that the power of rectification under section 254(2) can be exercised only when the mistake which is sought to be rectified is an obvious and patent; mistake which is apparent from the record, and not a mistake which requires to be established by arguments and a long drawn process of reasoning on points on which there may conceivably be two opinions. The Tribunal, under such circumstances, has no jurisdiction under section 254(2) to pass the second order.
- In view of aforesaid, there was no merit in instant application and the same is accordingly hereby dismissed.