

Rent taxable as business receipt as leasing out was part of business activity of firm as per partnership deed

Summary – The High Court of Andhra Pradesh in a recent case of Sri Bharathi Warehousing Corporation., (the Assessee) held that where construction of different buildings and leasing them out was main business activity of assessee firm while other activities were only optional, assessee-firm was right in showing rental income

Facts

- The assessee partnership firm was carrying on the business in letting out properties constructed either on acquired or leased land. In addition, the assessee firm was also carrying on the business in trade of tobacco. The properties were leased out only with business motive and not as a land owner. The assessee filed its return and had shown these two incomes under the head of income from business.
- The Assessing Officer held that correct head of income under which rentals were to be brought to tax was Income from house property.
- On appeal, the Commissioner (Appeals) stated that income earned by the assessee by way of rents was part of business income.
- On revenue's appeal, the Tribunal stated that rental income received by the assessee was income from house property and not business income.
- On appeal before the High Court:

Held

- A close scrutiny of the partnership deed terms would unhesitatingly manifest that the main objective of the partnership firm was to carry on the business in construction of godowns, residential or commercial buildings or flats or commercial shops etc., on the lands either owned by the firm or by taking on long lease basis from others and lease out the same to others. The terms would further signify that doing of any other business was only ancillary to the main business and that too an optional one which is evident from the clause any other business also may be carried on with the mutual consent of all the partners if deemed lucrative. Non-mentioning of specific type of business and doing of such unspecified business, only if the partners deemed it lucrative, would indicate that the unspecified business proposed to be carried on with mutual consent was only an optional but not the main objective of the partnership firm. Thus, the optional business proposed was not as clear and emphatic as that of the main business.
- During the assessment period under scrutiny, the assessee firm earned income in tobacco business as well as by rents. Hence, the point was whether the assessee firm under law, was entitled to show both the incomes under the head income from business or under two different heads *i.e.*, income from business and profession and income from house property.

- In *Chennai Properties & Investments Ltd. v. CIT* [\[2015\] 373 ITR 673/231 Taxman 336/56 taxmann.com 456](#), the Apex Court observed that deciding factor was not the ownership of the lands or lease but the nature of the activity of the assessee and the nature of the operations in relation to them and ultimately held, that the letting of the properties was in fact the business of the assessee and therefore, the assessee rightly disclosed the income under the head income from business and accordingly, allowed the appeal.
- The main objective of the assessee firm as manifest from the partnership deed was to carry on business in construction of different types of buildings such as godowns, residential or commercial buildings, flats, shops etc., and lease them out as a part of its business activity but not as exploitation of the property as an owner. In simple, construction of different types of buildings and leasing them out was the main business activity of the firm and doing other activity was only an optional one. In that view, the assessee firm was right in showing its both incomes under the head income from business. Therefore, there is no merit in the argument of the revenue that the rental income should be shown under a different head. Also, there was no merit in the other argument that since the Tribunal has held in the previous instances that the income received by the same assessee was the income from house property and not a business income, in the instant case also it should have held similarly, for the reason that in the earlier instances, the Tribunal had no occasion to peruse the Apex Court judgment in *Chennai Properties & Investments Ltd. case (supra)*.