

Leasing income from ready to move office in Gurgaon to Agilent held as business income

Summary – The Delhi ITAT in a recent case of M.M. Creations., (the Assessee) held that Rental income earned from letting of building along with fittings and fixtures (being complex one) would be considered as income from business

Facts

- The assessee was engaged in business of manufacture and export of readymade garments and hire of machinery and building. It had leased out a portion of premises to a company (Agilent) along with the fit outs installed in said premises. It had disclosed rent received from hiring of building under head income from house property and had claimed deduction under section 24. However, rent received from fit outs was disclosed as income from business.
- The Assessing Officer was of the opinion that rent derived from building was inseparable from hire of the fit outs and he included rent from lease of building as income from business and disallowed deduction claimed by assessee under section 24 and added it back to total income.
- The Commissioner (Appeals) treated income from letting off of building as income from other sources.
- On appeal:

Held

- The assessee has purchased plant and machinery, equipment and fit outs such as HT Distribution Transformer, ST Switchgear, LT panel and Associated Switchgear, Server stabiliser, Insulations Transformers, UPS, DG sets, easy plants and control panels, additional safety features and lifts etc. On reading of clause 3 of original composite agreement it is observed that the lessor is responsible for obtaining/maintaining specifications and quality decided by lessee in respect of the fit outs. It is also observed that in the event the lessor defaults on the cost, quality and timeframe for delivery of fit out, lessor shall pay a penalty of Rs. 50,000, for each day delay beyond 7-12-2003.
- The sequence of events reveals the intention of the assessee was to commercially exploit the building. It is for that reason that assessee had fit in fittings, as per prescribed specifications of lessor, it is seen that each and every fittings from office cabinets to electrical wires, even sanitary ware tiles and door lock system were specifically detailed by lessee. Submissions of assessee cannot be accepted under these circumstances. From the facts that emerges from agreement dated 25-8-2003, it is more than clear that agreement between assessee and Agilent related to building, that was ready for the purposes of being used as office. The agreement does not relate to bare tenement but in respect of a fully equipped office building. That said building was complete with fittings and fixtures and ready for commencing is apparent from agreement. If it was not so, it would not have

been mentioned in the agreement that Agilent shall have right to advise assessee for purchase of fittings, fixtures installations from exclusive and for architects on a global basis in the building. It is true that, from name given to agreement, one cannot decide true nature of income earned. However, what is important is the intention of parties. The agreement provides that upon expiration of terms of agreement or sooner determination thereof, Agilent shall surrender vacant possession of building and hand over entire building with furniture fittings and installations to assessee. If the agreement between assessee and Agilient was a simple lease or a licence of building, as is sought to be contended by assessee, there would not have been covenant providing that on expiry of term of agreement or sooner determination, Agilent shall handover vacant possession of building along with furniture, fittings and installations as is where is basis. It is true that period for which business assets are let out is always a relevant factor in finding out whether intention of assessee is to let out a business assets and if assessee had never started business, an inference may be drawn that assessee intended to exploit property and not business assets but intention of parties has to be gathered from overall facts and not isolated circumstances. In the facts of present case assessee had already constructed building in the assessment year 2004-05.

- It is settled legal position that each case has to be decided on its own facts including construction of the agreement, under which assets have been let out or handed over to a third party and no precise test can be applied to ascertain, as to under which head income received by assessee from leasing or letting out of assets should fall. The longer duration of agreement could have been for many reasons. The fact that all licences, permissions and no objection certificates required for leasing the building to be obtained in the name of assessee was a pointer to aspect that assessee intended to exploit business assets.
- It needs no emphasis that when a specific head of charge is provided for income from house property, rents or other income from ownership of house property has to be under this head and no other head. However, for an income from house property, it should be covered by section 22 where subject-matter that is let out or given on licence is not a bare tenement but is a complex one, income derived therefrom which is not separable as income from letting out building and "income letting out from furniture, plant and machinery", etc., shall not be covered by income from house property. In the present case rental income received from lease of building is not derived either wholly or even substantially from the ownership of the property. The income is not derived from mere letting of a tenement but income is derived from a complex letting, substantial part of which is other than bare tenement. It is further observed from bare reading of agreements that arrangement was in the course of and as a part of business of company and enterprise which it had entered upon was of providing special facilities.
- Rental income earned by the assessee from lease of building would be taxable under the head 'income from business and profession' and the Assessing Officer was directed to grant depreciation on building while computing income from business as per law.