

Income from letting out property was to be taxed as business income if letting out was main object of assessee

Summary – The Kolkata ITAT in a recent case of Oberoi Investments (P.) Ltd., (the Assessee) held that where in terms of memorandum of association, main object of assessee company was to acquire properties and to further let out such properties, income earned from such letting out was to be brought to tax as 'business income' and not as 'income from house property'

Facts

- The assessee company acquired shopping area from one, OSH. After acquiring the said shopping space, the assessee further let out different portion of shopping space to different persons. This letting out income was shown by the assessee as "contribution from shops" and the amount paid to the OSH was shown as "license fees and other charges". The assessee claimed said income as income from "business or profession."
- The Assessing Officer held that since the assessee was having the irrevocable right for 50 years over the shopping space, in view of provisions of section 27(iiiB) the assessee was the owner of the building or shopping space. Therefore, the income derived from the said building or shopping space were to be taxed under the head 'income from House property'.
- On appeal, the Commissioner (Appeals) also confirmed the order passed by the Assessing Officer.
- On second appeal :

Held

- The assessee's main object as stated in its Memorandum of Association was to acquire on license or by purchase, lease, exchange, hire or otherwise lands and property of any tenure, or premises in any part of India and to license or sub-license or lease or sub-lease or let, such lands or property or premises or any part thereof, clearly spells out that the assessee's main business is to carry out systematic and regular activity in the nature of business of letting out property. Section 27(iiB) read with section 269UA(f), is not applicable in the instant case as the agreement is only for use of property and not for the transfer of the same. Since the company is neither the owner nor the deemed owner in terms of section 27(iiiB), therefore the 'Contribution from Shops' cannot be assessed under the head 'Income from house property'. Taking into consideration the ratio laid down by the Supreme Court, the coordinate Bench the case of the sister concern of the assessee *i.e. Bombay Plaza (P.) Ltd. v. Asstt. CIT* [\[2016\] 73 taxmann.com 91/161 ITD 552 \(Kol - Trib.\)](#) was pleased to uphold the assessee's claim that the income from granting premises on sub-license was to be assessed under the head income from business. Therefore, considering the factual position and respectfully following the judgment of the Tribunal in assessee's own sister concern case, the

order of Commissioner (Appeals) is set aside and allow the claim of the assessee and hold that income from contribution received from the shops has to be assessed under the head Income from business.