

## Ownership of land on which building is constructed isn't necessary to taxing rental income as house property income

**Summary – The Chennai ITAT in a recent case of JG Exports., (the Assessee) held that It is not essential that a person who owns a building should be owner of land upon which it stands for assessing rental income under head 'Income from House Property'**

### Facts

- The assessee constructed a building on land taken on lease. The said building was let out to various tenants. The assessee's case was that rental income arising from said building was taxable under head 'Income from other sources' and, thus, lease rent paid by it was to be allowed as deduction while computing taxable income.
- The revenue authorities having rejected assessee's explanation, concluded that rental income was to be taxed under head 'Income from house property'. Accordingly, assessee's claim for deduction of lease rent was rejected.
- On second appeal:

### Held

- It was noted from the assessment orders for the impugned assessment years that assessee had not carried on any export business though, it had in its name the word "Exports". It has not been disputed by the assessee that the house property on which it was earning the rental income was constructed by it, though it was situated on a leased land. Ownership of the building therefore vested with the assessee. May be assessee was not sure under which head of income, the rentals had to be shown. However, income earned by the assessee by exploiting the property by letting it out *de hors*, any commercial or business activity is chargeable under the head "Income from House Property".
- Argument of the assessee is that, assessee could not be considered as owner of the property since the land was a leased one and section 27(iii)b) would not be attracted. According to assessee, lease agreement for leasing the land on which the building was constructed by the assessee was only an oral one and not a written one. However, answer to the question lies in section 22, which is the charging section.
- A reading of the said section clearly shows that annual value of the property which is in the nature of a building is to be charged under the head "Income from House Property", if the assessee is the owner of the such building. Admittedly assessee was the owner of the building though it might not be the owner of the land. It is not essential that a person who owns a building should be owner of

the land upon which it stands for assessing the rental income under the head "Income from House Property". In the circumstances, the lower authorities were justified in considering the rental income under the head "Income from House Property". Once income is assessed under the head "Income from House Property", assessee will be eligible only for allowance mentioned in section 24. Thus, there is no reason to interfere with the orders of the lower authorities.

- In the result, the appeal of the assessee stands dismissed.