

## **Sum received on renting of terrace for installation of mobile tower taxable as house property income: ITAT**

**Summary – The Mumbai ITAT in a recent case of Kohinoor Industrial Premises Co-operative Society Ltd., (the Assessee) held that Income earned by assessee from letting out space on terrace for installation of mobile tower/antenna was taxable as 'income from house property' and, therefore, deduction under section 24(a) was available in respect of it**

### **Facts**

- The assessee, a co-operative society, filed its return of income. The assessee had derived income from letting out some space on terrace for installation of mobile towers/antenna which was offered "as income from house property". Further, against such income the assessee had claimed deduction under section 24(a).
- The Assessing Officer observed that, the terrace could not be termed as house property as it was the common amenity for members. Further, the Assessing Officer observed that the assessee could not be considered to be owner of the premises since as per the tax audit report, conveyance was still not executed in favour of the society. He also observed that the annual letting value of the terrace was not ascertainable. Accordingly, he concluded that the income received by the assessee from the mobile companies towards installation of mobile towers/antenna was to be treated as "income from other sources".
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer on grounds that the income received by the assessee was in the nature of compensation received for providing facilities and services to cellular operators on the terrace of the building.
- On second appeal:

### **Held**

- The assessee has let-out some space on the terrace of the building to the cellular operators for installing and operating the mobile towers/antenna for the purpose of providing mobile telecom services. The issue is, what is the nature of income received by the assessee for letting out such space to the cellular operator/mobile company for installing and operating mobile towers/antenna? The terrace of the building cannot be considered as distinct and separate but certainly is a part of the house property. Therefore, letting-out space on the terrace of the house property for installation and operation of mobile tower/antenna certainly amounts to letting-out a part of the house property itself. That being the case, the observation of the Assessing Officer that the terrace cannot be considered as house property is unacceptable. As regards the observation of the Commissioner (Appeals) that the rental income received by the assessee is in the nature of compensation for providing services and facility to cellular operators, it is relevant to observe, the department have failed to bring on record any material to demonstrate that in addition to letting-

out space on the terrace for installation and operation of antenna the assessee has provided any other service or facilities to the cellular operators.

- Thus, from the material on record, it is evident that the income received by the assessee from the cellular operators/mobile companies is on account of letting out space on the terrace for installation and operation of antennas and nothing else. That being the case, the rental income received by the assessee from such letting-out has to be treated as income from house property. Further, the contention of the assessee that in no other assessment year, the assessee's claim of such income as house property has been disturbed by the Assessing Officer has not been controverted by the departmental. Therefore, there being no material difference in fact, applying rule of consistency also, assessee's claim deserves to be allowed. Accordingly, the Assessing Officer is directed to treat the rental income received by the assessee from cellular operator as income from house property and allow deduction under section 24(a).