

Period during which property wasn't legally occupied - notional rental income not taxable

Summary – The High Court of Bombay in a recent case of Sharan Hospitality (P.) Ltd., (the Assessee) held that during the period the property wasn't legally occupied, notional rental income is not taxable

Facts

- The assessee had purchased a commercial property with the intention to let out this property for earning rental income.
- While assessing the return of income of the assessee the Assessing Officer held that for the period during which the assessee purchased the property and received occupation certificate, the assessee had to pay tax on the rental income of the property in question on notional basis.
- The Commissioner (Appeals) and the Tribunal rejected the assessee's appeal.
- On appeal to the High Court:

Held

- The assessee acquired the property in December 2008 and the OC for the property was obtained by the builder only in May, 2009. Under such circumstances, by operation of law, such property could not have been legally occupied by either the assessee or any other person under the license given by the assessee.
- Between the above period, the property was legally not occupiable and not occupied. Under such circumstances, charging of tax on notional rental basis and the question of interpretation of section 23(1)(a) did not arise at all.
- In the result the impugned judgment of the Tribunal is reversed.