Determination of head under which income from immovable property is to be assessed

Merely because income is attached to immovable property, it cannot be the sole factor for assessment of such income as "income from house property"

ITAT, DELHI BENCHES `F': NEW DELHI

Bigg Investments & Finance Pvt. Ltd.

v.

DCIT

ITA Nos. 5367 & 5368/Del/04

April 30, 2009

RELEVANT EXTRACTS:

** ** ** ** ** ** ** ** ** ** ** **

5.8 The question whether income from property should invariably be taxed under the head "income from house property" is to be decided after taking into consideration the cumulative effect of all factors prevailing in a given case. The Courts have formulated different tests to determine the head under which such income can be taxed. Merely because income is attached to immovable property, it cannot be the sole factor for assessment of such income as "income from house property". The primary object of the assessee while exploiting the property has to be seen. If it is found that the main intention is for let out of property or any portion thereof, the same must be considered as rental income or income assessable under the head "income from' house property". In case, it is found that the main intention is to exploit the .immovable property by way of commercial activities^, in that event it must be held as "business income". It is, therefore, clearly born out that the main test to determine the head under which the income from immovable property be taxed is the purpose for which the property was exploited. If it is exploited commercially in the course of carrying on in business activity, then the income arising therefrom would be assessable under the head "business income". No abstract or straight jacket formula can be devised to determine conclusively as to under which head "income from property" would fall. All the relevant facts and circumstances are necessarily to be looked into to decide the character of income. If the facts of a given case are that the assessee was doing a complex commercial activity by exploiting the immovable property, then the income would be assessable under the head "business". If, on the other hand, the property or space is simply let out by the assessee and the rental income is earned, it would be assessed under the head "income from house property". Thus, the decisive test is. the true nature of activity carried out: by the assessee while letting out the property.

5.14 The property in question was designed as business centre in the period relevant to the assessment year 1996-97. However, no evidences or materials have been brought on record that the assessee was engaged in the business of exploiting the property commercially by indulging into complex: commercial activity in the year in question. The present agreement to let out the property to I£)BI for their business purposes has been made for a period of 3 years from 1998 with an option to review the same for a total period of 9 years with an escalation of 15% of the monthly charges at the end of each 3 years' period. The assessee has thus simply let out the property. In the present case, the assessee has not been able to prove that the assessee has let out the property for a temporary period to exploit the same commercially. In the light of the agreement with IDBI, it is clear to us that the assessee has decided to let out the property to others to earn rental income and not to do any activity of complex commercial exploitation of property.

5.15 In view of the reasons given above, we, therefore hold that the authorities below are justified in assessing the receipt of so called service charges received from IDBI as income assessable under the head "income from house property".