

Rent receipt from spouse is taxable as income from house property and not as income from other sources

Summary – The Mumbai ITAT in a recent case of Swapna Murarka, (the Assessee) held that Income earned by assessee from letting out residential property to her husband was liable to tax as income from house property and not as income from other sources

Where assessee did not offer any sum for disallowance under section 14A in respect of exempt dividend income, AO without ascertaining nature of expenses incurred to earn said income, could not workout disallowance in a mechanical manner by resorting to rule 8D

Facts -I

- The assessee was owner of the property wherein she was residing with her husband. Her husband had paid rental income to the assessee which was disclosed by the assessee in her return of income as income from house property.
- The Assessing Officer as well as the Commissioner held that such an income was to be taxed under the head 'income from other sources'.
- On second appeal:

Held - I

- From the plain reading of sub-section (2) of section 23, it is evident that the annual value of a property which is a self occupied, then annual value cannot be deemed and shall be taken at *Nil*. This deeming value at *Nil* is to be claimed by the assessee. However, if the assessee has let out the self occupied property, then sub-section (2) will not apply. This has been specifically provided in sub-section (3) of section 23. If the assessee has claimed that self occupied property has been let out and rent has been received then the annual value cannot be deemed at '*Nil*'.
- In instant case, the main allegation of the revenue that transaction between the husband and wife is colourable transaction to reduce the tax liability. However, such allegation cannot be labelled against the assessee, unless it is brought on record as to what benefit is being derived by the husband or there is any tax avoidance by the husband. If at all any adverse inference is to be drawn, then same needs to be examined in the case of the husband, as to whether any tax benefit is being sought by the husband. Even for the argument sake, stand of the revenue is accepted, then there is no denying fact that the money has come from her husband and if such a money was not rent, then it can be treated as gift from a husband to his wife. How can it be treated as income from other sources.
- The entire finding of the Assessing Officer as well as the Commissioner (Appeals), that it is a colourable transaction is without any merits and examining the case of the husband. If at all the

revenue had any doubt about such arrangement, then both the cases of husband and wife should have been examined. If the money received by the assessee had been shown by letting out of the property, then it had to be taxed 'as income from house property' unless some material was brought on record to controvert said transaction. Further as brought on record by the assessee, the department itself in the subsequent year had accepted the rent received from husband as chargeable to tax under head 'income from house property'.

- Thus, on the facts of the case, the assessee's income from letting out the property is to be taxed under the head 'income from house property'. Accordingly, the ground raised by the assessee is allowed.

Facts –II

- The assessee earned dividend income which was claimed as exempt. In the computation of income, the assessee had not offered any disallowance under section 14A.
- The Assessing Officer held that the disallowance had to be worked out in accordance with the rule 8D and he accordingly worked out the disallowance at 0.5 per cent of the average investment. Such a disallowance was confirmed by the Commissioner (Appeals).
- On second appeal:

Held - II

- It is noticed that the assessee has shown income under the head salary, income from house property, capital gains and interest income which is mainly from saving bank account and FDR. From the perusal of the profit and loss account, it is seen that assessee has debited Rs. 1,52,835 on share transaction charges and STT charges of Rs. 2,89,148 which can be said to be relatable for purchase of shares.
- The Assessing Officer without examining the nature of expenditure and assessee's claim, has resorted to rule 8D mechanically. This is not mandate of the law under section 14(2). On these facts and in the interest of justice, this matter has to be restored to the file of the Assessing Officer to examine the nature of expenses claimed by the assessee and whether any expenditure could be held to be attributable for earning of exempt income or not.