
(2008) 12 KL CK 0050
In the High Court Of Kerala

Commissioner of Income Tax

APPELLANT

Vs

Mohan's Enterprises

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Citation : (2008) 12 KL CK 0050

Hon'ble Judges : Harun-Ul-Rashid, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Judgement

C.N. Ramachandran Nair, J.—The only question raised is whether charges received separately for providing lift service to the tenants in the building is to be assessed as business income or income from house property. We have heard counsel appearing for both sides.

2. The contention of the revenue is that without use of the lift tenant has no access to the house and so much so it is an integral part of the house and the income therefrom, is therefore assessable as income from house property. On the other hand, counsel for the assessee relied on the decision of the Supreme Court in Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, and contended that issue is covered in favour of the assessee and hence appeal has to be dismissed. However, we are unable to accept the contention of the assessee because the case decided by the Supreme Court pertains to supply of electricity, supply of hot and cold water, scavenging and all services related to maintenance of building which are not undertaken by landlords generally in tenancy agreements. In fact the service of lift is one of the components of several activities carried on by the assessee in that case as business undertaking. In this case, strangely the only charge received by the assessee is service charges for providing lift service to the tenants. Strangely none of the authorities has considered terms of tenancy agreement. In the first place the Supreme Court decision probably may not have any relevance as of now because under the current building rules, all multi-storied buildings above four floors must have compulsorily lift. This pre-supposes that a tenant in a high-rise building is

entitled to lift service and it is therefore intrinsically connected with letting out of the building for residential or commercial purpose. In fact, lift only provides access to the tenant to the flat and it is an alternate to the staircase. It is not known whether a tenant has option to go out of the lift service and be contented with use of staircase. In other words, whether a tenant can get out of the lift service and maintain tenancy agreement without paying for the lift service. In fact, if uniform service charges are collected from every tenant, whether he be in the first floor or top floor, then it is to be treated as part of the rent and the separate arrangement for collection of service charges is an arrangement to reduce tax liability. Since in this case facts are not considered by either of the authorities we set aside the orders of the authorities and remand the matter to the assessing officer for factual verification and for verifying rent deed and for making fresh assessment.

Appeal stands disposed of as above.