
(2013) 11 KAR CK 0250
In the Karnataka High Court
Case No : IT Appeal No. 409 of 2013

Tektronics Engineering Development (India) (P.) Ltd.	APPELLANT
Vs	
Deputy Commissioner of Income Tax, Circle-12(4)	RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 221 TAXMAN 134

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Judgement

N. Kumar, J.—This is an assessee's appeal against the order passed by the Tribunal treating the income derived by letting out the premises as not a business income. The assessee M/s. Tektronix Engineering Development (India) Pvt. Ltd., is in the business of Development of Computer Software. The assessee filed return of income on 27.11.2003 declaring the total profit as Rs. 34,93,168/- as per section 115JB. Subsequently, the return was selected for scrutiny and notice u/s 143(2) was issued on 12.10.2004. The assessee has shown a sum of Rs. 28,11,600/- rent received as part of income from business and depreciation has been claimed in respect of the house property. The assessing authority held the said income needs to be assessed as part of income from "house property" and depreciation in respect of house property is not allowable. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of income tax (Appeals). The appellate authority held that the income arose from exploitation of the commercial assets of the assessee and therefore, it should be assessed under the head "business" and the depreciation be allowed in respect of the building at the prevalent place.

2. Aggrieved by the said order, the revenue preferred an appeal to the Tribunal. The Tribunal, after going through the Lease Deed and the details of the property schedule was of the view that the intention of the assessee was to let out a portion of the building for rent. By no stretch of imagination, it could be said that the assessee was exploiting the commercial assets. Therefore, it held that the

income of Rs. 28,11,600/- received by the assessee has to be assessed as "income from house property". However, they found fault with the assessing authority in treating the entire rental income as one arising from exploitation of the commercial assets of the assessee and therefore to be assessed under the head "business" and consequently the assessee was denied certain statutory deductions. Therefore, the matter was remanded back to the assessing authority to give deductions treating the said income as a rental income. Aggrieved by the said order, the assessee has preferred this appeal.

3. The learned counsel for the appellant assailing the impugned order contended that the property which is leased out is a fully furnished office accommodation. The assessee is in the business of computer software. As a portion of the premises was not required for sometime, the same was let out. Therefore, the income derived by way of rent is to be construed as a "business income", as it is nothing but a commercial exploitation of an asset of the assessee. In fact, such a benefit was conferred on the assessee for the previous years. Assuming that it is not a business income, then it has to be treated as income from other sources and certainly not the rental income and therefore, she submits a case for interference is made out.

4. The property which is the subject matter of lease as set out in the Lease Deed reads as under:

All that piece and parcel of the premises in the second and fourth floor (Terrace) of the building known as Samrah Plaza situated at 42, St. Marks Road, Bangalore-560 001 measuring super built-up area of about 15,832 sq. ft. namely, the premises at second floor measuring about 8,240 sq. ft. and fourth floor measuring about 7,592 sq. ft. together with fixtures attached thereto on "as is where is" condition with access through staircase and lift for the premises along with ten (10) covered car parking space in the basement floor of the said building.

5. The recitals in the Lease Deed makes it clear that the assessee is letting out the said premises with fixtures attached thereto for its occupation and use as its business establishment including software facility. A monthly rent of Rs. 10,96,000/- was agreed upon. The lessee paying the rent promptly and observing all the terms and conditions stipulated in the agreement, shall be entitled to peaceful and uninterrupted possession and quiet enjoyment of the schedule premises during the period of lease. The parties shall have the option to terminate the lease without assigning any reason whatsoever, by serving an advance written notice of 180 days to the other party. The lease shall be initially for a period of three years commencing from 1st July, 2000 and the lessee shall have the option to renew the lease for further terms of three years each as per the terms and conditions to be mutually agreed upon by the parties.

6. Therefore, the recitals in the Lease Deed and the property which is the subject matter of the lease makes it clear that the assessee who is the owner of the

schedule premises had let out the same to the lessee with fixtures attached thereto on "as is where is" condition with access through the staircase and lift for the premises along with ten (10) covered car parking space in the basement floor of the said building.

7. Admittedly, the assessee is not in the business of constructing buildings and letting out the same. They are also not in the business of furnishing these buildings and letting out the same. The only business of the assessee is the development of software. The schedule premises is owned by them. When they do not need the schedule premises they let out the premises, so that it could earn some rental income. Therefore, the Tribunal rightly held that it is not a business income but it is an "income from the house rental". The contention that even if it is not a business income, it has to be treated as "income from other sources" is without any substance because, the facts of this case, recitals of the lease Deed, the schedule to the Lease Deed and the property which is leased makes it very clear that the income derived from them by way of rental income cannot be construed as "income from other sources", but as the "income from house property" only. As rightly pointed by the Tribunal, the assessee is entitled to the benefit of certain deductions in respect of rental income from house property that has not been extended by the assessing authority. Therefore, the Tribunal was justified in remanding the matter to the assessing authority to give the benefit of said deductions after treating the income as "income from house property". The law on the point is well settled and therefore, no substantial question of law did arise for consideration in this appeal. No merit. Dismissed.