

### ***CBDT clarifies that income from letting out buildings/ developed space along with other amenities in an Industrial Park/ SEZ is taxable as business income***

#### **Background**

Traditionally, the characterisation of income from letting out of premises/ developed space along with other amenities under the head “income from house property” or “profits and gains of business or profession” has been a subject matter of litigation.

The recent trend of judicial precedents on the characterisation of income earned from operating and maintaining SEZ/ Industrial Park does suggest the acceptance by the appellate authorities that the income earned from such activity is business income. The appellate authorities have held that income is earned from such activity not merely in the capacity of ownership of immovable property, but by virtue of rendering complex services associated with letting out of property. However, practically, tax authorities are still challenging this position (i.e., characterisation as business income or income from house property), resulting in unwarranted tax litigations.

To put an end to these litigations, the Central Board of Direct Taxes (CBDT) has issued a circular<sup>1</sup> on the characterisation of such income for income tax purposes.

#### **CBDT circular**

CBDT has taken note of below judicial precedents rendered in the context of income earned from development, operation and maintenance of Industrial Parks.

1. Velankani Information Systems Private Limited<sup>2</sup> – The Karnataka High Court (HC) had observed that the object of section 80-IA of the Income-tax Act, 1961 and the government schemes for development of Industrial Parks in the country would be defeated if income is treated as income from house property. The Supreme Court (SC) has dismissed the special leave petition filed by the Revenue.
2. Information Technology Park Limited<sup>3</sup> – In this decision, the Karnataka HC has reaffirmed its earlier views. It has held that since the assessee company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out of buildings along with other amenities would be chargeable to tax under the head “profits and gains of business or profession.” The said decision has been accepted by the CBDT.

In view of the above principles, the CBDT has instructed that

- In case of an undertaking that develops, develops and operates or maintains and operates an Industrial Park/ SEZ notified in accordance with the scheme framed and notified by the government, the income from letting out of premises/ developed space along with other facilities in the Industrial Park/ SEZ would be charged to tax under the head “profits and gains of business or profession.”
- On the said issue, henceforth, no appeals would be filed by the Revenue Authorities. Further, in case any appeal is already filed, the same may be withdrawn or not pressed upon.

#### **PwC comments**

The CBDT circular clearly lays down the position for characterisation of income, and therefore, all existing litigation should be resolved. Further, future potential tax litigations should reduce as well. The circular would cover the developers engaged in developing SEZ/ Industrial Parks in accordance with the scheme framed by the government and earning income from letting out the premises/ developed space along with amenities.

For other commercial assets [e.g., retail malls, commercial assets (not satisfying the conditions of the Industrial Park scheme) etc.], one would, subject to facts of each case, have to rely on the judicial precedents, including the SC's decision in the case of Chennai Properties and Investments Limited<sup>4</sup> and Rayala Corporation Private Limited<sup>5</sup>, wherein the SC has held that rental income should be taxed as business income.

<sup>1</sup> Circular no. 16 dated 25 April 2017

<sup>2</sup> CIT v. Velankani Information Systems (P) Limited [2013] 265 CTR 250 (Karnataka)

<sup>3</sup> CIT v. Information Technology Park Limited [2014] 46 taxmann.com 239 (Karnataka)

<sup>4</sup> Chennai Properties and Investments Limited v. CIT [2015] 373 ITR 673 (SC)

<sup>5</sup> Rayala Corporation Private Limited v. ACIT [2016] 386 ITR 500 (SC)

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