Maintenance charges received in relation to the property should be regarded as "rent" for computing income taxable under the head "income from house property"

October 6, 2016

In brief

The Punjab & Haryana High Court (HC) in the case of the appellant[2], has held that maintenance charges received in relation to the property should have been included within the ambit of "rent" and be taxed under the head "income from house property."

In detail

Facts

- The appellant[1] had taken on sub-licence, an apartment in a commercial building (Property) from a Builder.
- The appellant[2] entered into a sub-sub-licence agreement for sub-leasing of the Property.
- As per the agreement, sub-sub-licensee was liable to pay the following sums in relation to the property:
  - agreed monthly rent to the appellant; and
  - monthly maintenance charges as would be payable directly to the builder.
- Pursuant to an understanding between the appellant and the sub-sub-licensee, the maintenance charges were paid by the sub-sub-licensee directly to the builder.
- The maintenance charges were regarded as rent of the property and was taxed in the hands of the appellant under the head "income from house property."

Issue before the High Court

Would maintenance charges received in connection with the property be regarded as "rent" and be taxed under the head "income from house property".

High Court's decision

- The HC observed the following while deciding that the maintenance charges should have been regarded as "rent" and be taxed under the head "income from house property."
  - for the purpose of sections 22 and 23 of the Income –tax Act, 1961 (Act), the ambit of the term "rent" is very wide. It includes any amount that was paid in consideration of the property being let.
  - where the legislature intended to provide deduction for any amount, it has specifically provided for the deduction e.g. proviso to section 23(1) of the Act provides for deduction for property

[1] PwC Note – It is presumed that the appellant is a "deemed owner" as per section 27 of the Act.

[2] ITA No. 369 of 2015

tax. The proviso does not provide for deduction of maintenance charges.

- the rent of a property was dependent on the facilities of the building. The better the facilities, qualitatively and/ or quantitatively, the higher the rent.
- where the agreements provide that the owner shall pay the amounts for common facilities, maintenance charges, etc., it was presumed that the same had been factored in the rent. In such event, the same could not be added to the rent agreed to be paid. However, if the maintenance charges were payable separately, then it must form a part of the rent for the purpose of computing the annual value of the property.
- if maintenance charges were not included in the rent, then it would enable a taxpayer to avoid paying tax on the true annual value of the property as the annual value would be lower.

The takeaways

One of the key requirements for taxing income under the head "income from house property" is that the income should be earned by the taxpayer in its capacity as being the "owner" or "deemed owner" of the property. In case the taxpayer is not the "owner" or "deemed owner" of the property, then the charging section of the head "income from house property" should not apply. In the present case, we presume that the appellant qualified as "deemed owner" of the property as per section 27 of the Act. Hence, the HC has not analysed the taxability of the income under the head "income from other sources".

Further, the HC has interpreted that the maintenance receipts are to be regarded as "rent" and should be taxed under the head "income from house property." One would have to examine whether the said principle can be extended to property owners earning rental income and maintenance charges, wherein the rental income in certain circumstances should be taxed as business income, taking into account the decision of the Supreme Court in the case of Chennai Properties and Investments Limited[3] (Please refer to our news alert dated 6 May, 2015). The principles laid down by the Punjab & Haryana High Court may not be applicable to all the situations where maintenance is payable separately by the tenant. The applicability of the said principles would need to be examined based on the facts and circumstances of each case.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

[3] Chennai Properties and Investments Limited *v.* CIT [2015] 373 ITR 673 (SC)

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greams Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata - 700 091
West Bengal
+91-033 2357 9101/
4400 1111

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road(Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

For more information

Contact us at
pwctrs.knowledgemanagement@in.pwc.com

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR (Gurgaon), Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit www.pwc.com/in

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see www.pwc.com/structure for further details.

Follow us on: