

Rental income from sub-lease shall be considered as Business Income since same was business of assessee

In *Shri Shanthilal Movji Bhai Thakker v. The Income Tax Officer [ITA No. 2267-2270/Chny/2019 decided on November 3, 2021]* Income Tax Appellate Tribunal, Chennai (“ITAT”) held that rental income from sub-lease shall be considered as business income as the assessee was engaged in business of real estate development and the property in question was sub-leased in furtherance of their business.

Shri Shanthilal Movji Bhai Thakker (“the Appellant”) aggrieved by the order (“Impugned Order”) passed by Assessing Officer (“AO”) treating lease rental income earned by the Appellant as income from House Property as against Business Income offered by the Appellant, has preferred this appeal.

The Hon’ble ITAT observed that the Appellant has acquired the property in question by virtue of lease of 27 years i.e. for a long term basis and is sub-leased to various tenants.

Further observed that, the Appellant and his associated entities were in business of real estate development and the property in question was sub-leased in furtherance of their business i.e., to earn the rental income from the tenants, thus **such income cannot be treated as income from house property.**

ITAT relied upon the judgement passed by the Hon’ble Supreme Court in case of *Raj Dadarkar & Associates v. ACIT [81 Taxmann.com 193]* to hold that in cases where a particular income may appear to fall under more than one head, income has to be either treated as income from the house property or as the business income.

Further held, by applying the ratio of case, *Sultan Bros.(P) Ltd. v. CIT [1964, 51 ITR 353 (SC)]*, held that the type of income depends upon the fact that **whether the sub-letting was done as exploitation of the property by owner or was done by the owner in furtherance of business** and applying the same criteria held that in **present case income received by the Appellant was to be treated as income from the business.**

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