

On noting the prominent object of the Assessee company "to purchase develop, take in exchange or on lease or otherwise acquire lands, houses, farm house, buildings, sheds industrial or otherwise and other fixtures on land and buildings and to let them out on lease, rent, contract or any other agreements as may be deemed fit to or but, construct improve, sell ,exchange mortgage lands, houses, flats, sheds, factories sheds and buildings apartments to any person on terms and conditions as may be deemed fit or to hold, maintain sell, allot, houses apartments, sheds or buildings thereof to the shareholders or to any other person", DHC answered the question " Whether ITAT was correct in law in treating the amount of Rs.15,07,644/- received by the assessee from J&K Bank Ltd. as "Business Income" and not "Income from Other Sources "?" in favor of assessee.

Further, in light of ITAT reasoning that "The Tribunal had also made an in-depth study of the agreements as also the user to which the entire building in South Extension had been put. It noted that the business of the Assessee, apart from dealing in properties, was also the running of restaurants; that the assessee's purpose was to commercially exploit the business asset, that is, building in South Extension in respect of which it had invested a sum of approximately Rupees 1.3 crores for renovations; that the premises have been earlier utilized to run a store selling garments under the trade name Golden Arch. The thinking of the Tribunal was largely influenced by the manner in which the entire building had been utilised." DHC has answered the question " Whether ITAT was correct in law in treating the amount of Rs.52,80,000/- received by the assessee from Total Care(India) Pvt. Ltd. (under franchisee arrangement) as "Business Income" and not "Income From Other Sources "?" in favor of assessee.

Further one may usefully refer to:

- a) *Guj HC in Neha Builders 296 ITR 661 (HOLDING RENTAL INCOME FROM PROPERTY HELD AS STOCK IN TRADE IS BUSINESS INCOME)*
- b) *Delhi High Court in Ocean Structures 214 CTR 338 (against the assessee – held that income from business franchisee agreements is taxable under the head house property)*
- c) *CBDT Circular No 736: (matching with instant Delhi High Court ruling)*

### **"1159. Clarification regarding applicability of provisions of section 194-I to film distributors and exhibitors**

Representations have been received from the various quarters regarding applicability of the provisions of section 194-I of the Income-tax Act to the

sharing of the proceedings of film between film distributor and a film exhibitor owning a cinema theatre. The matter has been examined by the Board and the Board is of the view that the *provisions of section 194-I are not attracted to such payment because:*

- (i) The exhibitor does not let out the cinema hall to the distributor;*
- (ii) Generally, the share of the exhibitor is on account of composite services; and*
- (iii) The distributor does not take cinema building on lease or sub-lease or tenancy or under any agreement of similar nature.*

You are requested to bring these instructions to the notice of the Assessing Officer under your charge.

**Circular : No. 736, dated 13-2-1996"**