**Income from business of letting of property taxable as Business Income**

**Case Law Citation: – Shyam Burlap Company Ltd Vs CIT (High Court Kolkata), I.T.A No 163 of 2005, Date of decision:04-09-2015.**

**Brief of the case:**

Kolkata High court held Shyam Burlap Company Ltd Vs CIT that as the assessee’s main business is purchasing, developing and letting out of property. The same was mentioned in the object clause of memorandum of the company. It not to be considered that the in the previous years the assessee used to file its ROI under head income from House Property. The assessee had paid compensation to the tenants for releasing that property so that it can earn higher rent.

So that expenditure should be treated as business expenditure.

Moreover even if the assessee used to consistently file its ROI under head income from House property of previous years then also if any expense incurred related with its main business objective as mentioned in the company’s memorandum then the same would be considered under head Business Income.

**Facts of the case:**

Assessee was in the business of acquiring and developing properties and to deal with the same by way of sale, lease, letting out, etc. The same was given on rent by the assessee to tenants who were giving less rent to the assessee so assessee decided to give them compensation so that it could earn higher rent So assessee paid Rs 53,50,000/- as compensatory amount to the tenants and treated that amount to be business expenditure. But the AO disallowed the same and treated the rental income under head income from property and disallowed the expenditure because under head income from property only deduction u/s 24 was allowed . No other expense was allowed.

**Contention of the assessee:**

Assessee was of the view that as its core business objective was to acquire and develop properties and to deal with the same by way of sale, lease, letting out, etc so the expense incurred should be treated under head business income. Just because it was showing income under head income from house property in the earlier years was not a justifiable reason to disallow the expense. It had paid compensation just to earn higher rent which was wholly and exclusively for the purposes of the appellant’s business on grounds of commercial expediency and was revenue in nature.

**Contention of the revenue:**

Revenue was of the view that due to consistency which was followed by the assessee in the earlier years to treat the rental income under head income from House Property, this expense should be treated as per law of head ‘Income from House Property” under which no expense was allowed except deduction of sec 24. So the above expense claimed by the assessee should be disallowed.

**Held by High Court:**

High Court held that after reading the object clause of memorandum of the company the compensation paid by the assessee was in tune with the memorandum of the company which AO and tribunal failed to consider. The fact that the assessee itself used to file its ROI of earlier years was of no relevance because in the earlier years there was no occasion for adjudication or decision on the said issue.

**So appeal of the assessee was allowed.**

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