

## **Is Rent Not Taken Tax Deductible?** THE FINANCIAL WORLD

**Chandigarh, Wednesday, February 5, 2003**

*Query:* My father had let out his house in Delhi to Mr. Mishra for a rent of Rs 15000 per month. Last year when my father wanted to dispose of the property, Mr. Mishra agreed to buy for a consideration of Rs 30 lakh. The agreement of sale was executed in June, 2001, and the sale was effected in October 2001. My father allowed Mr. Mishra to remain in the property without payment of rent from June to October, 2001.

For the year ended 31-3-2002, my father offered property income only for two months, i.e. for April and May, 2001.

The Assessing Officer wants to tax property income up to October 2001 (i.e. for 7 months).

Is it correct?

*Opinion:* Your father (owner of the property) has allowed the tenant cum-agreement holder to remain and enjoy the property without payment of rent.

The tenant has enjoyed the property till October only as a tenant and not as landlord or as an agreement holder and the enjoyment has no connection to the agreement made between the parties. Your father has allowed possession of the property without receiving any rent voluntarily.

He has foregone the right to collect rent, such foregoing of right to collect rent cannot be taken as income not arising or accruing at all to the assessee (your father) during the previous year. In view of above the agreement, the holder (Mr. Mishra) stays in the property only as a tenant and not by virtue of the agreement, the annual value of the property up to the date of sale is chargeable to tax in the assessment of the property owner (your father). Hence the Assessing Officer's action is in accordance with law.

### **Debit Balance in the Name of Director**

*Query:* I am a director of a limited company, with a salary of Rs 28,000 per month. For the year ended 31-3-2002, in addition to salary withdrawals, I had withdrawn some amounts which were standing on the debit side of the balance sheet of the company as at the yearend. The Assessing Officer is treating the debit of Rs 38,000 as perquisite though the withdrawals were not contractual payments.

Please advise whether the said debit balance can be charged to tax?

*Opinion:* Section 2(24) clause (iv) says that the value of any benefit or perquisite whether convertible into money or not obtained from a company either by the director or by a person having substantial interest in the company is chargeable to tax as income of the assessee.

Also any sum paid by the company in respect of any obligation which but for such payment would have been payable by the director or the aforesaid person is also chargeable under section 2(24)(iv).

In your question, it is not clear whether you withdrew the sums from the company as loan or the amounts were given gratuitously by the company to you.

Even if the benefit has been conferred on you (director) unilaterally by the company without any agreement, the benefit could be taxed as a perquisite, as held in CIT v. Tara Singh (1998) 233 ITR 669 (Del)

However, if the amounts debited in your (director's) name represent a loan then the question of taxing the loan as income will not arise.

Therefore, if the amount standing against your name in the company is not categorized as loan then such sum is chargeable to tax under section 2(24) (iv).

### **Waiver of Interest Due from Sister Concern**

*Query:* A limited company passed a resolution on 1-10-2001 whereby amounts advanced to 100% subsidiary at Company Ltd of Rs 93 lakh be not C charged interest from 1-10-2001. The Assessing Officer computed the interest payable based on the past practice A of the concerns and added Rs 9.30 lakh th to A Ltd's income for the year ended In 31-3-2002. Is the action of the Assessing Officer correct?

*Opinion:* In the absence of the agreement to charge the parties an inference cannot be drawn of the interest accruing to the lender. Interest on the loans advanced is a matter of contract between the two to parties and the criteria of commercial expediency is not relevant.

Income could have been earned but not earned cannot be made taxable In Jawala Prasad Radhakrishna v. CIT (1992) 198 ITR 415 (All) it was held hat there was no material on record to In show that an agreement for payment of interest existed between the lender and the borrower to charge the accrued Su interest to tax.

When an income neither legally nor actually accrued in favour of the in assessee there cannot be any liability to tax such income unless the in Department could establish the same. Taking the above decision it can be concluded safely that the action of the Assessing Officer is not justified.