



Income accrues or arises only when a right to receive the amount is vested in the taxpayer - Supreme Court

Background

Recently, the Supreme Court in the case of P.G. & W. Sawoo Pvt. Ltd & Anr¹ (the taxpayer) held that income can accrue or arise only when a right to receive the amount is vested in the taxpayer. In the present case, the right to receive the rent has not accrued to the taxpayer at any point of time during the Assessment Year (AY) 1989-1990, as enhancement of rent though with retrospective effect, was made only in the year 1994.

Facts of the case

- The premises belonging to the taxpayer was let out on rent to the Government of India. The rent was enhanced with retrospective effect from 1 September 1987 vide a letter dated 29 March 1994 of the Estate Manager of the Government of India.
- The said letter provides that the enhancement was subject to conditions including execution of a fresh lease agreement and communication of acceptance of the conditions incorporated therein. Such acceptance was communicated by the taxpayer by letter dated 30 March 1994.

- The taxpayer relying on the decision of the Supreme Court in the case of E.D. Sassoon & Company Ltd² contended that no income accrued or arose and no annual value which is taxable under Sections 22 and 23 of the Income-tax Act, 1961 (the Act) was received or receivable during the Assessment Year (AY) 1989-1990.
- The tax department contended that the enhancement of rent is with retrospective effect from 1 September 1987 and, therefore, the income must have to be understood to have been received in the said AY i.e. 1989-1990. Accordingly, the tax department issued a notice under Section 148 of the Act seeking to reopen the concluded assessment.

Supreme Court ruling

- The Supreme Court in the case of E.D. Sassoon & Company Ltd. has held that income can be said to have accrued or arisen only when a right to receive the amount in question is vested in the taxpayer. In the present case, no such right to receive the rent has accrued to the taxpayer at any point of time during the AY in question, in as much as such enhancement though with retrospective effect, was made only in the year 1994.

¹ P.G. & W. Sawoo v. ACIT (Civil Appeal No. 4091 of 2016) – itatonline.com

² E.D. Sassoon & Company Ltd. And Others v. CIT [1954] 26 ITR 27 (SC)

- The tax department's contention that the enhancement was with retrospective effect, does not alter the situation as retrospectivity is with regard to the right to receive rent with effect from an anterior date. The right, however, came to be vested only in the year 1994.
- Accordingly, it has been held that the notice seeking to reopen the assessment for the AY 1989-1990 is without jurisdiction and authority of law.

Our comments

The Supreme Court, in the instant case, has dealt with the important principle of accrual of income. The Supreme Court held that the income can be said to have accrued or arisen only when a right to receive the amount in question is vested in the taxpayer. It was observed that the right to receive income came to be vested only in the year in which the rent has been enhanced. Such right cannot be enforced in the past.



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