

No income can be said to have accrued or arisen to assessee until dispute pending before Court is adjudicated: HC

INCOME TAX : If a dispute is pending before Civil Court, no income can be said to have accrued or arise to an assessee pending adjudication of said dispute for purpose of section 5

Section 5, read with section 226(3), of the Income-tax Act, 1961 - Income - Concept of real income (Disputed claim) - Assessment years 1986-87 to 1993-94 - Whether if dispute is pending before Civil Court, no income can be said to have accrued or arise to an assessee pending adjudication of said dispute for purpose of section 5 - Held, yes - Assessee had entered into an sub-lease agreement with IDBI on annual lease rent of Rs.3.42 lakhs - Assessee had received aforesaid rent and offered same being lease rent in its return of income for the assessment year 1981-82 - In previous year 1980-81, dispute arose between assessee and IDBI and, accordingly, assessee terminated sub-lease agreement and refused to accept rent from IDBI post-termination - In year 1981, IDBI filed a Declaratory Suit in Small Cause Court and obtained injunction against assessee from terminating sub-lease agreement - Thereafter, Assessing Officer issued a garnishee notice to IDBI under section 226(3) to which IDBI deposited amount as per sub-lease agreement with Income Tax Department in spite of assessee terminating agreement - In year 1984, assessee had filed a suit for eviction against IDBI and claimed various reliefs, including compensation for wrongful use and occupation of flats wherein Small Causes Court on an application made by IDBI allowed IDBI to deposit lease rent in Court -However, assessee had not withdrawn any amount - Whether merely because a party to a civil dispute to protect its rights makes a payment to Income Tax Department pursuant to garnishee proceedings, it would not amount to subsistence or existence of sub-lease agreement between assessee and IDBI for bringing to tax Rs.3.42 lakhs per annum as income for assessment year under considerations - Held, yes - Whether cross-suits filed by assessee and IDBI against each other were still pending before the Small Causes Court, Tribunal was not justified in bringing to tax sum of Rs.3.42 lakhs as accrued income- Held, yes [Para 35] [In favour of assessee]

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