

**(2005) 02 AHC CK 0115**

**Allahabad High Court**

**Case No:** Income Tax R. No. 210 of 1988

The Commissioner of Income  
Tax

APPELLANT

Vs

Shri Mustafa Khan

RESPONDENT

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**Date of Decision:** Feb. 2, 2005

**Acts Referred:**

- Income Tax Act, 1961 - Section 22, 256(1)
- Partnership Act, 1932 - Section 4

**Citation:** (2005) 196 CTR 411 : (2005) 276 ITR 601

**Hon'ble Judges:** R.K. Agarwal, J; Prakash Krishna, J

**Bench:** Division Bench

**Advocate:** Shambhu Chopre and S.C, for the Appellant; Suyesh Agrawal, for the Respondent

**Final Decision:** Disposed Of

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**Judgement**

Prakash Krishna, J.

The Income Tax Appellate Tribunal, Allahabad has referred the following questions at the instance of the Commissioner u/s 256(1) of the Income Tax Act, 1961 (here in after referred to as the Act) for opinion to this Court:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was Justified in holding that the annual letting value of the godown owned by the assessee and used for the business carried on by him in partnership was not liable to be included in his total income u/s 22 of the Income Tax Act, 1961?"

2. The reference relates to the assessment year 1981- 82.

3. Briefly stated the facts giving rise to the present reference are as under:-

The assessee-respondent is owner of a house property bearing municipal No. 174/2 situate on plot Nos. 824/2, 823/1 and 825. The assessee is also a partner in a Firm

known as M/s. Sikandar Shahi Zarda Factory. A major portion of the aforesaid house property has been in occupation of M/s. Sikandar Shahi Zarda Factory for the business purposes and a small part was let out for residence. The Income Tax Officer found that no income from house property was disclosed by the assessee in his return. He added the notional rental income from the house property No. 174/2 towards the assumed rent paid by M/s. Sikandar Shahi Zarda Factory in which the respondent assessee is a partner. In appeal before the Commissioner of Income Tax (Appeals), it was contended by the assessee respondent that the income from the property in question is exempt at the hands of the assessee as the said property is in occupation of the Firm M/s. Sikandar Shahi Zarda Factory in which the assessee is one of the partners. Reliance was placed on a decision of [Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai](#), and several other decisions of the Tribunal. The Commissioner of Income Tax (Appeals) accepted the aforesaid contention of the assessee and held that the Income Tax Officer was not justified in adding notional rental income from M/s. Sikandar Shahi Zarda Factory at the hands of the assessee. Such income is exempt u/s 22 of the income Tax Act 1961. The Tribunal has confirmed the order of the Commissioner of Income Tax Appeals).

4. Heard Shri Sambhu Chopra, the learned standing counsel for the department and Shri Suyesh Agrawal, brief holder on behalf of the assessee-respondent. The learned standing counsel submitted that at on a plain reading of Section 22 of the Act, it is clear that it is the owner of the house property who becomes liable to be taxed under the head "income from house property" unless the house property is used by him for the purpose of his own business or profession. u/s 22 of the Act it is the only owner of the property who can claim exemption and that owner must be an assessee and the property concerned must be used or occupied for the assessee's (owner) business. Placing strong reliance upon the judgment of Karnatka High Court in the [Commissioner of Income Tax, Karnataka Vs. K.N. Guruswamy](#), it was submitted that the word "occupation of the property" in the context of Section 22, must mean "occupation" as "owner." Further reliance was placed by him on the following two cases:-

1. [Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc.](#),
2. CIT v. Bhoopalam Commercial Complex and Industries Pvt. Ltd. (2003) 252 ITR 517.

5. The learned counsel for the assessee has placed reliance on the following cases in support of his submission that a partner owning house property used by partnership firm for business purposes, in which he is also a partner, such partner is entitled to exemption in respect of the property occupied by the Firm in view of Section 22 of the Act:-

1. [Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai](#),
2. [Commissioner of Income Tax Vs. K.M. Jagannathan](#),

3. [Commissioner of Income Tax Vs. P.M. Thomas,](#)
4. [Commissioner of Income Tax Vs. Syed Anwar Hussain,](#)
5. [Commissioner of Income Tax Vs. Rabindranath Bhol,](#)

6. We have given our careful consideration to the arguments of the respective counsel and find that there is a divergence of opinion amongst the various High Courts on this issue. The leading case, accepting the contention of the assessee is that of Gujrat High Court in the case of [Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai,](#) The Madras, Orissa, Patna, Kerala and Gujrat High Courts are of the view that when a Firm carries on business, it is business carried on by the partners of that Firm. The income from; house property owned by an assessee and used in business carried on by the partnership Firm in which the assessee is a partner would qualify for exemption as provided in Section 22 of the Act. These High Courts have dissented from the view of the Karnatka High Court in the case of [Commissioner of Income Tax, Karnataka Vs. K.N. Guruswamy,](#) on which strong reliance has been placed by the counsel for the Revenue.

7. Section 22 of the Act reads as follows:-

"The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax, shall be chargeable to Income Tax under the head "Income from house property".

8. A plain meaning of Section 22 of the Act undoubtedly supports the contention of the learned standing counsel for the department. The Karnataka High Court in the case of CIT v. K.N. Guruswami (supra) has held that property owned by an assessee and occupied by him for the purpose of his own business or profession, only then such assessee is entitled to exemption u/s 22. The Learned Judges of the Karnataka High. Court have relied upon the decision of the Delhi High Court in the case of [Bhai Sundar Dass and Sons Vs. The Commissioner of Income Tax, New Delhi,](#) as well as the decision of the Calcutta High Court in the case of [Sarvamangala Properties Ltd. Vs. Commissioner of Income Tax,](#) There is further observation in the judgment of the Karnataka High Court that although these two cases are not directly on the point but still these two rulings have been relied upon by it. They have dissented with the view of the Gujrat High Court in the case of [Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai,](#) on the ground that Section 22 which provides for exemption, should be strictly construed. The phrase "the occupation of the property" in the context must mean " occupation as owner" or is "own occupation". This appears to be crux of the judgment of the Karnataka High Court in the aforesaid case.

9. The Gujrat High Court in the case of CIT v. Rasik Lal Bala Bhai (supra) has examined the matter and reached to the conclusion that even where the

partnership business is carried on in the premises of one of the partners, the said partner, as individually would be entitled to the exemption u/s 22 of the Act. For reaching to that conclusion it has examined the judgment of the Supreme Court to the effect that a Firm is not a legal entity though it is an assessable unit under the income Tax Act. A partnership is merely an association of the individuals and Firm name is only a collective name of those individuals who constitute the Firm. The Gujrat High Court has relied upon the following passage from the judgment of the Supreme Court in the case of [Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others,](#)

" "Nevertheless, the general concept of a partnership, firmly established in both systems of law, still is that a firm is not an entity of "person" in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership."

10. Section 4 of the Partnership Act defines a partnership as a relation between the persons who have agreed to share profits of the business carried on by all or any of them, enacted for all. It is further provided therein that the persons who has entered into partnership with others are called individually "partners" and collectively firm and the name under which their business is carried on is called "firm name".

11. It has been held that there is no relationship of master and servant in between a partner who carries on the firm's business and with the firm. A firm is not an employer of partners and similarly partners are not employee of the firm. The partners are the co-owners in the firm's property.

12. Therefore, we are of the opinion that one of the conditions to claim exemption u/s 22 of the Act, that a person must be carrying on his business in the property in question, stands satisfied.

13. The other requirement is that the premises in question in respect of which the exemption is claimed should be in occupation of the assessee. The judicial opinion of Karnataka, High Court in the case of K.N. Guruswami (supra) is based upon the meaning to be assigned to the phrase "the occupation". According to the Karnataka High Court here the "occupation" means occupation as owner or is own occupation. The other High Courts have given a broader meaning to the phrase the "occupation" and have held that the "occupation" will also include the "occupation" by the owner along with the other persons. We respectfully follow the interpretation put by the Gujrat and other High Courts and respectfully dissented with the view taken by the Karnataka High Court on the aforesaid phrase. We prefer to follow the view taken by the majority of the High Courts on interpretation of word "occupation" in Section 22 of the Act. The cases relied upon by the learned standing counsel namely

Commissioner of Income Tax v. Podar Cement Pvt. Ltd. (supra) and Commissioner of Income Tax v. Bhoopalam Commercial Complex and Industries Pvt. Ltd. (supra) have no bearing to the issue involved in the, present case. The ratio of these cases are not material and helpful for the decision of the controversy involved in the present case.

14. The upshot of the above discussion is that the Tribunal did not commit any mistake in granting exemption to the assessee with regard to the property income from the property in occupation of a firm in which the assessee is also one of the partners.

15. In the result we answer the aforesaid question in affirmative i.e. against the department and in favour of the assessee. But no order as to costs.