

## C.J. George Vs Commissioner of Income Tax

**Court:** High Court Of Kerala

**Date of Decision:** June 7, 1973

**Acts Referred:** Income Tax Act, 1961 " Section 22, 23

**Citation:** (1973) 92 ITR 137

**Hon'ble Judges:** P. Govindan Nair, Acting C.J.; George Vadakkal, J

**Bench:** Division Bench

**Advocate:** K. Velayudhan Nair, for the Appellant; P.A. Francis and P.K.R. Menon, for the Respondent

### Judgement

Govindan Nair, Actg. C.J.

1. These references are at the instance of the assessee and the question referred is in these terms:

Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the rent received by the applicant-assessee and

his co-lessee represents the annual letting value of the building?

The years of assessments are 1967-68 and 1968-69 and the appeals relating to these years before the Tribunal were disposed of by a common

order. We dispose of these tax revision cases also by a common judgment.

2. The facts are simple. The assessee let out a building, which he constructed on a land which was taken on lease by him, for an annual rent of Rs.

33,000 to a company, M/s. Arborites Private Ltd., hereinafter referred to as "the company". The land on which the building stood was leased by

the assessee on a rent of Rs. 1,000 for a period of ten years. But there was an agreement entered into by the assessee with the owner of the land

that the building constructed by him on the property which has now been leased to the company will pass to the owner of the land at the end of ten

years without any compensation being paid to the assessee. It was suggested by counsel for the assessee that the owner of the land is interested in

the company. There is no evidence regarding this matter. Before the assessing authority, the contention was raised that the amount payable by the

company to the assessee did not represent "the sum for which the property might reasonably be expected to let from year to year". This contention

was based on Section 23 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Section 23 states that "for the purpose of Section 22,

the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year". And

Section 22 defines "the annual value of property consisting of any building or lands appurtenant thereto . . .". It is admitted that Sections 22 and 23

apply to the case and that only the annual value as denned in Section 23 and determined in accordance with the provisions thereof is liable to be

taxed under the Act. The question, therefore, arose before the Income Tax Officer as to the annual value of the property. He fixed the annual value

at Rs. 33,000, the amount for which the assessee had let out the building to the company. This order was confirmed in appeal and in further appeal

by the Tribunal.

3. The Tribunal referred to the decision of the Supreme Court in Nalnikant Ambalal Mody Vs. Commissioner of Income Tax, Bombay, and said :

We accepted the contention on behalf of the assessee that notional income contemplated by Section 23 of the Act, namely, the sum for which the

property might reasonably be expected to let can be different from the rent actually paid.

This is what the Supreme Court also said in the decision. It is conceivable that the income actually received from the property in an year may

exceed the notional figure. It is not disputed before us that for the purpose of taxation it is the notional figure that must be taken into account and

not the actual amount of rent.

4. Having accepted the contention of the assessee that the actual rent received may not be the notional rent on which the tax should be imposed the

Tribunal considered the question as to whether the actual rent could be the notional rent and came to the conclusion that there was no material

available to accept the contention of the assessee that the notional rent was less than the sum of Rs. 33,000 for which the building had been

actually let. The certificate produced, annexure "D", by the assessee showed that the annual letting value had been fixed by the local authority at

Rs. 18,000. That it was so fixed by the local authority is clear from annexure "D" to the paper book. This material was rejected by the Tribunal on

three grounds: (1) that it was not clear when it was so fixed ; (2) that there was nothing to indicate that the assessing authorities were aware of the

fact that the building in question had been let out for Rs. 33,000 per year ; and (3) that the assessee had not established that he had placed all the

materials before the assessing authorities who made the fixation evidenced by annexure "D".

5. The contention raised on behalf of the assessee by counsel is that the rejection of the evidence supplied by annexure "D" is shutting out relevant

material without valid reasons and that, therefore, the finding entered by the Tribunal is vitiated. He also relied on the decision of the Supreme

Court in SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., and contended that if the relevant

material has been ignored or rejected the finding entered after rejecting such material can be interfered with in Income Tax references before the

High Court. This is so is now well-established, and we do not think that we should deal with this aspect further. So the question is whether relevant

material has been eschewed and that, on unreasonable grounds. The first ground mentioned is not acceptable, because there is inherent evidence in

the certificate itself to show that the contract rent was known to the local authorities and was taken into account in the first instance for fixing the

annual letting value. In the column under the heading "rent that can be obtained for the building", Rs. 33,000 is mentioned. It cannot be an

accidental coincidence that the taxing authorities fixed the annual letting value at the same figure at which the building had been let out. The fact that

the identical figure for which the building had been let out is mentioned in the certificate clearly shows that the factum of letting out the building at

Rs. 33,000 was known to the authorities and was relied on for the purpose of fixing the annual letting value. This is further made absolutely clear

by the fact that under the heading "lessee's name" in the same certificate, the name of the company (Arborites Private Ltd.) is mentioned. We have

no doubt, therefore, that the assessment by the local authority was made after the lease, and after taking into consideration the terms of the lease

agreement between the assessee and the company. This certificate further showed that there was an appeal by the assessee to the panchayat and

that by a resolution dated October 17, 1967, the monthly rent was fixed at Rs. 1,500 for the building. This was the valuation for the purpose of

imposing tax by the local authority. The grounds Nos. 1 and 2 relied on by the Tribunal for rejecting the certificate are therefore unsustainable. We

must also presume that the other relevant factors such as the prevailing rent in the area and what a similar building of the same nature would fetch in

that locality must have been taken into consideration by the local authority before fixing the monthly rent at Rs. 1,500. It is inconceivable that the

authority who has as much interest in imposing as much legitimate tax as possible would have ignored this aspect before fixing the annual letting

value. Whatever it be, in the absence of material to indicate that there were other relevant considerations which were not taken into account, the

certificate and the evidence furnished by it cannot be totally ignored. Prima facie, the certificate affords evidence to sustain the contention of the

assessee that the contract rent is in excess of the reasonable rent that can be expected from the building. This item of evidence should not have

been eschewed in considering the question as to what is the rent that the building can reasonably be expected to fetch. The finding of the Tribunal

is, therefore, vitiated in that it omitted to take into account relevant material. We may in this connection mention that Rule 4 of the Kerala

Panchayats (Building Tax) Rules, 1963, contains words very similar to those in Section 23 of the Act. This rule provides for the determination of

annual rental value and states :

The net annual rental value of buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from

month to month or from year to year. ....

In the light of the above, the finding entered by the Tribunal cannot be sustained. We, accordingly, answer the question referred to us in the

negative that is in favour of the assessee and against the department. The assessee will have his costs in these Income Tax referred cases including

advocate's fee in each case which we fix at Rs. 250.

6. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by

Sub-section (1) of Section 260 of the Income Tax Act, 1961.