CHITPORE GOLABARI CO. P. LTD. Vs COMMISSIONER OF Income Tax WEST BENGAL.

Court: Calcutta High Court

Date of Decision: May 20, 1970

Acts Referred: Income Tax Act, 1922 â€" Section 12, 12(4), 66(1)

Citation: (1972) 1 ILR (Cal) 600 : (1971) 82 ITR 753

Hon'ble Judges: P. B. Mukharji, Acting C.J.; T. K. Basu, J

Bench: Full Bench

Judgement

income tax Reference No. 102 of 1967.

P. B. MUKHARJI, ACTG. C.J. - These are three Income Tax references which at counsels request we have heard one after the other because

they arise between the same parties and because there are certain connected questions of fact and law, and because they arise out of the some

order of the tribunal although three different references have been made.

We shall take up first Income Tax Reference No. 102 of 1967, in the matter of Commissioner of Income Tax v. Chitpore Golabari Co. Private

Ltd. The question set for an answer by this court in this reference is as follows :

Whether, on the facts and in the circumstances of the case, on a proper construction of the indenture of lease dated 28th October, 1957, the

Tribunal was right in holding that the entire rental income from premises No. 8, Clive Row, Calcutta, should be assessed u/s 12 of the Income Tax

Act, 1922 ?

The facts of the case giving rise to this question are as follows :

The assessment years is 1961-62 for which the corresponding accounting year in this case is the calendar year 1960. The assessee is an

investment and property holding company managed by Andrew Yule & Co. Ltd. During the accounting year the company owned, inter alia, three

properties, namely, No. 8, Clive Row, 243, Upper Chitpore Road, and No. 62, Hazra Road, all in the town of Calcutta. By an indenture of lease

dated the 28th October, 1957, the assessee-company leased premises No. 8, Clive Row, to a number of companies managed by Andrew Yule &

Co. Ltd. The deed records that in consideration of the rent reserved and other covenants and conditions, the landlord demised unto the tenants, 8,

Clive Row, together with the compound, garage, outhouses belonging or appurtenant thereto excluding the fixtures and fittings therein at a monthly

rent of Rs. 8,612. It was further provided in the said deed that the landlord would let out on hire and the tenants would take on hire the fixtures,

fittings and the air-conditioning plants in the said premises whether affixed or not and specified in the third schedule thereto at a rent of Rs. 5,082

per month for the hire of the said fixtures and fittings and the air-conditioning plants. The lease is a part of the record of the case.

In its return the assessee showed the rent reserved for the building u/s 9 and the rent reserved for fixtures, buildings and air-conditioning plant u/s

12. The assessment was made accordingly. Before the Appellate Assistant Commissioner on appeal from the order of assessment, the assessee

raised no objection to the method of assessment of the income from 8, Clive Row property. On this point the Appellate Assistant Commissioner

confirmed the order of the Income Tax Officer.

The assessee appealed before the Tribunal. It was claimed on behalf of the assessee that the entire rental income from 8, Clive Row, should have

been assessed u/s 12 and the letting value of the fixtures, fittings, air-conditioning plant, etc., was inseparabel from the letting of the buildings.

Reliance was placed on the Supreme Court decision in Sultan Brothers v. Commissioner of Income Tax. The Tribunal, on a consideration of the

terms of the indenture of lease dated the 28th October, 1957, and in view of the fact that the building was situated in the principal commercial

centre of Calcutta and was let out to the companies managed by Andrew Yule & Co. Ltd., to be used as their Calcutta offices, held that the lessee

would not have accepted the lease of the premises without hire of the fixtures and fittings, such as the lifts, electrical fittings, air-conditioners, etc.

The Tribunal applied the test laid down by the Supreme Court in the above-mentioned case and held that it was the intention of the parties to the

deed of lease that the letting would be inseparable. Therefore, the Tribunal directed that the entire rental income from premises No. 8, Clive Row,

should be assessed u/s 12 after allowing all the deductions available under that section. On these facts, the Tribunal stated the case and raised the

above question in this reference u/s 66(1) of the Indian Income Tax Act, 1922.

Section 12(4) of the Income Tax Act, 1922, reads as follows :

Where an assesses let on the hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable

from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi)

and (vii) of sub-section (2) of section 10 per respect of such buildings.

The word ""inseparable"" is used in the above section. The Tribunal has found on the facts of this case and on the reading of the lease that in the

instant reference the letting of the fixtures, plant and machinery in this case was inseparable from the letting of the building within the meaning of this

statuary provision.

Section 12(4) of the Income Tax Act, 1922, was introduced by the Indian Income Tax (Amendment) Act, 1941 (23 of 1941). Prior to that

section 12(3) of the Income Tax Act, 1922, was introduced by the Indian Income Tax (Amendment) Act, 1939 (7 of 1939), and which reads as

follows :

Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions

of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10.

The reason for setting out both sub-section (3) and (4) of section 12 is to show the sequence and the juxtaposition which will have a bearing on the

interpretation.

Two obvious and major questions arise in this reference. The first is about the inseparability and the meaning to be given to the word ""inseparable

in section 12(4) of the Indian Income Tax Act, 1922. The other is : What is the meaning and connotation of the expression ""machinery, plant or

furniture"" appearing in section 12(4) of the Act.

On a consideration of the facts and circumstances of the case, we are satisfied that in the instant reference the letting of the building is inseparable

from the letting of the machinery, plant or furniture. The Tribunal has given certain reasons. We shall add our own to them to show why we

consider that the letting of the building and the letting of the machinery, plant or furniture are inseparable in this case.

An analysis of the lease clearly shows certain dominant features. In the first place, clause 1 of the lease deals with the lease as a whole and divides

it into sub-clauses (a) and (b), sub-clause (a) relating to the building and its rent, and sub-clause (b) relating to what is described as ""the fixtures,

fittings and air-conditioning plants"". The idea is to treat them both as coming under clause 1 although separate rents are allocated for building and

for fixtures, etc. Secondly, sub-clause (c) of clause 1 of the lease expressly describes the houses and the fixtures, fittings and air-conditioning plants

collectively as ""the demised premises"". From this, it follows that the letting of the building and the fixtures or fittings or plants are regarded as one,

indivisible and inseparable. Thirdly, the term of the lease is for 16 years from the 1st day of April, 1956, for both the lettings and the fixtures, etc.

This also shows that the two lettings of the buildings and the fixtures, etc., are regarded as indivisible and inseparable, so that one can terminate and

the other can continue. Fourthly, the rent for either, viz., for (1) the building, and (2) fixtures, fittings and the air-conditioning plants, are payable at

the same time with no difference. That fact also indicates that these two lettings are treated as one and inseparable. Lastly, there are no separate

leases for these two lettings but one lease for each of the 39 tenants who are held jointly and severally liable by clause 2 of the lease indicating that

it is one and inseparable letting. We have, therefore, no hesitation in holding that, in the facts and circumstances of this reference and on the express

terms and conditions of the lease, the letting of the building and the letting of the fixtures, fittings and air-conditioning plants are ""inseparable"" within

the meaning of that word used in section 12(4) of the Indian Income Tax Act, 1922.

Dr. Pal for the assessee then drew a distinction between the expression ""machinery, plant or furniture"" used in section 12(4) of the Indian Income

Tax Act, 1922, and the expression ""fixtures, fittings and air-conditioning plants"" used in the lease. The point of his submission was that these two

expressions did not mean the same thing. In support of this argument, he drew our attention to the 3rd schedule of the lease which describes the

property list under the following broad classifications :

1. Air-conditioners : portables.

2. Air-conditioners : fixed plants.

3. Tubewells, pumps, motors and tanks.

4. Lift.

5. Lights and fans.

6. Refrigerators and kitchen equipment including frigidaires, coolers and cookers.

Both Dr. Pal for the assessee and Mr. Sen for the revenue contended that they were not the same as the expression ""machinery, plant or furniture"",

although, naturally, for different reasons. The reason of Mr. Sen for the revenue was to take it out from section 12 altogether and place it u/s 9 in

seeking to make this difference and suggesting that these kinds of plants are really a part of the building itself to be taken along with bricks and

mortars. The reason for Dr. Pal making the distinction was to suggest that it was a distinction without a difference, for his main contention was that

the expression : ""machinery, plant or furniture"" u/s 12(4) of the Act meant, for all practical purposes, the same thing as ""the fixtures, fittings and air-

conditioning plants"" used in the context of the lease in this reference.

Be that as it may, the conclusion is irresistible. Having regard to the definitions and decisions on this branch we find it difficult to hold that the air-

conditioning plant is not a plant or machinery or that the tube-wells, pumps, motors and tanks are not machinery in this case or that frigidaires are

not machinery. Reference may be made to the Supreme Court decision in Commissioner of Income Tax v. Mir Mohammad Ali. At pages 171 and

172 of the report, Sikri J., delivering the judgment of the Supreme Court, points out ""the definition of the word plant in section 10(5) of the Indian

Income Tax Act, 1922, does not throw any light on the meaning of the word machinery and that the word plant is of wide import."" The Supreme

Court then proceeds to notice the Privy Council decision in Corporation of Calcutta v. Chairman of Cossipore & Chitpur Municipality, where the

Privy Council said :

The word, machinery when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination

with one or more other mechanical contrivances, by the combines movement and inter-dependent operation of their respective parts generate

power, or evoke, modify, apple or direct natural forces with the object in each case of effecting so definite and specific a result.

The Supreme Court, after noticing this definition, observed :

The Privy Council case was not a tax case but, prima facie, the ordinary meaning of the word machinery - and the word machinery is an ordinary

and not a technical word - must, unless there is something in the context, prevail in the Indian Income Tax Act also.

We, therefore, both on the facts and on the authority as discussed above, hold that although the lease uses the expression ""fixtures, fittings and air-

conditioning plants"" they include items which are obviously plant and machinery within the meaning of section 12(4) of the Indian Income Tax Act,

1922.

The controversy then began about the applicability of section 9 or section 12 of the Income Tax Act on this point. The revenue contends that this is

an income from property and should come u/s 9 of the Indian Income Tax Act. The assessee contends that it should come u/s 12 of the Indian

Income Tax Act relating to ""other sources"". This competition between section 9 and section 12 is quite a complex problem in this branch of the

law. The simple argument for the revenue is that this property is 8, Clive Row, and the income is an income of rent from this property. Therefore,

section 9 of the Indian Income Tax Act dealing with ""property"" is the most appropriate section under which this matter should be decided. The

assessee, on the other hand, contends that the appropriate section is section 12 which deals with ""other sources"".

Section 6 of the Indian Income Tax Act, 1922, gives the different heads of income chargeable to Income Tax as, (1) salaries, (2) interest on

securities, (3) income from property, (4) profits and gains of business, profession or vocation, (5) income from other sources and (6) capital gains.

The first question that arises in this connection is whether property u/s 6(iii) of the Indian Income Tax Act, 1922, read with section 9

Thereof means property of any kind including not only lands and buildings but also plant, machinery or furniture. If that were so, there would be

good deal of force in the contention for the revenue in this case. But we have come to the conclusion that the contention of the revenue is not sound

on this point. A scrutiny of section 9 of the Indian Income Tax Act, 1922, shows that, although its marginal headnote is ""property"", it speaks only

of lands and buildings and nothing else. The whole scheme of section 9 relates to lands and buildings. They do not use words like ""machinery, plant

or furniture"" or any similar or quasi-similar expression to be included in property under section, section 10 of the Indian Income Tax Act, 1922.

Proceeding to the next section, section 10 of the Indian Income Tax Act, 1922, one finds that it deals with business and there it not only speaks of

lands and buildings but also of machinery and plant. So, machinery and plant could be a consideration u/s 10 of the Indian Income Tax Act when

the profits and gains of business, profession or vocation are concerned. But we are not concerned with section 10 and there is no computation u/s

10 in the instant reference. That has been nobodys case, either by the revenue or the assessee, on this point. This fact should be borne in mind in

the instant reference in order to distinguish it from a possible confusion. Then when one comes to section 12 of the Indian Income Tax Act, 1922,

the significant, relevant and decisive words for interpretation on this point are ""other sources"", ""income, profits and gains of every kind"" and ""if not

included under any of the way in this reference, it follows that section 9 cannot be attracted to the facts of the case because it only speaks of lands

and buildings. Therefore, it follows also that this is an ""income, profits and gains..."" which is ""not included under any of the preceding heads"" within

the meaning of those expressions used in section 12 of the Act. In other words, our conclusion is that rent or hire for letting out or hiring machinery,

plant or furniture can only be put u/s 12 of the Act, on the ground that it is not covered by section 9 so far as this case is concerned which is

confined to only land and buildings. This, in our view, is supported by the express words used in section 12(4) of the Act says that the assessee

will be entitled to allowances ""in accordance with sections 10(2) (iv), (v), (vi) and (vii)"". Therefore, section 12(4) of the Act includes letting on hire

machinery, plant or furniture combined with letting of building and where the two lettings are inseparable. Such an income cannot come u/s 9 of the

Indian Income Tax Act, 1922, but can only come under the residuary clause of section 12 not only impliedly but expressly by the language of the

statute as indicated above. To enforce this conclusion, we shall now emphasize the juxtaposition of sub-section (4) immediately after sub-section

(3) in section 12. Section 12(3), which came earlier, for the first time introduced the consideration of the case where machinery, plant or furniture is

let on hire and provided that the allowance should be ""in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of subsection (2) of

section 10"" which is the familiar ring to be repeated a few years later in the legislative history in sub-section (4). After the introduction of section

12(3) in 1939, it was found that the letting of machinery, plant or furniture did not stand alone but went along with the letting of building and,

therefore, this amendment was introduced in 1944 to provide for the case where there was inseparable letting, combining the letting of machinery,

plant or furniture and the building. In such a case, there is no further scope left to separate again section 9 from section 12 and say that the income

from hire for machinery or the rent for the machinery should be taxed u/s 12 whereas rent from the building should be taxed u/s 9 of the Act. That

would negative the whole concept so inseparable letting of the building and the machinery, plant or furniture for which express provision was made

by section 12(4) of the Indian Income Tax Act, 1922.

Here, it is necessary to notice the Supreme Court decision in Sultan Bros. (Private) Ltd. v. Commissioner of Income Tax, to which reference has

already been made. At page 358, the learned judge, delivering the judgment of the Supreme Court, observed :

Whether a particular letting is business has to be decided in the circumstances of each case. We do not think that the cases cited lay down a test

for deciding when a letting amounts to a business. We think each case has to be looked at from a businessmans point of view to find out whether

the letting was the doing of a business or the exploitation of his property by an owner. We do not further think that a thing can by its very nature be

a commercial asset. A commercial asset is only an asset used in a business and nothing else, and business may be carried on with practically all

things. Therefore, it is not possible to say that a particular activity is business because it is concerned with an asset with which trade is commonly

carried on.

There in that case the question was also involved whether section 10 relating to business had any applicability, and therefore, there was this

discussion whether the letting was a part of the business itself or not and what was being used was a commercial asset from that point of view. No

such question, however, arises in the instant reference before us and there is no argument to suggest that section 10 has at all any application to his

case. As the Supreme Court observes at pages 359-60 of that report that the assessee never carried on any business of a hotel in the premises let

out in that case. Nor was there anything to show in that case that it intended to carry on a hotel business itself in the same building and, therefore,

the income under the lease in the Supreme Court case could not be assessed u/s 10 of the Act as the income of that business. Having disposed of

this argument on section 10 of the Indian Income Tax Act, 1922, the Supreme Court proceeded to the discussion of the next point which is

relevant for the purposes of deciding the instant reference before us. At page 361 of that report, the Supreme Court observed :

The only dispute that then remains is whether the building is to be assessed u/s 9 which of course will have to be on the basis of its annual value or

whether the rent from the building has to be assessed u/s 12 after the allowances mentioned in sub-section (4) have been deducted.

That exactly is the point before us. At page 362, the Supreme Court lays down the following principle :

Under sub-section (4) of section 12 the assessee become entitled among others to an allowance in accordance with section 10(2) (vi) which is on

account of depreciation of the building being the property of the assessee from which it follows that sub-section (4) of section 12 contemplates the

letting of the building by the owner. Sub-section (4) of section 12 must therefore be applicable when machinery, plant or furniture are inseparably

let along with the building by the owner. It sub-section (4) of section 12 is to have any effect-and it is the duty of the court so to construe every

part of a statute that it has effect - it must be held that the income arising from the letting of a building in the circumstances mentioned in it is an

income coming within the residuary head. If a person cannot be assessed u/s 12 in respect of the rent of a building owned by him, sub-section (4)

will become redundant; there will be no case in which the allowances mentioned by it can be granted in computing the actual income from a

building. An interpretation producing such a result is not natural. We must therefore hold that when a building and plant, machinery or furniture are

inseparably let, the Act contemplates the rent from the building as a residuary head of income.

See also the observations of the Supreme Court on this point at page 363 of the report. On the subject of the inseparability mentioned in section

12(4) of the Indian Income Tax Act, 1922, the Supreme Court, at page 363, observed :

It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the parties.

It will therefore be seen from these observations of the Supreme Court that the two essential points relevant for the purposes of deciding the instant

reference before us are : (1) intention is the test of inseparability, and (2) that rent from building let out along with the machinery is a residuary head

of income. Applying the ratio of the Supreme Court decisions we are bound to hold that, in the facts and circumstances of the reference before us,

the entire rental income from premises No. 8, Clive Row, must be assessed u/s 12(4) of that Act.

Mr. Sen, appearing for the revenue, submitted that this decision of the Supreme Court has not really been followed in a subsequent case called

Nalinikant Ambalal Modi v. Commissioner of Income Tax, where he said that the majority judgment did not refer to this decision at all but the

minority judgment did. The majority judgment was delivered by the same learned judge who delivered the judgment in Sultan Brothers case quoted

above. Reading the judgment in Nalinikant Ambalals case we do not think that Mr. Sens submission is correct and we do not find that the

subsequent Supreme Court decision either expressly or impliedly was against the previous Supreme Court decision.

For these reasons, we are of the opinion that the Tribunal was right in holding that the entire rental income from premises No. 8, Clive Row,

Calcutta, should be assessed u/s 12 of the Indian Income Tax Act, 1922, and answer the question in the affirmative and in favour of the assessee.

There will be no order as to costs.

T. K. BASU J. - I agree.

income tax Reference No. 130 of 1967.

P. B. MUKHARJI, Actg. C.J. - The facts of this reference would be found in the judgment just delivered by us in Income Tax Reference No. 102

of 1967. The question raised in this reference is as follows :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the enhanced municipal taxes of Rs. 25,803 for

the earlier years in respect of premises No. 8, Clive Row, Calcutta, demanded by the municipality and debited by the assessee during the relevant

previous year was not deductible in computing the assessees income u/s 9 of the Indian Income Tax Act, 1922, for the assessment year 1961-62

?

In view of our decision in Income Tax Reference No. 102 of 1967, holding that section 12 applies to the facts of this case, no question arises

about the applicability of section 9 of the Income Tax Act. The question asked, therefore, does not arise, in other words, to record a formal

answer to this question would be that we hold that section 12 of the Indian Income Tax Act applied to the facts and circumstances of the case and

not section 9 thereof. We answer the question accordingly.

There will be no order as to costs.

T. K. BASU J. - I agree.

income tax Reference No. 132 of 1967.

P. B. MUKHARJI, ACTG. C.J. - This Reference No. 132 of 1967 is the third in the series of references in two of which, viz., I. T. Ref. No. 102

of 1967 and I. T. Ref. No. 130 of 1967, we have just delivered judgment Again, the parties are the same. This reference u/s 66(1) of the Indian

Income Tax Act, 1922, raises the following two questions :

(1) Whether, on the facts and in the circumstances of the case and having regard to the fact that the Tribunal had held that the income from No. 8,

Clive Row, was to be assessed u/s 12 of the Indian Income Tax Act, 1922, the arrear municipal taxes in respect of that property amounting to Rs.

25,803 were allowable as a deduction under that section ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 32,290 had been rightly

assessed u/s 9 as the rental income from premises No. 62, Hazra Road, even for the period subsequent to the 8th January, 1960 ?

The first question relates to 8, Clive Row, whose facts have already been stated in our judgment in Income Tax Ref. No. 102 of 1967. Dr. Pal

appearing for the assessee did not press this question because the Tribunal did not decide this point. The relevant observation of the Tribunal on

the point is as follows :

.... In view of this conclusion, we must direct that the income from premises No. 8 Clive Row, should be assessed u/s 12, after allowing all the

deductions available under that sub-section.

Therefore, the Tribunal did not decide the point raised in question No. 1 but left it open. We, accordingly, do not answer this question.

Question No. 2 raises certain facts which are special to this reference and relates to premises No. 62, Hazra Road. We think that so far as 62,

Hazra Road, is concerned and having regard to the facts and circumstances relating to this premises and having regard to the decision of the

Division Bench in Income Tax Ref. No. 68 of 1965 in Commissioner of Income Tax v. Ganga Properties Ltd. delivered on 23rd July, 1969 (as yet

unreported) we must answer question No. 2 in the affirmative, in favour of the revenue and against the assessee and hold that the Tribunal was

right in holding that the sum of Rs. 32,290 was rightly assessed u/s 9 of the Indian Income Tax Act, 1922. We need only add that the recitals and

covenants in the relevant deeds of conveyance show that the owner was possessed of the premises at the relevant time when these conveyances

were being executed and thus contradicting the whole foundation of the case on facts raised by the assessee that possession had already been

given in part-performance of the agreement for sale. In that view of the matter, the affirmative answer to question No. 2 is further enforced.

We are, however, not to be understood as determining the point of interpretation of the word ""owner"" appearing in section 9 of the Indian Income

Tax Act, 1922. We are not expressing any opinion whether ""owner"" in that context means an absolute owner or a limited owner or any qualified

owner. In an appropriate case on appropriate fact, this question may have to be determined because the word ""owner"" in the case of property u/s

9 of the Indian Income Tax Act, 1922, may have real property connotations. For instance, a lessor may be the owner of the property for the right

of reversion but at the same time the lessee may be the owner of the right of reversion but at the same time the lessee may be the owner of the

leasehold rights. Similarly, the mortgagor may be the owner of the right of redemption in the property but the mortgage in possession may be

equally the owner of his rights as a mortgagee which are also real property. No doubt, in that event, the annual value of the property would depend

on each case what that property is, viz., in the case of lessor the annual value of his right of reversion. In the unreported Division Bench judgment in

I. T. Ref. No. 68 of 1965 in Commissioner of Income Tax v. Ganga Properties Ltd. or in any other case on this point, there is no discussion about

this aspect of the point involved u/s 9 of the Income Tax Act, 1922. But, a decision on that point must await for proper facts. We do not express

any opinion on that point.

No order as to costs.

T. K. BASU J. - I agree.