(1993) 08 CAL CK 0020

Calcutta High Court

Case No: IT Ref. No. 176 of 1991

COMMISSIONER OF INCOME TAX		APPELLANT
	Vs	
SATYA CO. LTD.		RESPONDENT

Date of Decision: Aug. 2, 1993

Citation: (1997) 140 CTR 569 : (1994) 75 TAXMAN 193 : (1994) 73 TAXMAN 508

Hon'ble Judges: Chowdhury, J; Ajit K. Sengupta, J; Ajit K. Sen Gupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 256(2) of the IT Act, 1961 (the Act) made at the instance of the Revenue the following questions have been referred by the Tribunal for the opinion of this Court :

Asst. yrs. 1982-83 & 1983-84 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the direction of the CIT(A) to adopt the annual value of the house property at 10, Sarat Chatterjee Avenue, Calcutta-29, taking the principal valuation and adding 1/9th of it ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the concrete evidence of tenancy in adjoining flat and relying on the municipal valuation for determination of annual value ?"

Asst. yrs. 1984-85 & 1985-86 :

"3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the direction of the CIT(A) to adopt the annual value of the house property at 10, Sarat Chatterjee Avenue, Calcutta-29, taking the municipal valuation and adding 1/9th of it ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the concrete evidence of tenancy in adjoining flat and relying on the municipal valuation for determination of annual value ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no material to make addition on account of interest to the rental income in respect of the interest-free deposit of Rs. 10,40,000 given by the tenant Vinit Traders & Investment Ltd. to the landlord assessee-company as part consideration for obtaining the tenancy right ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the valuation of fair rental value of the house property made by the AO on the basis of concrete evidence of fair rent in an adjoining house and deposit of Rs. 10,40,000 as interest-free advance with the landlord assessee-company by a new tenant Vinit Traders & Investment Ltd. as part consideration for obtaining the tenancy right ?"

2. The facts as found by the Tribunal are as under :

The assessee is the owner of the house property at No. 10, Sarat Chatterjee Avenue, Calcutta-700029. The flats in the said house were let out to the sons of director of the assessee-company at low rent. The assessee in its return showed the rental income at Rs. 14,140 with reference to the actual rent received from such tenants. The municipal valuation of the said premises was Rs. 21,600. The AO estimated the gross rental income at Rs. 96,000 alleging that in an adjoining building the ground floor flat had been let out at Rs. 1,800 per month. For the asst. yrs. 1984-85 and 1985-86 the AO made addition to such estimated rental of Rs. 96,000 of further sum on account of notional interest on the interest-free deposit of Rs. 10,40,000 received during the relevant period from a sister concern, Vinit Traders & Investment Ltd. to whom a flat had been let out.

On appeal by the assessee, the CIT(A) held that even after the amendment made to the provisions of s. 23(1) of the Act w.e.f. 1st April, 1976 by the Taxation Laws (Amendment) Act, 1975, the rental value of the property for the purposes of assessment should be calculated on the basis of the municipal valuation after adding 1/9th thereto. So far as further addition on account of notional interest for the interest-free deposit for the asst. yrs. 1984-85 and 1985-86 was concerned, the CIT(A) held that there was no scope for making any such further addition since the fair rental of the premises was to be computed with reference to the municipal valuation.

The Department preferred an appeal against the said order of the CIT(A) before the Tribunal which upheld the said order of the CIT(A). The aforesaid questions have been referred to this Court arising out of the said order of the Tribunal.

3. At the hearing before us the contentions urged before the Tribunal have been reiterated.

4. After the amendment of s. 23 w.e.f. 1st April, 1976, the annual value of the property for determining the income from house property is deemed to be the sum for which the property might reasonably be expected to let from year to year or where the property is let and the annual rent received or receivable is in excess of such sum, the amount so received or receivable. The annual value for the purpose of assessment under s. 23(1) is a deemed value as the section itself says For the purpose of s. 22 of the Act, the annual value of any property shall be deemed to be". The annual value for determining the income from house property has to be strictly computed as provided in s. 23(1) since it is a fictional or deemed value.

Prior to the amendment w.e.f. 1st April, 1976 such deemed value was the sum for which the property could reasonably be expected to let from year to year. The fair rent as postulated in s. 23 was similar and/or akin to the provisions of the municipal laws for levy of municipal taxes and that such municipal valuation afforded a proper guide. Such fair rent could not be more than what was the fair rent under the relevant rent control legislations even though the actual rent received was much higher than such fair rent.

The law was amended w.e.f. 1st April, 1976 to provide that where the actual rent was higher, then such actual rent could be taken into consideration.

5. The law on the point is settled by the decisions of this Court where it had taken into consideration all the decisions of the Supreme Court, including the amendments made w.e.f. 1st April, 1976. This Court has consistently taken the view that for the purpose of s. 22 r/w s. 23 of the Act, the Revenue was bound to fix the annual letting value based on the municipal valuation unless the same was lower than the actual rent received in respect of the period falling after 1st April, 1976. In Commissioner of Income Tax Vs. Prabhabati Bansali, this Court held that the annual value under s. 23 of the Act should be estimated on the basis of the municipal valuation.

In Madgul Udyog Vs. Commissioner of Income Tax, this Court held that the valuation under s. 23(1) should be determined by adding 1/9th to the municipal valuation. The relevant extracts from the said decision are set out hereinbelow :

"The views of the Tribunal do not appear to be correct. The amendment Act only seeks to provide that, in case actual rent received by an assessee is higher than the annual value, the actual rent received would itself be considered as the annual value. In the present case, it is an admitted fact that the assessee-firm did not receive any rent. Therefore, there is no higher amount. In other words, we are still concerned with the provisions of s. 23(1)(a) ... Sec. 23(1)(a) which is relevant for our purpose reads as under :

23. Annual value how determined - (1) For the purposes of s. 22, the annual value of any property shall be deemed to be, (a) the sum for which the property might reasonably be expected to be let from year to year."

Sec. 168 of the Calcutta Municipal Act, 1951, which corresponds to s. 23(1)(a) of the IT Act, 1961, reads as under :

168. The amount of consolidated rate, how to be fixed -(1) For the purpose of assessment of the consolidated rate, the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might, at the time of assessment, be reasonably expected to be let from year to year, less in the case of a building, an allowance of 10 per cent. for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent.

It would thus be seen that in all, s. 23(1)(a) of the IT Act is in pari materia with s. 168 of the Calcutta Municipal Act, 1951, as well as s. 154 of the Bombay Municipal Corporation Act, 1988. These matters were duly considered by this Court in Commissioner of Income Tax Vs. Prabhabati Bansali,

The Tribunal was not right in saying that there will be a double deduction for repairs in case the municipal valuation was adopted. The Tribunal failed to appreciate that the rateable value fixed by the municipality has to be increased by 1/9th so as to determine the annual value being the gross annual rent at which the property is reasonably expected to be let from year to year.

The view that the annual value cannot exceed the municipal valuation is supported by the decisions in Commissioner of Income Tax Vs. R. Dalmia, Commissioner of Income Tax Vs. M.R. Alagappan, M.A. Arunachalam and M.A. Murugappan, and C.J. George Vs. Commissioner of Income Tax, .

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Since there is no material difference between s. 168 of the Calcutta Municipal Act and s. 23(1)(a) of the IT Act, there is no reason why the Tribunal should disregard the municipal valuation. In this context, it may be relevant to refer to the decision of the Supreme Court in The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., . There, the Court held that the test in municipal laws relating to annual value is the same, namely, what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is, thus, not free to assess any arbitrary annual value and has to look to and is bound by the theory of standard rent which would be payable for a particular premises under the Rent Control Act in force during the year of assessment."

In CIT vs. Bhaskar Mitter (IT Ref. No. 174 of 1991, dt. 30th July, 1993), a Division Bench of this Court has taken the view that unless the actual rent received in respect of the house property is higher, the Revenue was bound to fix the annual letting value for the purpose of s. 22 r/w s. 23 with reference to the municipal valuation as increased by 1/9th thereof to arrive at the gross annual rent at which the property may reasonably be let from year to year.

In the instant case the actual rent has been ignored since according to the Department it is too low. Accordingly, the actual rent has no relevance in the instant case and the annual value has to be determined with reference to only the fair rent. The Tribunal was in the circumstances justified in directing that the municipal valuation after increasing by 1/9th should be taken as the annual value. The correctness of the municipal valuation was never disputed by the Department. It merely referred to a case of the ground floor of another building for estimating the rental income at Rs. 96,000. It did not find that the alleged rent of the adjoining building was fair rent under the rent control legislation. The municipal valuation of the said other premises was also not found out or considered for making the estimate. Further, and in any event, since the municipal valuation of the premises in question itself is available and such valuation has not been disputed, the same should be adopted as the annual value of the premises after adding 1/9th thereto. In this case the Tribunal has followed the same principles which have been consistently laid down by this Court in fixing the annual value of the house property at 10, Sarat Chatterjee Avenue, Calcutta-700029. In this view of the matter we answer question Nos. 1, 2, 3 and 4 in the affirmative and in favour of the assessee.

6. With regard to question Nos. (5) and (6) which are only for the asst. yrs. 1984-85 and 1985-86 the further issue involved is whether any addition to the annual rental value can be made with reference to any notional interest on the deposit made by the tenant. When the annual value is determined under sub-cl. (a) of sub-s. (1) of s. 23 with reference to the fair rent then to such value no further addition can be made. The fair rent, takes into consideration everything. The notional interest on the deposit is not any actual rent received or receivable. Under sub-cl. (b) of s. 23(1) only the actual rent received or receivable can be taken into consideration and not any notional advantage. The rent is an actual sum of money which is payable by the tenant for use of the premises to the landlord. Any advantage and/or perquisite cannot be treated as rent. Wherever any such perquisite or benefit is sought to be treated as income, specific provisions in that behalf have been made in the Act by including such benefit, etc., in the definition of the income under s. 2(24) of the Act. Specific provisions have also been made under different heads for adding such benefits or perquisites as income while computing income under those heads, e.g., salary, business. The computation of the income under the head House property is on a deemed basis. The tax has to be paid by reason of the ownership of the property. Even if one does not incur any sum on account of repairs, a statutory deduction therefore is allowed and where on repairs expenses are incurred in

excess of such statutory limit, no deduction for such excess is allowed. The deductions for municipal taxes and repairs are not allowed to the extent they are borne by the tenant. However, even such actual reimbursements for municipal taxes, insurance, repairs or maintenance of common facilities are not considered as part of the rent and added to the annual value. Accordingly, there can be no scope or justification whatsoever for making any addition for any notional interest for determining the annual value.

Whatever benefit or advantage which is derived from the deposits - whether by way of saving of interest or of earning interest or making profits by investing such deposit - the same would be reflected in computing the income of the assessee under other heads.

In our view there is no scope for making any addition on account of so-called notional interest on the deposit made by the tenant, since there is no provision to this effect in s. 22 or 23 of the IT Act, 1961. We may add that Schedule III to the WT Act, 1957 which is inserted by the Direct Tax Laws (Amendment) Act, 1989 w.e.f. 1st April, 1989 lays down the method of valuation of different assets including, inter alia, an immovable property. Rule 5 of Part B of Schedule III of the said Act lays down the manner in which the gross maintainable rent in relation to an immovable property is to be determined. There it is statutorily recognised that the gross maintainable rent means where the property is let, the amount received or receivable by the owner as annual rent or the annual value assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax on the basis of such assessment, whichever is higher. In this rule an Explanation is added to define the meaning of the expression annual rent. Proviso (iii) to the said Explanation reads as under :

"Provided that in the following cases, such actual rent under sub-cls. (a) and (b) shall be increased in the manner specified below :

(iii) where the owner has accepted any amount as deposit (not being advance payment towards rent for a period of three months or less), by the amount calculated at the rate of 15 per cent. per annum on the amount of deposit outstanding from month to month for the number of months (excluding part of a month) during which such deposit was held by the owner in the previous year, and if the owner is liable to pay interest on such deposit, the increase to be made under this clause shall be limited to the sum by which the amount calculated as aforesaid exceeds the interest actually paid;"

There is no such corresponding provision in s. 23(1). Even this Schedule III has come on the statute book only w.e.f. 1st April, 1989 and the same has been inserted only in the WT Act. In the absence of any such corresponding provision in sub-s. (1) of s. 23 of the IT Act, the ITO in our view was not justified in calculating any notional interest on the deposit of Rs. 10,40,000 made by the tenant Vinit Traders Investment

Ltd. in fixing the annual value.

7. The learned counsel for the Revenue has quoted a passage from Simons Income tax, 2nd Edn., Vol. 1, p. 502 which reads as follows :

"The theory behind Schedule A is that the possession of an interest in property gives rise to income, the theory which is not always borne out in fact. That there may be no income in fact is disregarded, when the assessment is made. The actual or hypothetical income has to be measured by some standard for the purposes of taxation, and the standard prescribed is the annual value. This principle has been subject to adverse comment, but once the theory is appreciated, the method may be understood and any confusion of thought created by the words of the charging section, dispelled."

The reliance on this paragraph is obviously beside the point because there is no dispute here as to the notional basis of the computation of income from house property. The passage merely refers to the controversial nature of the provision that requires hypothetical income to be computed.

That question is not in controversy here nor can there be a controversy as we are to go by the provision as it is enacted by the legislature. The learned counsel, however, pointed out that the issue involved here is res integra, there being no pronouncement by any High Court or the Supreme Court on the impact of interest-free deposit lying with the owner of the house property as a condition running with the tenancy. This is doubtless a question that attracts attention. To our mind this will only call for an inference that the rent is lower than what it would have been in the absence of such condition for interest-free deposit. But that inference would be inchoate because if the rent is lower than the municipal annual value, the actual rent is to be ignored and the municipal annual value is to be the basis of the income; on the other hand, if the rent exceeds the municipal annual value, the law provides that such rent, though in excess, can alone be taken as the annual letting value under s. 23(1). There is no mandate of law whereby the AO could convert the depression in the rate of rent into money value by assuming the market rate of interest on the deposit as the further rent received by way of benefit of interest-free deposit. But s. 23, as already noted, does not permit such calculation of the value of the benefit of interest-free deposit as part of the rent. This situation is, however, foreseen by Schedule III to the WT Act and it authorises computation of presumptive interest at the rate of 15 per cent. as an integral part of rent to be added to the ostensible rent. No such provision, however, exists in the Act. That being so, the act of the AO in presuming such notional interest as integral part of the rent is ultra vires the provision of s. 23(1) and is, therefore, unauthorised. Though what has been urged on behalf of the Revenue is not to be brushed aside as irrational, yet the contention is not acceptable as the law itself comes short of tackling such fact-situation.

In this view of the matter we answer questions 5 and 6 in the affirmative and in favour of the assessee.

There will be no order as to costs.

CHOWDHURY, J. :

I agree.