
(2003) 02 DEL CK 0095

In the Delhi High Court

Case No : IT Reference No. 185 of 1991 10 February 2003

Archna Luthansa

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Citation : (2003) 130 TAXMAN 264

Hon'ble Judges : Madan B. Lokur, J; D.K Jain, J

Bench : Full Bench

Advocate : R.C. Pandey, for the assessee, for the Appellant;

Judgement

The matter has been placed before the court for appropriate orders, as the assessed, at whose instance the reference has been made, has failed to file the paper books despite various opportunities.

2. Although the assessed remains unrepresented, but since the issue raised in the present reference stands concluded by a decision of the Apex Court, we dispense with the filing of the paper books and proceed to dispose of the reference.

3. Pursuant to the directions issued by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, New Delhi has referred the following questions for our opinion :

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal did not err in law in holding that the assessed could not be treated as the owner of commercial flats in multistoried buildings known as Ansal Bhawan, Akashdeep and Surya Kiran, New Delhi ?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal did not err in holding that the income enjoyed by the assessed from the commercial flats be assessed under the head "Income from other sources" and not under the head "Income from house property"?"

The issue involved being purely legal, we deem it unnecessary to state the facts. Suffice it to note that the controversy involved in the reference is as to whether the assessed could be treated as the "owner" of commercial flats held by her in a multistoried building in New Delhi, within the meaning of section 22 of the Act and the income derived from the said flats could be assessed under the head "Income from house property".

4. A similar issue came up for consideration of the Supreme Court in Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., . Their Lordships of the Supreme Court were pleased to hold that though under the common law "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law, such as the Transfer of Property Act, the Registration Act etc., in the context of section 22 of the Act, having regard to the ground realities and further having regard to the object of the Act, namely, to tax the income, "owner" is a person who is entitled to receive income from property in his own right. It has been held that the requirement of registration of the sale deed in the context of section 22 of the Act is not warranted.

5. In view of the said authoritative pronouncement, both the questions referred are answered in the negative i.e. in favor of the assessed and against the revenue.

6. The reference stands disposed of with no order as to costs.