
(1989) 04 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 136 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Batala Trading Co. (P.) Ltd.

RESPONDENT

Date of Decision : 06-04-1989

Acts Referred:

Citation : (1990) 2 ILR (P&H) 89 : (1989) 179 ITR 603

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; S.S. Mahajan, for the Respondent

Judgement

Gokal Chand Mital, J.—Against the assessee-company, proceedings for liquidation were started. During the pendency of the proceedings, to discharge debts owed to its directors, the company passed a resolution on January 27, 1978, to give the building of the company to the directors. The resolution was approved by the shareholders on January 28, 1978. On January 31, 1978, the company recorded in its accounts that with effect from February 1, 1978, the building would belong to the directors on the basis of the resolution referred to above and that the company would have no right or interest therein. Finally, a registered deed was executed in favour of the directors on January 2, 1980. The building was already in the possession of tenants and with effect from February 1, 1978, the directors started receiving rent from the tenants. When proceedings for the assessment year 1978-79 were taken up by the Income Tax Officer, he wanted to add the rental income from February 1, 1978, in the income of the company on the plea that the sale deed was executed only on January 2, 1980, and from that date only, the company ceased to be the owner and not from February 1, 1978. Factually, the company was not receiving the rent and it was the directors who were receiving the rent. The Income Tax Officer decided the matter against the company and so did the Appellate Assistant Commissioner.

2. When the matter came to the Tribunal, it took notice of the decision reported as Smt. Kala Rani Vs. Commissioner of Income Tax, , of this court in which a

converse proposition was being propounded by the Revenue, and decided the matter in favour of the company and observed that from February 1, 1978, the company ceased to be in possession of the building and income by way of rent received by the directors could not be included in the income of the company.

3. At the instance of the Revenue, the Tribunal has referred the following question for opinion :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in excluding the income of the aforesaid house property for the months of February and March, 1978, from the total income of the appellant-company for the assessment year 1978-79 ?"

4. The question has to be decided on the basis of the opinion already furnished by this court in Smt. Kala Rani Vs. Commissioner of Income Tax, . As observed earlier, the facts of that case were converse. There, an assessee had agreed to purchase the building on March 17, 1964, and got possession but the sale deed was executed only on April 11, 1969. In the returns filed for the assessment years 1968-69 and 1969-70, the assessee did not include the income from the property agreed to be purchased on the ground that he had become an owner thereof, vide sale deed dated April 11, 1969, during the accounting year 1969-70, relevant to the assessment year 1970-71. The assessee failed up to this court. It was observed as follows (headnote) :

"that the assessee occupied the property after the execution of the agreement of sale dated March 17, 1964, in his favour and after the completion of the building he was in a position to earn income from the property sold to him. Further, the entire consideration was paid to the vendor earlier at the time of the execution of the agreement to sell dated March 17, 1964, and no payment was made at the time of the execution of the registered sale deed dated April 11, 1969. Therefore, the Tribunal was right in holding that the income from the self-occupied property was includible in the assessee's income for the assessment years 1968-69 and 1969-70."

5. There, the Department wanted to tax the income received by a person who was in occupation of the property but did not possess title and here the Department wants to tax a person who has given up possession on the basis of the agreement after squaring up the debt payable against the value of the building. This cannot be permitted.

6. Following the aforesaid decision, we hold that for all intents and purposes, the directors were the owners of the building and thus the rental income received by the directors could not be included in the income of the company. Accordingly, we answer the question in the affirmative, in favour of the assessee with no order as to costs.