

(1975) 11 CAL CK 0007
In the Calcutta High Court

Case No : Income-tax Reference No. 274 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Bejoy Kumar Almal

RESPONDENT

Date of Decision : 24-11-1975

Acts Referred:

Income Tax Act, 1961 — Section 23(2), 26

Citation : (1977) 106 ITR 743

Hon'ble Judges : Dipak Kumar Sen, J; Deb, J

Bench : Division Bench

Advocate : A. Sen Gupta, for the Appellant; R.K. Morarka, amicus curiae, for the Respondent

Judgement

Dipak Kumar Sen, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Commissioner of Income Tax, we are called upon to determine the method of computation of income from house property where more than one person jointly own such property in ascertained shares.

2. For the assessment year 1962-63, Bejoy Kumar Almal, the assessee, filed his return for Income Tax. At the relevant time he was the owner of undivided one-third share in a house property and along with his brothers, the other co-sharers, they and their families completely occupied the house.

3. The Income Tax Officer in making the assessment order followed the valuation of an earlier year without making any particular computation.

4. The assessee filed an appeal before the Appellate Assistant Commissioner and suggested computation of such income by first determining the annual value of the entire property and thereafter the value of his one-third undivided share. From the amount ascertained as above he claimed a further reduction of Rs. 1,800 or half of his income u/s 23(2) of the Income Tax Act, 1961.

5. The Appellate Assistant Commissioner did not accept the contention of the assessee. He computed such income by deducting the amount of Rs. 1,800 (or

half of the total income) from the annual valuation of the entire property and arrived at a different figure than what was claimed by the assessee.

6. On further appeal before the Tribunal the assessee contended that the redaction u/s 23(2) of the Income Tax Act, 1961, should be allowed in the case of each of the co-owners. The Tribunal accepted the contention of the assessee. In its order the Tribunal noted that the language of the section was not free from ambiguity where co-owners were concerned but held that the computation of the assessee should be accepted on the construction of the entire scheme.

7. The Tribunal noted in particular the provisions of Section 26 of the Act and held that in the usual course each co-owner would have to be separately assessed in respect of their separate shares, which had to be ascertained in each case. The language of Section 26 did not preclude the normal rule.

8. On the question of practical difficulties following such computations the Tribunal held that even on the computation suggested by the revenue such difficulties would arise.

9. The question which is referred to us from the order of the Tribunal is as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the statutory allowance mentioned in Section 23(2) of the Income Tax Act, 1961, should be allowed every time separately in computing the income from house property falling to the share of each of the co-owners including the assessee?"

10. The Scheme of the Act in respect of the taxability of the income from house property is as follows :

Under Section 22 of the Act the annual value of the property owned by the assessee is made chargeable to Income Tax under the head "income from house property". Section 23 lays down the procedure for determination of annual value. Sub-section (2) of this section lays down that after the annual value has been determined under Sub-section (1) it has to be reduced by one-half of the amount so determined or Rs. 1,800, whichever is less. Section 24 provides for further deductions from such income from house property after the same has been determined u/s 23. The language of Section 26 is as follows :

"26. Property owned by co-owners.--Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income."

11. From the language of this section it appears that where there are co-owners of property having definite, and ascertainable shares the shares of each of such

person in the income from the property as computed under the earlier sections has to be included in the total income.

12. Sections 22 to 25 of the Income Tax Act, 1961, which have been specifically referred to in Section 26 do not provide for the computation of income from the property as such. It is the assessee's income notionally arising from ownership of property which is computed. In that view it does not appear to us that the total notional income of the entire property is relevant for the purpose.

13. Mr. R. Morarka, learned counsel who originally appeared for the assessee in this case, retired, under instructions from his client. We invited him thereafter to act as amicus curiae and we record our appreciation of the able assistance which he has rendered in that capacity.

14. He has construed sections from the earlier Act to show that the income from house property must be computed in the context of the income of the owner and not as the notional income of the entire property as such as already noted.

15. The matter, however, is set at rest by the Explanation which has been added u/s 26 under the Taxation Laws (Amendment) Act, 1975. This Explanation reads as follows :

"For the purposes of this section, in applying the provisions of Sub-section (2) of Section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that subsection."

16. Under well-known principles of construction of statutes when an Act is passed for the express purposes of explaining or clearing up issues as to the meaning of the previous Acts and is called "an Act of Explanation "the Explanation should normally govern the earlier Act. Such explanatory Act is prima facie confined to the subject-matter of the prior enactment and governs the same The presumption is that such an explanatory Act is retrospective. See Crates on Statute Law, sixth edition, pages 146, 360 and 394.

17. It appears to us that in view of the Explanation which was enacted subsequently the same should govern the meaning of the earlier sections, particularly when the meaning is not unambiguous and is open to different interpretations.

18. For the reasons stated above we answer the question in the affirmative and in favour of the assessee. There will be no order as to costs.

Deb, J.

19. I agree.