
(1985) 01 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 169 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Bharatchandra Banjdeo

RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Income Tax Act, 1961 — Section 10(19A)

Citation : (1985) 48 CTR 382 : (1985) ILR (MP) 375 : (1985) 154 ITR 236 :
(1985) JLJ 324 : (1986) 27 TAXMAN 456

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

Oza, C.J.—This is a reference made by the Income Tax Appellate Tribunal at the instance of the Revenue for answering the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the entire income from the palace of the assessee, who is the former Ruler of Bastar, is exempt from Income Tax ?"

2. The facts stated by the Tribunal in the statement of the case are that this assessment pertains to an ex-Ruler of Bastar, a State which merged in the province of Central Provinces and Berar under the States Merger (Governor's Provinces) Order, 1949, and, according to Notification No. SRO 1620, dated May 14, 1954, in pursuance of para. 13 of the above Order of 1979 at item 39, the palace at Jagdalpur of the Ruler of Bastar had been declared as the official residence of the Ruler. It is stated that in the return of income, the income from house property was originally shown as Rs. 50,055 and Rs. 57,088 which was subsequently revised to Rs. 13,473 and Rs. 14,135 for the assessment years 1975-76 and 1976-77, respectively. In the course of the assessment proceedings, it was claimed that the palace at Jagdalpur is recognised as official residence and as such its rental value is exempted under the Act. The ITO negatived the claim on the ground that the entire palace at Jagdalpur is rented

out leaving a small portion used for residence and that only the annual letting value of the residential portion in occupation of the assessee is exempt. The income from property has been assessed at Rs. 47,060 and Rs. 47,630 for the assessment years 1975-76 and 1976-77. The assessee preferred an appeal before the AAC, who confirmed the ITO's findings, holding that the income from property has been correctly computed. On further appeal before the Tribunal, the Tribunal took the view that the entire income from the palace of the assessee who is the former Ruler of Bastar is exempt from tax. The Tribunal took the view that if the palace is in occupation of the assessee and which is the official residence of the ex-Ruler, then it is exempt from tax as, according to the Tribunal, the law does not provide that if a portion only is occupied by the Ruler and the remaining is let out, the portion which is let out should be computed for purposes of Income Tax. Dissatisfied with the order of the Tribunal, the Commissioner submitted an application for making a reference and the Tribunal has made this reference.

3. It is not disputed that under the Merged States (Taxation Concessions) Order, 1949, this palace was declared to be an official residence and was exempt from tax. In this reference, we are concerned with the language of Section 10(19A) of the Income Tax Act, as amended by the Rulers of Indian States (Abolition of Privileges) Act, 1972. Section 10(19A) reads :

"(19A) the annual value of any one palace in the occupation of a Ruler, being a palace, the annual value whereof was exempt from Income Tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958 :

Provided that for the assessment year commencing on the 1st day of April 1, 1972, the annual value of every such palace in the occupation of such Ruler during the relevant previous year shall be exempt from Income Tax."

4. The significant words in this provision are "one palace in the occupation of a Ruler" and further that it should be a palace which under the Merged States (Taxation Concessions) Order, 1949, was declared to be an official residence. So far as the second test is concerned, this palace was declared as an official residence and is not disputed. Learned counsel for the Revenue contended that the phrase "one palace in the occupation" contemplates that if the whole palace is in occupation, then alone exemption is attracted. If part of the palace is in occupation, then the exemption will be only of that part of the rental income which is in occupation and the rest which is not in occupation will be chargeable to tax. Learned counsel relied on a decision of the Delhi High Court in Mohd. Ali Khan v. CIT [1983] 140 ITR 948 , and also a decision of this court in H.H. Raja Agit Singh of Jhabua Vs. Commissioner of Income Tax, .

5. Learned counsel for the assessee, on the other hand, contended that under

the Merged States (Taxation Concessions) Order, 1949, even more than one palace could be declared as official residence and once under that order they were declared as official residence, they were exempt from tax, but by the introduction of Section 10(19A) the Legislature limited this exemption only to one such palace which is in occupation and from the language of Sub-section (19A) of Section 10, it could not be contended that the Legislature further intended the splitting up of the rental value of one palace also in parts in respect of occupation and it was, therefore, contended that if it is one palace and is in occupation, further splitting up is not contemplated within the meaning of the language of Sub-section (19A) of Section 10.

6. Learned counsel contended that in H.H. Raja Agit Singh of Jhabua Vs. Commissioner of Income Tax, which is a decision of this court, this matter has not been considered at all. In that reference, the only question was from what date effect can be given to the amendment incorporated in Sub-section (19A) of Section 10 and it is, therefore, of no assistance so far as this case is concerned. The Delhi decision, according to the learned counsel, is on the W.T. Act and even in that decision, there was no question of splitting up of the matter further as in the W.T. Act in place of "one palace", "one building" is mentioned and what has been considered in that case is that out of so many buildings which were declared as official residence, if only one building is in occupation, exemption can be granted in respect of that building and not in respect of others and to that extent that decision is also of no help so far as this case is concerned.

7. It is clear that under the Merged States (Taxation Concessions) Order, 1949, all buildings and palaces declared to be the official residence were declared exempt from tax and in some of the States when one building or palace was declared as an official residence, they were exempt from tax. This provision of Sub-section (19A) to Section 10 was incorporated by the Rulers of Indian States (Abolition of Privileges) Act, 1972, with effect from December 28, 1971, and from the language of Sub-section (19A), it is clear that the exemption which was available for a number of palaces declared to be the official residence under the Merged States (Taxation Concessions) Order, 1949, was limited to only one place in occupation. Sub-clause (iv) of Clause (13) to the Merged States (Taxation Concessions) Order, 1949, was amended by Order No. 377, dated March 14, 1951. Clause (iv), which exempted the income of the property which was declared to be an official residence, reads :

"The bona fide annual value of the palaces of Rulers of Indian States which are declared by the Central Government as the official residence of such Rulers."

8. It is, therefore, clear that under this order the income from all the palaces of a Ruler which are declared to be the official residence were exempt. Under Sub-section (19A) of Section 10, only one palace in occupation has been exempted and it appears that similarly in the W.T. Act instead of using the word "palace" they have used the words "one building in occupation of a Ruler" which has been exempted from tax.

9. It is not in dispute that in this reference the property in question is a palace. It is also not in dispute that a portion of it is in occupation. The only question which has been raised by learned counsel for the Revenue is that if only a portion of the palace is in occupation, the exemption under Sub-section (19A) of Section 10 would be available only for that part and not for the whole. The change brought about by the insertion under the Merged States (Taxation Concessions) Order is clearly illustrated by the two provisions quoted above. By Sub-section (19A), the exemption has been limited only to one palace in occupation. If the Legislature intended a further splitting up, it would have been provided in Sub-section (19A) that such portion of the palace in occupation is only exempted, but it appears that the language used by the Legislature did not contemplate a further splitting up. In Mohd. Ali Khan's case [1983] 140 ITR 948 which is a case under the W.T. Act, the only question considered was that if the palace which was declared to be an official residence had a number of buildings, as the exemption under the W.T. Act is available only in respect of one building which is in occupation and, therefore, the assessee's contention, that the other buildings which may not be in occupation but declared to be an official residence should be exempted, was not accepted. In Sub-section (19A) of Section 10 of the I.T. Act, in the place of "building", the phrase employed is "one palace" and so far as the case in hand is concerned, it is not disputed that this official residence is only one palace and not more than one. Under these circumstances, in our opinion, Sub-section (19A) could not be interpreted to mean that it contemplates further splitting up of portions of a palace. The language of Sub-section (19A) of Section 10 does not justify it. It is settled that in cases of exemption, the language of the statute has to be liberally construed but even if this principle is not considered, there are no words in Sub-section (19A) of Section 10 from which an intention for splitting up of the palace into portions could be gathered. In this view of the matter, therefore, the contention advanced by the learned counsel for the Revenue cannot be accepted.

10. The question is accordingly answered in the affirmative and in favour of the assessee. Parties are directed to bear their own costs.