
(1985) 09 BOM CK 0008

In the Bombay High Court

Case No : Income-tax Reference No. 138 of 1975

Commissioner of Income Tax

APPELLANT

Vs

I. Chatterji

RESPONDENT

Date of Decision : 17-09-1985

Acts Referred:

Income Tax Act, 1961 — Section 22, 23, 23(1), 280

Citation : (1986) 50 CTR 129 : (1986) 161 ITR 535 : (1986) 24 TAXMAN 251

Hon'ble Judges : Kania, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—At the instance of the Revenue, this reference is made u/s 256(1) of the Income Tax Act, 1961, to pose the question :

"Whether the Tribunal was right in holding that the deduction for municipal taxes was allowable u/s 23(1) of the Income Tax Act, 1961, while determining the annual value in the case of self-occupied property ?"

2. The assessment year involved is 1969-70. The assessee is the owner of a house property at Koregaon Park, Poona. He was occupying it himself. The Income Tax Officer computed the income from this self-occupied house property at Rs. 8,090, as against Rs. 5,663 returned by the assessee. In doing so, the Income Tax Officer did not allow deduction for municipal taxes in the sum of Rs. 3,032, in view of section 23 of the Income Tax Act, 1961. The Appellate Assistant Commissioner allowed the assessee's appeal. The Revenue went up before the Income Tax Appellate Tribunal which, upon a construction of section 23, held that the deduction on account of municipal taxes ought to have been allowed. The correctness of the Tribunal's conclusion is in question before us.

3. Section 23 of the Income Tax Act, 1961, as it stood then, read thus :

"23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year :

Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner, be deducted in determining the annual value of the property :

Provided further that in the case of a building comprising one or more residential units the erection of which is begun and completed after the 1st day of April, 1961, the annual value as determined under this sub-section shall, for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of -

(i) in respect of any residential unit whose annual value as so determined, does not exceed six hundred rupees, by the amount of such annual value;

(ii) in respect of any residential unit whose annual value as so determined exceeds six hundred rupees, by an amount of six hundred rupees;

so, however, that the income in respect of any residential unit is in no case a loss.

(2) Where the property is in the occupation of the owner for the purposes of his own residence, the annual value shall first be determined as in sub-section (1) and further be reduced by one-half of the amount so determined or one thousand eight hundred rupees, whichever is less :

Provided that where the sum so arrived at exceeds ten per cent. of the total income of the owner (the total income for this purpose being computed without including therein any income from such property and before making any deduction under Chapter VI-A or section 280(O) the excess shall be disregarded.

Explanation. - Where any such residential unit as is referred to in the second proviso to sub-section (1) is in the occupation of the owner for the purposes of his own residence, nothing contained in that proviso shall apply in computing the annual value of that residential unit."

4. It is a settled position, in view of the judgment of a Full Bench of this court in New piece goods NEW PIECEGOODS BAZAR CO., LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY CITY., , that, in arriving at the annual value of property, being the sum for which the property might reasonably be expected to let from year to year, for the purposes of Income Tax, local or municipal taxes cannot be deducted.

5. Mr. Jetly, learned counsel for the Revenue, submitted that having regard to this position and the language of section 23 of the Income Tax Act, 1961, no deduction was available to the assessee on account of municipal taxes.

6. It was the submission of Mr. Dalvi, learned counsel for the assessee, that, on a construction of section 23 of the Income Tax Act, 1961, the assessee was entitled to deduct the municipal taxes that he had paid for the purposes of determining the annual letting value of his self-occupied house property. In his submission, by reason of sub-section (2) of section 23, the entirety of the provisions of sub-

section (1) thereof had to be applied in determining the annual letting value of self-occupied house property. Hence, even though a house property was self-occupied, its annual letting value had to be calculated on the basis of a hypothetical tenancy. The basis being a tenancy, the first proviso to sub-section (1) was attracted. The first proviso to sub-section (1) being attracted, a deduction was required to be made in respect of local or municipal taxes that had been paid by the landlord.

7. Mr. Dalvi then placed emphasis upon the words "and further be reduced" in sub-section (2) of section 23 of the Income Tax Act, 1961. These words, he argued, necessarily indicated that a reduction from the annual letting value had already been made in computing it under sub-section (1), which reduction could only be on account of local or municipal taxes.

8. Our attention was drawn by Mr. Dalvi to the decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat III Vs. Arvind Narottam Lalbhai Dalpatbhai Vada, , and the decision of the Madras High Court in Additional Commissioner of Income Tax Vs. M.B. Rajeswari,

9. The Gujarat High Court in the aforementioned case of Commissioner of Income Tax, Gujarat III Vs. Arvind Narottam Lalbhai Dalpatbhai Vada, , observed that the words which required interpretation, having regard to the argument before it (which is the argument before us) in sub-section (2) of section 23 of the Income Tax Act, 1961, were : "the annual value shall first be determined as in sub-section (1) "and" and further be reduced by one-half of the amount". What the main part of sub-section (1) provided for was the determination of the annual value of all properties, whether tenanted or self-occupied, and it was deemed to be the sum for which the property might reasonably be expected to let from year to year. If any taxes of any local authority had been paid, then, as laid down in the first proviso to sub-section (1), they were deductible in the manner therein stated. But this proviso only applied in the case of property in the occupation of a tenant. If a mere prima facie view were to be taken, the condition about deduction of municipal taxes laid down in the first proviso would not apply to property in the occupation of an owner for the purpose of his own residence. The words "as determined in sub-section (1)" referred only to the main body of sub-section (1), namely, that the annual value should be considered to be that at which the property could reasonably be let from year to year. However, the words "and further be reduced" in sub-section (2) indicated that some reduction from the annual letting value had already been carried out before the further reduction contemplated by sub-section (2) could be considered. That further reduction could only be of the municipal taxes as contemplated by the first proviso to sub-section (1). It was, therefore, clear that by the use of the words "and further be reduced" the Legislature had provided for deduction of municipal taxes as contemplated by the first proviso.

10. The decision of the Gujarat High Court was considered by the Madras High Court in Additional Commissioner of Income Tax Vs. M.B. Rajeswari, . The Madras

High Court came to the same conclusion as the Gujarat High Court but did not rest itself solely upon the words "and further be reduced" in sub-section (2) of section 23 of the Income Tax Act, 1961. The Madras High Court found, first, that the expression "the annual value shall first be determined as in sub-section (1)" occurring in sub-section (2) of section 23 would necessarily take in the first proviso to sub-section (1), thereby providing for the deduction of municipal taxes paid by the owner. Secondly, reliance was placed upon the second proviso to sub-section (1) which provided for a situation where, in a residential building, one unit might be in the occupation of the owner and another of a tenant. Thirdly, there was the expression "further be reduced" in sub-section (2) which necessarily contemplated an earlier reduction, which could only be of municipal taxes paid by the owner as contemplated by the first proviso to sub-section (1).

11. We have applied our minds with some care to the provisions of section 23 of the Income Tax Act, 1961. In our view, the words "the annual value shall first be determined as in sub-section (1)" used in sub-section (2) refer to the provisions of sub-section (1) in so far as they are applicable to the facts of a particular case. The substantial provision of sub-section (1) applies to the case of tenanted house property and, by reason of the provisions of sub-section (2), to the case of self-occupied house property. The annual value in both these cases must, therefore, be determined on the basis of what the house property would fetch if let from year to year. The first proviso to sub-section (1) uses the words "where the property is in the occupation of a tenant". The use of these words lays down the condition that the first proviso can have application only where the house property is in fact tenanted. The first proviso has no application to the case of a hypothetical tenancy assumed for the purposes of calculating the annual letting value under sub-section (1) of house property occupied by the landlord himself.

12. In our view, the words "and further be reduced" in sub-section (2) of section 23 of the Income Tax Act, 1961, do not lead to the conclusion that there has already been a reduction in the annual letting value by the application of the provisions contained in sub-section (1). The words, it will be noted, are not "and be further reduced" but "and further be reduced". As we see it, the word "further" must be read as indicating the further or next step to be taken in the computation of the annual letting value of the self-occupied house property; which is to say that after the annual letting value of the self-occupied house property has been computed on the basis of what it would fetch if let from year to year, the further or next step is to reduce it as prescribed in sub-section (2).

13. There is no provision in section 23 of the Income Tax Act, 1961, as we construe it, whereby, for the purposes of computing the annual letting value of the self-occupied house property, local or municipal taxes paid by the owner can be deducted.

14. For the aforesaid reason, we are unable to agree, though with the greatest respect, with the conclusions of the Gujarat and Madras High Courts in the cases aforementioned.

15. The question posed for our consideration is answered in the negative and in favour of the Revenue.

16. There shall be no order as to costs.