
(2003) 12 CAL CK 0020
In the Calcutta High Court
Case No : Income Tax A. No. 241 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Indra Co. Ltd.

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Income Tax Act, 1961 — Section 22, 23

Citation : (2004) 190 CTR 625 : (2004) 268 ITR 240

Hon'ble Judges : S.K. Gupta, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : Joydeb Saha, for the Appellant;J.P. Khaitan, for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This appeal was filed challenging the order of the Income Tax Appellate Tribunal, whereby the appeal preferred by the Revenue was dismissed.

2. The facts relevant for the present purpose are that the assessee-company being the owner of the first floor of an old building in premises No. 14, N. S. Road, Kolkata, measuring 12,000 square feet approximately, let out 4,787 square feet therefrom to M/s. Bangur Brothers Limited at a monthly rent of Rs. 075 per square foot long back. Bangur Brothers had been granted the right to sublet the said "office space to others and had actually sublet the same to M/s. Bengal Papers Mills Limited long time back. After Bangur Brothers surrendered its tenancy right, the assessee entered into a formal agreement of tenancy with Times Construction on April 17, 1987, in respect of the said office space and on May 12, 1987, Times Construction entered into an agreement with the State Bank of Bikaner and Jaipur for subletting the said office space to the said bank at a monthly rent of Rs. 14 per square foot along with another amount of Rs. 6.35 per square foot towards service charges and maintenance charges. In the process, the assessee-company started receiving rent from the Times Construction at the rate of Rs. 1,14,888 per annum only whereas Times

Construction went on receiving rent from its sub-tenant, the bank, at the rate of Rs. 11,68,985 per annum.

3. The Assessing Officer while assessing the income of the assessee-company for the assessment year 1992-93, made computation of income of the assessee from the house property at the rate of Rs. 11,68,985 instead of Rs. 1,14,888 as claimed by the assessee.

4. On appeal, the Commissioner of Income Tax (Appeals) accepted the contention of the assessee and directed the Assessing Officer to recompute the income from the house property in respect of the assessee on the basis of the actual rent received by the assessee.

5. The Department challenged the above order of the Commissioner of Income Tax (Appeals) before the Tribunal wherein the impugned order was passed dismissing the appeal.

6. Heard Mr. Saha, learned counsel for the Revenue-appellant, who relied on Sections 22 and 23 of the Income Tax Act, 1961, and contended that the computation of income from the house property in such case should be made taking into consideration the annual rent actually received in respect of the said house property itself. Reliance was placed also on the judgment in the case of Smt. Protima Roy Vs. Commissioner of Income Tax, and Smt. Pratima Roy Vs. Commissioner of Income Tax, . Reliance was also placed on the judgment in the case of Commissioner of Income Tax Vs. Kishanlal and Sons (Udyog) Pvt. Ltd., .

7. Mr. J. P. Khaitan, learned counsel for the assessee-respondent, relied on the findings of the Tribunal as also the provisions of law particularly as contained in Section 23 of the Income Tax Act, 1961. He also relied on the judgment in the case of Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, . It has also been pointed out that the provisions of law applicable in respect of the concerned assessment year, if taken into consideration, clearly explains the difference of view taken in the cases cited by the Revenue.

8. After considering the aforesaid contentions, we find that Section 22 is as follows :

"22. Income from house property.--The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax, shall be chargeable to Income Tax under the head "Income from house property"."

The relevant portion of Section 23 is as follows :

"23. (1) For the purposes of Section 22, the annual value of any property shall be deemed to be--

(a) the sum for which the property might reasonably be expected to let from

year to year ; or

(b) where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in Clause (a), the amount so received or receivable."

9. In the cases of Smt. Protima Roy Vs. Commissioner of Income Tax, and Smt. Pratima Roy Vs. Commissioner of Income Tax, , observations are there which have been relied on by the Revenue for showing that the rent received by the sub-tenant is to be taken into consideration as the rent receivable by the owner and computation has to be made on that basis. But on consideration of the said two judgments, we find that in both the cases the contention regarding sub-tenancy has been disbelieved and the intermediate status of the tenant has been held to be sham in nature. The apex court in the case of Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, , held that in respect of the building situated in an area where rent control law applies, the standard rent determinable under the provisions of the rent control law would be the annual value if the standard rent is not determined. The above judgment of the apex court was considered and explained by another Division Bench of this court in the case of Commissioner of Income Tax Vs. Kishanlal and Sons (Udyog) Pvt. Ltd., . Considering the said judgment of the apex court as also the provisions of law contained in Section 23, it has been held by the said Division Bench as follows (page 486) :

"If a property is actually let out, then the expectation of its letting out becomes an actual reality, and the proof of the expectation, can be made in the best manner possible, by producing evidence of the rental which is being actually received by the assessee."

10. In the present case in hand, none of the agreements either between the landlord and the tenant or between the tenant and the sub-tenant has been disbelieved or held to be executed as a result of collusion between the parties or as sham transaction. Therefore, the two judgments in the cases of Smt. Protima Roy Vs. Commissioner of Income Tax, and Smt. Pratima Roy Vs. Commissioner of Income Tax, are not at all applicable.

11. In the assessment order in the present case for calculating income from house property fair rent has been taken as Rs. 11,68,985. In the judgment of the Commissioner of Income Tax (Appeals) it was considered that the said figure as accepted by the Assessing Officer, is not the amount received by the owner, but is the amount received by the tenant from its sub-tenant and therefore, the said appellate authority directed the Assessing Officer to revise the computation of income from the house property replacing the annual letting value at Rs. 11,68,985 by Rs. 1,14,888. This finding was affirmed by the Tribunal on appeal filed by the Revenue and the appeal before the Tribunal was dismissed. In the present appeal filed by the Revenue against the aforesaid judgment of the Tribunal, we do not find any ground for interference as the actual receipt by the

assessee from its tenant has been taken into consideration for the purpose of assessing the income from the house property which appears to be in consonance with the findings of the Division Bench of this court in the case of Commissioner of Income Tax Vs. Kishanlal and Sons (Udyog) Pvt. Ltd., explaining the judgment of the apex court.

12. In view of the above findings, no interference is felt required and the appeal is dismissed hereby.

S.K. Gupta, J.

I agree.