**(1998) 11 KL CK 0048**

**In the High Court Of Kerala**

**Case No :** Income Tax R. No''s. 24, 25 and 26 of 1997

Commissioner of Income Tax — APPELLANT

Vs

Johny Joseph — RESPONDENT

**Date of Decision :** 16-11-1998

**Acts Referred:**
Income Tax Act, 1961 — Section 23

**Citation :** (1999) 153 CTR 142 : (1999) 240 ITR 782 : (1999) 102 TAXMAN 454

**Hon'ble Judges :** Om Prakash, C.J;J.B. Koshy, J

**Bench :** Division Bench

**Advocate :** P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, for the Respondent

## Judgement

Om Prakash, C.J.—At the instance of the Revenue, the Income Tax Appellate Tribunal referred the following question for the consecutive assessment years 1986-87, 1987-88 and 1988-89 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and coupled with the fact that for the assessment year 1983-84 the admitted annual letting value was Rs. 46,411, the Tribunal, on an interpretation of Section 23 of the Income Tax Act is right in law and fact :

(i) in accepting and acting upon the annual value fixed by the municipality and that returned by the assessee ?

(ii) in holding that the annual value disclosed by the assessee is fair and reasonable ?"

2. The Appellate Tribunal found that the annual letting value returned by the assessee in respect of the properties owned by him in Alleppy Municipal Town is as under :

"Annual letting value returned Assessment years

Rs. 24,450 1986-87

Rs. 23,400 1987-88

Rs. 22,680 1988-89"

3. The Income Tax Officer noticed that for the, assessment year 1983-84 the admitted annual letting value was Rs. 46,441. The Assessing Officer then observed that the rental value of the properties has been increasing year after year. He, therefore, took the annual letting value of the properties in question at Rs. 46,441 for each assessment year in question.

4. The Deputy Commissioner of Income Tax (Appeals) estimated the annual letting value at Rs. 36,000 for each year under appeal. Aggrieved, both the assessee and the Revenue approached the Appellate Tribunal in appeal. The Appellate Tribunal held as under :

"3. As per the municipal valuation, the annual value is Rs. 13,560. Therefore, it has been contended that the Deputy Commissioner of Income tax (Appeals) was not justified in fixing the annual letting value in this case at Rs. 36,000 for the assessment years under consideration.

4. We find that the annual letting value returned by the assessee for the years under consideration is more than the annual value fixed by the municipality. We, therefore, accept the annual letting value returned by the assessee for the years under consideration . . . .".

5. It is not disputed, nor can it be disputed, as the Appellate Tribunal found it as a fact, that for the assessment year 1983-84 the assessee himself declared the annual letting value at Rs. 46,441. No doubt, for the years under appeal the assessee declared the annual letting value in descending trend without giving any cogent reasons therefor. No reason has been shown by the assessee that in the next following years the annual letting value went on decreasing. Normally, as observed by the Assessing Officer, the annual letting value should gradually increase. Simply because the annual letting value shown by the assessee was more than the one fixed by the municipality, the annual letting value declared by the assessee, could not be accepted.

6. Section 23(1) of the Income Tax Act, 1961 (for short "the Act"), provides as to how the annual value is to be determined. Sub-section (1) says that 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 be 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. The property being actually let out by the assessee, Section 23(b) of the Act is relevant. Looking to the annual letting value declared for the assessment year 1983-84, the Assessing Officer took the view that there was no good reason to assess the annual letting value at a lesser figure for the next following years, as there was an increasing trend in the annual letting value and no decreasing trend was shown by the assessee.

 

There being no supportive material that the annual letting value went on decreasing in the next following years, we see no good reason to differ from the observation made by the Assessing Officer. The Tribunal grossly erred in referring to irrelevant material, that is, the annual value fixed by the municipality. According to the Assessing Officer, the annual letting value being in the ascending order in the next following years to the assessment year 1983-84, we are of the view that the Assessing Officer was right in taking the annual letting value as declared by the assessee himself for the assessment year 1983-84. The inference drawn by the Tribunal on the facts, as stated above, is surely against the canon of appreciation of evidence.

7. In the result, the above question is answered in the negative, that is, in favour of the Revenue and against the assessee.