(1999) 10 KL CK 0033

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 246 and 247 of 1997

Commissioner of Income Tax		APPELLANT
	Vs	
Johny Joseph		RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:
Income Tax Act, 1961 — Section 2, 22, 23

Citation : (2000) 241 ITR 423

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; C. Kochunni Nair, S. Vinod Kumar and Dale P. Kurian, for the Respondent

Judgement

Arijit Pasayat, C.J.—On the basis of applications u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), the following questions have been referred for opinion of this court by the Income Tax Appellate Tribunal, Cochin Bench (in short "the Tribunal") :

"Questions in ITA No. 810/Coch of 1992 :

(1) Whether, on the facts and in the circumstances of the case and also in view of the fact that the actual rent received for the assessment year 1983-84 being Rs. 46,441 the Tribunal is right in law and fact in upholding the order of the Commissioner of Income Tax (Appeals) who adopted the annual letting value u/s 23 of the Income Tax Act at Rs. 27,780 ?

(2) Whether, on the facts and in the circumstances of the case and on an interpretation of Section 23(1) of the Income Tax Act, 1961, the Tribunal is right in law and fact in holding that the amount estimated by the Assessing Officer cannot be the rent received or receivable, as per the provisions of Section 23(1) of the Income Tax Act, 1961 ?

Question in C. O. No. 4/Coch of 1993 :

Whether, on the facts and in the circumstances of the case, the Tribunal is right in accepting the assessee''s alternative contention and in directing the Assessing Officer to adopt the annual letting value on the basis of the rent receivable at Rs. 22,680 ?"

2. The factual position, as set out in the statement of the case, is as follows: The assessee is an individual, deriving income from house property. The Assessing Officer fixed the annual value of the property at Rs. 46,441 on the basis of the actual rent received for the assessment year 1983-84, as against Rs. 27,780 claimed by the assessee. The determination was challenged in appeal before the Deputy Commissioner of Income Tax (Appeals) (in short the "Deputy CIT(A)"). The appellate authority accepted the assessee''s claim and directed the Assessing Officer to estimate the annual letting value at the figure disclosed by the assessee. The Revenue preferred second appeal before the Tribunal. With reference to Section 23(1)(a) dealing with annual value, the Tribunal upheld the order of the Deputy Commissioner of Income Tax (Appeals). It was observed that the annual value as mentioned in the provision was the same for which the property might reasonably be let from year to year and the rent receivable had been rightly adopted by the first appellate authority. In the cross-objection filed by the assessee, the Tribunal held that the rent receivable amounting to Rs. 22,680 should be taken for the purpose of assessment instead of Rs. 27,780.

3. The Revenue''s stand is that where the assessee''s property is let out, the amount actually received has to be taken note of. According to learned counsel for the assessee, the provisions of Section 23(1)(a) clearly set out the limits for fixing annual value and even if a higher rent was received than the annual value computed on the basis of Section 23(1)(a), the latter has to be adopted.

4. Section 23(1) reads as follows :

"23. Annual value how determined.--(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 :"

5. A bare reading of the provision shows that for the purpose 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. Obviously, if the amount received or receivable is in excess of the sum for which the property might reasonably be expected to be let from year to year, the amount actually received or receivable shall be the annual value of the property for the purpose of Section 22. It is to be noted that Section 22 deals with income from house property. Prior to the 1975 amendment, i.e., up

to assessment year 1975-76, the actual rent received or receivable was not decisive in the determination of the annual value of the property, although it was an important piece of evidence therefor. After 1975 amendment, if the actual annual rent received or receivable is in excess of the notional annual value, the actual annual rent shall be deemed u/s 23(1), to be the annual value, for and from the assessment year 1976-77. The expression "total income" in Section 4 has to be understood as it is defined in Section 2(45). Under that definition total income means "the total amount of income referred to in Section 5, computed in the manner laid down in the Act", that is, computed for the purpose of charge ability, under the sections, from Sections 15 - 59. After amendment in 1975, the above position is applicable. That being the position, the approach and conclusions of the first appellate authority and the Tribunal were not justified. Additionally, we find that a Division Bench of this court in Commissioner of Income Tax Vs. G. Ramesan and B. Indira Devi, (Appex.) (infra), expressed a similar view.

6. Our answer to the questions is in the negative, i.e., in favour of the Revenue and against the assessee.

7. The references are disposed of accordingly.

