
(1992) 10 DEL CK 0019

In the Delhi High Court

Case No : Income-tax Reference No. 49 of 1983

Commissioner of Income Tax

APPELLANT

Vs

M.K. Modi

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Income Tax Act, 1961 — Section 17(1), 23

Citation : (1993) 112 CTR 176 : (1993) 200 ITR 673 : (1993) 68 TAXMAN 157

Hon'ble Judges : P.K. Bahri, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta, Adv Dr. Debi Pal, for the Appellant;

Judgement

B.N. Kirpal, J.—The Income Tax Tribunal has referred, u/s 256(1) of the Income Tax Act, 1961, the following question of law in respect of the assessment years 1970-71 to 1972-73 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in directing that the value of perquisites in respect of residential accommodation be limited to the value fixed by the local authority u/s 9 of the U.P. Urban Building Act, 1972 ?"

2. Briefly stated, the facts are as follows :

The assessed is the managing director of M/s. Modi Industries Ltd., Modinagar, and had been assessed as an individual for the assessment years 1970-71 to 1972-73 under reference. The company provided the assessed with rent-free accommodation in Modi Bhavan No. 1, Modi Nagar. The rent-free accommodation consisted of two bed rooms with attached bath and dressing rooms, a living room, a store, a dinning room and a kitchen. The value of his rent-free accommodation was declared by the assessed and estimated by the Income Tax Officer and the Appellate Assistant Commissioner for the three years under appeal as follows :

----- Assessment As per									
As per As per As per I.T.A.T. in the Year assessed I.T.O. A.A.C. case of Seth K. N. Modi ----- 1970-71 724									
(for five	2812	2812	1000	+	418	months)	1971-72	4808	7125
1000	1972-73		4808		10125		10125	2400	+

								2400	+
									1000

3. The Income Tax Officer based the estimate of the value of the rent free accommodation at 12.5 per cent. of the salary received by the assessed in each of three years as the managing director of Modi Industries Ltd.

4. The assessed preferred appeals to the Appellate Assistant Commissioner of Income Tax. The Appellate Assistant Commissioner confirmed the estimate of the Income Tax Officer on the ground that the decision of the Income Tax Officer and the Appellate Tribunal, Delhi Bench "C", dated April 30, 1974, in the case of Shri M. L. Modi taking the value of the perquisite at 12.5 per cent. of salary was made in identical circumstances for the assessment years 1970-71 and 1971-72. In regard to the assessment year 1972-73, the Appellate Assistant Commissioner further observed that the Income Tax Officer had worked out the value of the perquisites as per rule 3 (a) of the Income Tax Rules, 1962, which action was also according to him approved by the tribunal in the said case of Shri M. L. Modi. For these reasons, the Appellate Assistant Commissioner held that the Income Tax Officer was perfectly justified in taking the value of the perquisite in the shape of rent-free accommodation at 12.5 per cent. of the salary received by the assessed.

5. The assessed brought the matter in appeal, to the Appellate Tribunal. The Tribunal found that the standard rent for similar accommodation occupied by Shri K. K. Modi had been fixed by the prescribed authority u/s 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972), at Rs. 400 p.m. Following the decisions of the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, and The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., , and the decision of the Patna High Court in the Income Tax case of Kashi Prasad Kataruka Vs. Commissioner of Income Tax, , the Tribunal held that the said two decisions of the Supreme Court not only support the proposition of that, where the fair rent had been fixed by the Rent Controller, it is not open to treat the profits which the property can fetch to be anything more than on the basis of the fair rent fixed by the Rent Controller, but also go to support the principle which is involved in the construction of section 23 of Income Tax Act, 1961, namely, what is the hypothetical rent which may be presumed or the premises in question. The Tribunal further held that the same principle would apply in determining the value of the perquisites in the shape of rent free accommodation. On the basis of the standard rent fixed by the prescribed authority at Rs. 400 p.m. the Tribunal reduced valued of the rent free accommodation to Rs. 1,418 or the assessment year 1970-71, as it was for limited period. As regards the remaining two

assessment years 1971-72 and 1972-73, the Tribunal limited the value of the rent-free accommodation to the rent fixed by the prescribed authority u/s 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972), in the case of Shri K. N. Modi.

6. While coming to the aforesaid conclusion, the order of the Rent Controller in the case of K. K. Modi whereby, a standard rent of Rs. 400 per month had been fixed on an application filed u/s 9 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, was referred to. In the said order, it was mentioned that the inspector had considered all the relevant facts which had to be taken into consideration u/s 9 and had recommended that the standard rent should be fixed at Rs. 200 per month. This report of the inspector was dated August 28, 1973. The Sub-Divisional Magistrate, however, himself considered the facts of the case and came to the conclusion that the prevailing market rate of rent at Modi Nagar was such that the reasonable rent should be Rs. 400 per month. A contention was raised before the Tribunal, in the present case, that the order of the Sub-Divisional Magistrate, fixing the standard rent, was obtained by collusion between members of the Modi family. The Tribunal, however, came to the conclusion that there was no material on the record to support to such an argument. It, accordingly, accepted Rs. 400 per month as fair rent and this amount was taken to be the value of the perquisites.

7. It had been contended by Shri Gupta that, in view of the decision of the Delhi High Court in the case of Murlidhar Dalmia Vs. Commissioner of Income Tax, Delhi-II, , the Income Tax Tribunal ought not to have taken into consideration the standard rent which had been determined by the Sub-Divisional Magistrate. In Murlidhar Dalmia Vs. Commissioner of Income Tax, Delhi-II, , this court came to the conclusion that the assessed was an officer of the company and, Therefore, he was not a tenant but a mere licensee. The rent laws were thus not applicable and, what is important is that the premises had been given to him at a concessional rate. It is pertinent to note that, in this decision, the attention of the Bench was not drawn to the decision of the Supreme Court in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, .

8. Be that as it may, the finding of fact which was taken into consideration by the court in Murlidhar Dalmia Vs. Commissioner of Income Tax, Delhi-II, was that the premises had been given to the assessed at a concessional rate. In the present case, however, the report of the inspector in the year 1973 was that the fair rate of rent should be Rs. 200 per month. The Sub-Divisional Magistrate applied his own mind and keeping in view the market rents which were prevalent in Modi Nagar, he came to conclusion that the fair rent should be Rs. 400 and not Rs. 200 per month. This is a finding of a fact which was not challenged and the tribunal having come to the conclusion that the order of the Sub-Divisional Magistrate was not collusive and no question of law in relation thereto having been sought, we have to proceed on the basis that the fair market rent in respect

of the premises in question in the case of K. K. Modi was only Rs. 400 per month.

9. Taking into consideration the extent of accommodation which was available with the assessed and applying the rate of rent which was determined in the case of K. K. Modi, the Tribunal, in the present case, came to the conclusion that the value of perquisite in the assessed's case in respect of the assessment year 1970-71, worked out to Rs. 1,418 while, in respect of the subsequent years, it came to Rs. 4,808 which was declared by the assessed. This figure of Rs. 4,808 consisted of Rs. 2,808 as rent, Rs. 1,500 in respect of furniture and Rs. 500 in respect of electricity. This conclusion of the Income Tax Tribunal is a finding of fact and the same cannot be disputed in this reference before the court. It is not necessary, because of the finding of fact, to go into the larger question as to whether the determination of standard rent under the provisions of the Rent Control Act is final and binding on the Income Tax authorities. As already observed hereinabove, the Sub-Divisional Magistrate gave a finding of fact that the fair market rent of the premises in question with regard to K. K. Modi was Rs. 400 per month and it is the market rent which was made the basis of the order of the Income Tax Tribunal in the present case.

10. Before concluding, we may refer to decision of J. Dalmia Vs. Commissioner of Income Tax, Delhi (Central), in which a Division Bench of this court came to the conclusion that, when the property belonging to the company is allowed to be used by a director, then even though it may not be case of letting out, the value of the rent-free accommodation has to be determined as per the decision of the Supreme Court in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and the standard rent will determine the value. To this extent, the decision of a Division Bench of this court in J. Dalmia Vs. Commissioner of Income Tax, Delhi (Central), is at variance with the decision in Murlidhar Dalmia Vs. Commissioner of Income Tax, Delhi-II, .

11. For the aforesaid reasons, the question of law is answered in the affirmative and in favor of the assessed.

12. There will be no order as to costs.