(1999) 08 CAL CK 0021

In the Calcutta High Court

Case No : Income Tax R. No. 99 of 1993

Commissioner of Income Tax APPELLANT

Vs

Poddar Bros (P.) Ltd. RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:
Income Tax Act, 1961 — Section 23

Citation : (1999) 240 ITR 925 : (2002) 123 TAXMAN 1058

Hon'ble Judges : Y.R. Meena, J;R.K. Mazumdar, J

Bench : Division Bench

Advocate : Bajoria, for the Appellant;

Judgement

1. By this reference application, the Tribunal has referred the following questions set out at page 2 of the statement of case for our opinion ;

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in adopting the annual rateable value according to the municipal law for the purpose of assessment under the Income tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not holding that the standard rent u/s 8(1)(d) of the West Bengal Premises Tenancy Act, 1956, should be the basis for determining the annual letting value of the property at 33, Madan Mohan Tolla Street, Calcutta, u/s 23(1) of the Income Tax Act, 1961 ?

3. Whether there was any material before the Tribunal to hold that the rent received by the assessee was low or not fair rent ?"

2. The assessee was the owner of the house property at 33, Madan Mohan Tolla Street, Calcutta. This was a seven-storeyed building comprising the covered area of 11,380 sq. ft. The entire building was let out to various persons, including some directors of the assessee-company and relatives of the directors and persons having substantial interest in the company.

3. The Assessing Officer estimated the gross rental income from the building at Rs. 2,73,120 in each of the assessment years, that is, assessment years 1985-86 and 1986-87.

4. In appeal, the Commissioner of Income Tax (Appeals) has followed its earlier order for the assessment year 1984-85 and directed the Assessing Officer to compute the income from house property as shown by the assessee and allowed statutory deductions.

5. In appeal before the Tribunal, the Tribunal has considered the decision of this court in the case of Commissioner of Income Tax Vs. Prabhabati Bansali, , and also the decisions of the Supreme Court in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, and directed that the annual letting value should be taken according to the municipal law for the purpose of assessing the annual letting value.

6. Learned counsel for the Revenue submits that considering the location and covered area of the building, the property can fetch much more in the open market. Therefore, when the property is let out for extraneous considerations, the annual letting value should be taken which the property can fetch in the open market.

7. Learned counsel for the assessee, Mr. Bajoria, submits that even in the cases where the property is let out to relations or the directors of the company or persons who have substantial interest in the company, the value should be taken on the basis of rent received actually or on the basis of rent determined as per valuation of the property by the Municipal Corporation under the provisions of the Calcutta Municipal Corporation Act. He placed reliance on a decision of this court in the case of CIT v. Satya Co. Ltd. [1994] 75 Taxman 193.

8. Considering the decisions referred by the Tribunal and the decision of this court in the case of Satya Co. Ltd. [1994] 75 Taxman 193 when the valuation of the property has been determined under the Calcutta Municipal Corporation Act and that has not been challenged, the Tribunal is justified in accepting the annual letting value on the basis of valuation taken by the Calcutta Municipal Corporation under the provisions of the Municipal Corporation Act.

9. Clause (b) of Sub-section (1) of Section 23 provides that 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 should be taken as the annual letting value of the valuation.

10. Admittedly, the assessee is receiving more rent than the rent receivable on the basis of the valuation of the property in question, under the provisions of the Municipal Corporation Act. Therefore, in view of the facts no interference is called for with the order of the Tribunal.

11. Accordingly, we answer question No. 1 in the affirmative. Question No. 2

does not arise out of the order of the Tribunal. Therefore, we decline to answer question No. 2.

12. Learned counsel for the assessee, Mr. Bajoria, submits that in view of the answer to question No. 1, question No. 3 need not be answered. Accordingly, we decline to answer question No. 3 also.

13. Accordingly, this tax reference is disposed, of.