

(1993) 08 CAL CK 0027

In the Calcutta High Court

Case No : Income-tax Reference No. 208 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Poddar Project Ltd.

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Income Tax Act, 1961 — Section 154, 23, 23(1)

Citation : (1994) 122 CTR 123 : (1994) 209 ITR 385

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that resort to Section 154 of the Income Tax Act, 1961, cannot be taken to rectify the original assessments for allowance of municipal tax which was a mistake apparent from the record?"

2. The assessee-company is assessed to Income Tax under the heads "Income from house property" and "Income from other sources". This reference relates to the Income Tax assessment of the assessee-company for the assessment years 1978-79 and 1979-80. In respect of those two years, the assessee-company was originally allowed deduction in respect of municipal taxes in computing its income under the head "Income from house property" in the sums of Rs. 4,11,352 and Rs. 4,16,337, respectively. Subsequently, the Income Tax Officer issued notice u/s 154 of the Income Tax Act, 1961, and sought to rectify the deduction allowed in respect of municipal taxes by substituting the figure of Rs. 2,08,254 in each of the said two years, in place of the original figure of Rs. 4,11,352 and Rs. 4,16,337, respectively. According to the Income Tax Officer, the actual tax levied for each of the said two years was Rs. 2,08,254 only. A perusal of the original assessment orders passed in respect of the said two years shows that the

deduction in respect of municipal tax was originally allowed in the sum of Rs. 4,11,352 and Rs. 4,16,337 respectively, calculated at 33 1/2 per cent. of the gross rent receivable less 10 per cent. thereof.

3. On appeal by the assessee against the said two orders passed by the Income Tax Officer u/s 154 of the said Act, the Commissioner of Income Tax (Appeals) found that from the final bill issued by the Calcutta Municipal Corporation in January, 1985. it was apparent that the municipal tax falling to the share of the assessee-company was Rs. 4,13,912 in respect of each of the said two years as against the sum of Rs. 2,08,254 allowed by the Income Tax Officer through his said two orders passed u/s 154 of the said Act. The Commissioner of Income Tax (Appeals), therefore, directed the Income Tax Officer to recompute the assessee-company's income from house property in respect of each of the said two years by allowing deduction in the sum of Rs. 4,13,912 by way of municipal tax in place of Rs. 2,08,254 allowed by the Income Tax Officer through his said two orders passed u/s 154 of the said Act, in each of the said two years.

4. On further appeal by the Revenue, the Tribunal held and observed that two views were possible on the question whether the municipal tax should be allowed on the basis of what was actually levied in the relevant previous year or with reference to the amount which is finally determined by the municipal tax authorities for the relevant year. The Tribunal referred to the decision of the Supreme Court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions and that a decision on a debatable point of law is not a mistake apparent from the record. In this view of the matter, the Tribunal held that the original assessment orders in this case for each of the said two assessment years 1978-79 and 1979-80 could not be said to disclose any mistake apparent from the record within the meaning of Section 154 of the said Act.

5. Deduction in respect of municipal tax is permissible under the proviso to Sub-section (1) of Section 23 of the Income Tax Act, 1961. Section 23(1) of the said Act lays down the principle according to which the annual value of any property could be notionally determined during the relevant period. The first proviso to Sub-section (1) of Section 23 of the said Act, as it stood at the relevant time, read as under :

"Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner, be deducted in determining the annual value of the property."

6. The expression "borne by the owner" as appearing in the proviso came in for consideration before the Supreme Court in Commissioner of Income Tax, Calcutta

Vs. Dalhousie Properties Ltd., The Supreme Court observed at page 711 that the expression "borne by the owner" may refer to either the liability which a person is liable to discharge or the actual sum paid by him in discharge of that liability. The Supreme Court further observed that having regard to the scheme of the Act, it is reasonable to construe that the expression "borne" means the amount of tax which the owner is liable to discharge in respect of the municipal tax. The expression "annual value" is a notional figure u/s 23 of the said Act and this figure does not refer to any actual receipt. It is arrived at by deducting taxes levied by a local authority, for paying which the owner has assumed the responsibility, from the sum for which the property might reasonably be expected to be let from year to year. It is reasonable to treat the annual value of a house property as remaining more or less constant during the entire period covered by any given previous year except perhaps where the tax liability itself is modified by the local authority concerned. In order to ensure that there is no unwarranted fluctuation in the annual value during the year in question, such actual payment towards the tax liability imposed by the local authority should be eliminated from consideration but only the tax liability imposed by the local authority, which the assessee is liable to pay as contemplated by the proviso to Section 23(1) of the Act should be allowed to be deducted under the said proviso.

7. It is true that the first proviso to Section 23(1) of the said Act has since been again substituted by the Taxation Laws (Amendment) Act, 1984 w.e.f. April 1, 1985. Under the newly substituted proviso, the deduction for municipal tax will now be allowed with effect from the assessment year 1985-86 and onwards only to the extent and in the year in which such taxes are actually paid by the assessee. But in this reference we are concerned with the assessment years 1978-79 and 1979-80 in which the old law was applicable. Having regard to the principles laid down by the Supreme Court in Commissioner of Income Tax, Calcutta Vs. Dalhousie Properties Ltd., , it cannot be said that the point in issue as involved in this reference is not free from doubt since the same expression "borne by the owner" as was interpreted by the Supreme Court in the said case continues to appear in the first proviso to Section 23(1) of the said Act.

8. It also appears that the municipal tax actually levied by the Calcutta Municipal Corporation in respect of each of the said two years, though subsequent to the completion of the original assessment was in the sum of Rs. 4,13,991 as against Rs. 4,11,352 and Rs. 4,16,337, respectively, allowed originally in this case. In any event, it cannot be said that there was any mistake apparent from the record within the meaning of Section 154 of the said Act in the original assessment order passed by the Income Tax Officer and, therefore, in our view, the provisions of Section 154 are not applicable in this case. The Tribunal was correct in holding that there was no mistake, apparent from the record in this case and the Income Tax Officer was not right in taking recourse to Section 154 of the Act and rectifying the original assessment orders passed in respect of each of the said two assessment years 1978-79 and 1979-80.

9. We, therefore, answer the question in this reference in the affirmative and in favour of the assessee.

10. There will be no order as to costs.

Shyamal Kumar Sen, J.

11. I agree.