

(1978) 12 KL CK 0020

In the High Court Of Kerala

Case No : Income-tax Reference No"s. 64 and 65 of 1976 and 33 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Pradeepkumar M. Shah

RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:

Income Tax Act, 1922 — Section 9(1)

Income Tax Act, 1961 — Section 24(1)

Citation : (1979) 2 ILR (Ker) 261 : (1981) 130 ITR 118

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;V. Balakrishna Eradi, J;George Vadakkal, J

Bench : Full Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; S.A. Nagendran, N. Krishna Pillai, N.N.D. Pillai, D.A. Kammath, P.C. Abraham and K.B. Subhagamani, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—This Income Tax reference has been sent up by the Income Tax Appellate Tribunal, Cochin Bench, u/s 256(1) of the. I.T. Act, at the instance of the revenue. The assessment year with which we are concerned is 1969-70. The assessee is the owner of a property consisting of several rooms and godowns. During the period prior to the assessment year, the godowns and rooms were let out to different persons. But during the accounting year they were vacant except two rooms which had been let out to two firms in which the assessee is interested. In the original assessment, the assessee returned an income from this property of Rs. 3,620 after deducting the vacancy allowance. This was accepted and the original assessment was completed on that basis. Subsequently, the officer reopened the assessment u/s 147(b). In the reassessment proceedings he included an annual letting value of the part of the property which was vacant throughout the year. The income on such basis was computed to be Rs, 24,053. He held that no vacancy allowance was to be given in respect of the property which was vacant throughout the year. The AAC confirmed this order of the ITO, On further appeal to the Tribunal, the Tribunal

was of the view that the assessee was entitled to vacancy allowance. It found that the part of the property had been vacant throughout the year and this would suffice to entitle the assessee to the vacancy allowance. The Tribunal had taken a similar view on an earlier occasion in *Raja Timbers* (I.T.A. No. 483 (Coch)/74-75 dated 29-4-76). Following the said decision of the Tribunal, it adopted the same view in the instant case. It has sent up the following question of law for our opinion, viz.:

"Whether, on the facts and in the circumstances of the case, and in view of the fact that the property in question was lying vacant for the full year, the Income Tax Appellate Tribunal is right in law in holding that the assessee is entitled to vacancy allowance u/s 24(1)(ix) of the Income Tax Act ?"

2. The question referred has to be decided in the light of Section 24(1)(ix) of the I.T. Act, 1961. The said section reads ;

"24. Deductions from income from house property.--(1) Income chargeable under the head "Income from house property" shall, subject to the provisions of Sub-section (2), be computed after making the following deductions, namely :--.....

(ix) where the property is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied.

Explanation.--The deduction under this clause shall be made irrespective of whether the period during which the property or, as the case may be, part of the property was vacant precedes or follows the period during which it is let."

3. The language of the clause indicates that the vacancy must be during a part of the year in question and not for the entire year. This aspect of the meaning and the content of the section is further emphasised by the latter part of Clause (ix) which provides for the calculation of the vacancy allowance of any part in proportion to the period during which the part was wholly unoccupied. We were pressed with the argument that this mode of construction of the section may lead to anomalies and incongruities. In the face of the clear language of the provision, we can only leave such anomalies and incongruities, if any, to be resolved by the Legislature. We notice that Section 24(1)(ix) of the 1961 Act makes a significant departure from the language of its predecessor, Section 9(1)(vii) of the Indian I.T. Act, 1922. Section 9(1)(vii) read :

" 9. Property.--(1) The tax shall be payable by an assessee under the head "Income from property" in respect of the bona fide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are

assessable to tax, subject to the following allowances, namely :--.....

(vii) in respect of vacancies, that part of the annual value which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied.

Explanation.--For the purposes of Clause (iv) of this sub-section, the expression "annual charge" does not include any tax in respect of property or income from property levied by a local authority or a State Government or the Central Government."

4. The difference in phraseology should be obvious. We called upon the counsel for the assessee and the counsel for the department to throw light on the objects and reasons of the Act, or the Notes on Clauses in order to highlight the reasons that led to the difference in language. They have placed before us the Bill in Part II, Section 2 of the Gazette dated April 24, 1961, at p. 464, and the Notes on Clauses at pp. 474 and 475 of the same. The note on Clause 23(ii) covers a case where the building is to remain unoccupied for the whole year. This, we find, is now taken care of by Section 23, Clause (3), of the Act, which is as follows :

"23. (3) Where the property referred to in Sub-section (2) consists of one residential house only and it cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house shall-

(a) If the house was not actually occupied by the owner during the whole of the previous year, be taken to be nil, or

(b) if the house was actually occupied by the owner for a fraction of the previous year, be taken to be that fraction of the annual value determined under Sub-section (2):

Provided that the following conditions are in either case fulfilled :

(i) the house is not actually let, and

(ii) no other benefit therefrom is derived by the owner. "

5. We see no reason for not giving effect to the plain and direct language employed in Section 24(1)(ix) of the Act.

6. Counsel for the revenue drew our attention to the decision of the Bombay High Court in *SIR KASTURCHAND LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY CITY.*, regarding Section 23A of the Indian I.T. Act, 1922. The decision has no direct application and we need not discuss the same. Reference was made to the decision in *Liquidator, Mahmudabad Properties Ltd. Vs. Commissioner of Income Tax, .* Speaking with reference to Sections 22 and 23 of the I.T. Act, the learned

judges of the Calcutta High Court observed that the income brought to charge under these sections is the annual value of the property and that the same is to be deemed to be the rent for which the property might reasonably be expected to let from year to year. These, it was observed, are deeming provisions based on the idea of hypothetical tenancy. The provisions were taken as indicative that the property had to be considered as it is, at the time of determination of its annual value. That decision, again, has no direct bearing on the question that we have to consider in the instant case.

7. The matter is essentially one of first impression, and, on the language of the section, we are of the opinion that unless the vacancy occurred during a part of the year and did not last for the entire year, the relevant part of the section can have no application. In this view, we answer the question referred in the negative, i.e., in favour of the revenue and against the assessee. There will be no order as to costs.

8. A copy of this judgment, under the seal of the court and the signature of the Registrar, will be communicated to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.

Gopalan Nambiyar, C.J.

9. These cases were posted "to be spoken to", today, because, although three cases, I.T.Rs. Nos. 64 and 65 of 1976 and ITR 33 of 1977 were heard together, the judgment delivered related only to ITR No. 33 of 1977. That was apparently on account of the fact that the order of reference related only to ITR No. 33 of 1977 and I.T.Rs. Nos. 64 and 65 of 1976 were called up as connected with it. These cases (I.T.Rs. Nos. 64 and 65 of 1976) relate to the same assessee for the assessment years 1972-73 and 1973-74 and raise the same question. Following our decision in ITR No. 33 of 1977, we answer the question referred in these cases also in the negative, i.e., in favour of the revenue and against the assessee. There will be no order as to costs.

10. A copy of this judgment under the signature of the Registrar and the seal of the court, will be communicated to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.