(1992) 01 KAR CK 0045

In the Karnataka High Court

Case No : Income-tax References No''s. 186 and 187 of 1985

Commissioner of Income Tax APPELLANT

Vs

Ramkumar Mills Pvt. Ltd. RESPONDENT

Date of Decision : 30-01-1992

Acts Referred:
Income Tax Act, 1961 — Section 22, 28

Citation : (1992) 108 CTR 436 : (1992) 197 ITR 160

Hon'ble Judges : S.P. Bharucha, C.J;Shivaraj V. Patil, J

Bench : Division Bench

Advocate : H. Raghavendra Rao, for the Appellant; K.S. Ramabhadran, for the Respondent

Judgement

S.P. Bharucha, C.J.—This is a reference u/s 256(2) of the Income Tax Act, 1961, made at the instance of the Revenue. The assessments years with which we are concerned are the assessment years 1977-78 and 1978-79. The question that is referred to us reads thus :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Commissioner of Income Tax (Appeals) who held that the assessee is not liable to be assessed to tax in respect of the lease rent of Rs. 6,000 attributable to the sites agreed to be sold ?"

2. Briefly stated, the facts are thus :

The assessee is a private limited company. It owned sites Nos. 725 to 736 and 1049 in Block No. 4, Rajajinagar Extension, Bangalore-10. It had leased the said sites under an agreement dated February 23, 1974, to Yadalam Brothers Private Limited. Thereafter, with the consent of said lessee, the assessee entered into an agreement to sell some of the said sites, which yielded a rent of Rs. 6,000 per annum to Yadalam Subbaiah Setty and Company for the sum of Rs. 80,000. For the assessment years in question, corresponding to the previous years ended March 31, 1977, and March 31, 1978, the assessee submitted that it had ceased to collect lease rent for the said sites after the execution of the agreement foe sale so that the lease rent of Rs. 6,000 per annum should not be included in its business income. The Revenue, on the other had, submitted that the assessee continued to be the owner of the said sites until they stood transferred to the vendee in accordance with law so that the lease rent that accrued to the assessee in respect of the said sites was liable to be included in the assessee''s business income. The matter having gone up in appeal to the Income Tax Appellate Tribunal, the Tribunal found that the assessee had executed an agreement of sale and that thereunder (clause 2(a)) it was the vendee who became entitled to collect the lease rents from that date. It also found that possession of the said sites bad been handed over by the assessee to the vendee and that, in fact, the lease rent for the said sites had not been received by the assessee for the periods under consideration. In these circumstances, the Tribunal came to the conclusion that the Commissioner of Income Tax (Appeals) was perfectly justified in holding that the lease rents of the said sites could not be assessed in the hands of the assessee for the relevant years. The Tribunal noted that the case of income assessable under the head "Property" u/s 22 was different from income assessable as business income u/s 28.

3. On behalf of the Revenue, emphasis has been laid upon the judgment of this court in the case of the assessee itself Ramkumar Mills P. Ltd. Vs. Commissioner of Income Tax, As the question before the court in that case shows, the court was concerned with house property income u/s 22 and it held that until ownership of property was transferred by execution and registration of a sale deed, the owner was, for the purposes of section 22, liable to income that accrued from the property. There can be no doubt as to the correctness of that decision in view of that fact that the phraseology used in section 22 is "..........property considering of any buildings or lands appurtenant thereto of which the assessee is the owner........" We are here concerned with business income u/s 28 and there is no provision similar to that which we have quoted therein.

4. In the circumstances of the case, the right to collect the lease rent having been made over to the vendee and the lease rent having been, in fact, collected by the vendee, the amount of the lease rent cannot be said to be the assessee''s business income for the purposes of section 28.

5. In the result, the question is answered in the affirmative and in favour of the assessee.

