
(2000) 11 MAD CK 0142

In the Madras High Court

Case No : Tax Case No"s. 647 and 648 of 1983

Commissioner of Income Tax

APPELLANT

Vs

S. Muthukumaraswamy

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 23(1), 23(1)(a), 23(1)(b), 24

Citation : (2000) 11 MAD CK 0142

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : O. Anand Ram, for the Appellant;

Judgement

K. Gnanaprakasam, J.—Two questions have been referred to this Court at the instance of the revenue : (1) as to whether with regard to the second proviso to section 23(1) of the income tax Act, 1961 ("the Act"), the Tribunal was justified in allowing the claim of the assessee in respect of new residential units, and (2) as to whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the word "income" referred to in the second proviso to section 23(1) could refer to only the annual value and not the income after the deductions admissible u/s 24 of the Act. The assessee is an individual and she was assessed to tax in individual status for the years 1975-76 and 1976-77. She had constructed a new property at No. 14, Ramaswamy Street, Madras-1, with borrowed funds. The property consisted of four floors and the first floor is occupied by the assessee and other three floors are rented out to the tenants. In respect of this property, the assessee returned a loss of Rs. 12,974 and Rs. 816 in the returns for the assessment years referred above, and in doing so, the assessee reduced the annual value for eight units at Rs. 1,200 per unit under the second proviso to section 23(1). The Assessing Officer did not accept the assessee's computations, which necessitated the assessee to prefer an appeal.

2. The appellate authority while confirming the view of the ITO, however, allowed the deduction of the part of the interest against the assessee's income from self-

occupied property. As against the same, these references have been made.

3. A similar question arose for consideration of this Court in the case of Commissioner of Income Tax Vs. K. Rajagopalan, wherein it has been held that the limitation with regard to the extent of the deduction of the annual value provided for in the second proviso to section 23(1) is only with reference to the annual value determined u/s 23(1)(a) or 23(1)(b) and it has no relevance whatever for determining the extent of deductions provided u/s 24. The deductions provided for in section 24 are required to be made from out of the amount ascertained as the annual value u/s 23(1)(a) or 23(1)(b) as reduced by the amounts referred to in the second proviso. Section 24 itself does not provide that the result of the computation can never be a loss or that the loss is to be ignored. Section 24 is not made subject to the second proviso to section 23(1). The words of limitation referred to in that proviso are not to be regarded as being part of section 24. Applying the said principle, we answer the references in favour of the assessee and against the revenue.