(1993) 01 AHC CK 0054

In the Allahabad High Court

Case No : Income-tax Reference No''s. 1030 and 1031 of 1978

Commissioner of Income Tax APPELLANT

Vs

Shiv Mohan Lal RESPONDENT

Date of Decision : 23-01-1993

Acts Referred:
Income Tax Act, 1961 — Section 22

Citation : (1993) 111 CTR 406 : (1993) 202 ITR 60

Hon'ble Judges : M.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Respondent

Judgement

M.C. Agarwal, J.—In compliance with this court''s direction u/s 256(2) in Miscellaneous I. T. A. Nos. 325 and 326 of 1976, the Income Tax Appellate Tribunal, Delhi Bench ''D'', has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the user of the house property by the partnership firm could be said to be user thereof by the assessee for the purposes of business carried on by the assessee within the meaning of Section 22 of the Income Tax Act, 1961?"

2. The assessee is a Hindu undivided family and the aforesaid question concerns its assessment for the assessment years 1968-69 and 1971-72. The assessee owned a house property being half share in building No. 13, M. G. Road, Agra. The said property was being used for purposes of business carried on by a partnership firm, Messrs. Ganeshi Lal and Sons, Agra, in which the assessee''s karta, Shiv Mohan Lal, and other members were partners in their individual capacity. The Income Tax Officer assessed the annual letting value of the said property as the assessee''s income from house property. This action of the Assessing Officer was upheld by the Appellate Assistant Commissioner. On further appeal by the assessee, the Income Tax Appellate Tribunal, however,

observed that no rent had been charged by the assessee from the partnership firm which was using the property for business purposes for the last 62 years and the annual letting value thereof was never assessed to tax as income of the assessee. The Tribunal, therefore, held that the property will be deemed to be used by the assessee for its own business and, therefore, the annual letting value thereof was not taxable as income of the assessee.

3. Section 22 of the Income Tax Act, 1961, reads as under :

"The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax, shall be chargeable to Income Tax under the head '' Income from house property''."

4. A perusal of this provision of law would indicate that it is not necessary for an assessee to actually receive rent in respect of house property for incurring liability to be taxed on the income from house property. The annual letting value of a house property is, subject to the provisions of the Act, to be treated as income from house property. An exception has been made in respect of property which an assessee may occupy for purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax.

5. In the present case, the assessee-Hindu undivided family is the owner of the house property. The business which is being carried on in the properly in question, however, is not owned by the assessee. The said business is being carried on by individuals in partnership with other persons. The fact that such individuals are members of the assessee-Hindu undivided family cannot make that business a business carried on by the present Hindu undivided family. Admittedly, the income from that business does not belong to the assessee and is not taxable in its hands.

6. Reliance was placed by learned standing counsel on Commissioner of Income Tax, Karnataka Vs. K.N. Guruswamy, in which the Hon''ble Karnataka High Court took the view that where a house property was owned by a partner but was used by the partnership firm for its business the occupation of the property was not by the owner for his business and, therefore, the annual letting value was taxable in the hands of the owner. On the other hand, learned counsel for the assessee placed reliance on CIT v. Rasiklal Balabhai [1979] 119 ITR 305 and Commissioner of Income Tax Vs. P.M. Thomas, in which a contrary view was taken holding that the annual letting value of a property belonging to the assessee which was in the occupation of a partnership firm in which the assessee was a partner was not includible in the income of the assessee u/s 22. These authorities dealt with a different set of facts in which the partner was the owner of the property that was being used by the partnership firm. In the case before us, the situation is different. Even the partners are not the owners of the house property. The owner is the Hindu undivided family. In the case of a partner, the

income from the business is taxable in the hands of that partner to the extent of his profit and there is some identity in the income from house property and the income from business. The rationale in making an exception u/s 22 in respect of property used for business is that the same income should not be doubly taxed in the hands of the same person. That can happen only where one and the same person is liable to Income Tax in respect of the house property as well as the business carried on therein. In the circumstances of the present case, that cannot happen as the income from business is taxable in the hands of the individuals while the income from house property is taxable in the hands of the Hindu undivided family. The fact that the assessee had not been charging any rent from the partnership firm or that in the past the notional income from that property was not being assessed as income of the assessee was not relevant and could not override the specific provisions of Section 22. We, therefore, hold that, on the facts and in the circumstances of the case, the Tribunal was not right in holding that the user of the house property by the partnership firm was user thereof by the assessee for purposes of the business carried on by the assessee. Accordingly, we answer the question in favour of the Revenue and against the assessee.

7. Parties shall bear their own costs.