
(1979) 07 AP CK 0016

In the Andhra Pradesh High Court

Case No : Case Referred No. 137 of 1976

D.R. Sunder Raj

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 22, 23(2)

Citation : (1980) 2 AnWR 232 : (1980) 123 ITR 471

Hon'ble Judges : C. Kondaiah, C.J.; P.A. Choudary, J

Bench : Division Bench

Advocate : Y.V. Anjaneyulu, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Kondaiah, C.J.—This is a reference made u/s 256(1) of the Income Tax Act, 1961 (hereinafter called " the Act") at the instance of the assessee, by the Income Tax Appellate Tribunal, Hyderabad Bench, for the opinion of this court on the following question of law:

" Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim the statutory allowance for self-occupation provided in section 23(2) of the Income Tax Act, 1961? "

2. In order to understand the scope of the question, it is necessary to refer briefly to the material facts as revealed from the statement of case submitted by the Tribunal, which lie in a short compass. The assessee, an individual, who is an employee of Vazir Sultan Tobacco Co. Ltd., owns a house whose annual letting value was declared for the assessment year 1970-71 relevant to the accounting year ending with March 31, 1970, at Rs. 1,800 in the return filed, by him, disclosing income from salary at Rs. 51,086. The house was in fact let out by the assessee, the owner, to his employer-company on a monthly rent of Rs. 250 and the employer-company had allotted the same house to the assessee as rent-free quarters. The assessing authority, who opined that the assessee was not entitled to the statutory allowance for self-occupied property as provided u/s 23(2) of the

Act, disallowed the claim and added a sum of Rs. 3,000 to the returned income. On appeal, the AAC accepted the contention of the assessee that he was entitled to the statutory allowance u/s 23(2) of the Act on the ground that he was in actual occupation of the same for his residence during the relevant year of account and allowed the appeal. Aggrieved by the decision of the AAC, the ITO preferred an appeal to the Income Tax Appellate Tribunal. The Tribunal disagreed with the view of the AAC and held that the occupation of the assessee was not as owner of the house but only as sub-tenant of the employer-company in view of the admitted fact that the house had been let out by the owner-assessee to his employer-company and, therefore, he was not entitled to the relief provided under Sub-section (2) of Section 23 of the Act. Consequently, the Tribunal allowed the appeal. Hence, this reference.

3. Sri Y. V. Anjaneyulu, learned counsel for the assessee contended that the factum of the house being let out by the owner assessee to his employer-company for rent would not in any way disentitle him from claiming relief u/s 23(2) of the Act so long as he himself occupies the house. This claim of the assessee is opposed by Sri P. Rama Rao, learned standing counsel for revenue, contending inter alia that the assessee can have the benefit of the provisions of Section 23(2) only when the house has been occupied by the owner for the purpose of his own residence but not in any other capacity and, therefore, the view taken by the Tribunal is correct.

4. The answer to the question depends upon the provisions of Sections 22 and 23. Sections 22 - 27 of Chap. IV of the Act deal with " Income from house property". Section 24 provides for deductions from income from house property, whereas Section 25 indicates the amounts not deductible from income from house property. Section 26 applies to cases where property is owned by co-owners. Section 27 defines the terms " owner of house property ", " annual charge ", etc., for the purpose of Sections 22 - 26.

5. Section 22 relates to annual value of house property of which the assessee is the owner. The income from house property shall be chargeable to Income Tax under the head " Income from house property ". Where any portions of the property are occupied by the owner-assessee for any business or profession carried on by him, the income out of such portions of house property is not taxable under the head " Income from house property " as the profits of the business or profession are chargeable to Income Tax. It is pertinent to notice that in Section 22 stress is laid on the ownership of the house property and, therefore, tax u/s 22 is exigible upon the owner be it legal or beneficial, but not upon the occupant of the house property. Secondly, the tax is not levied upon the actual income from the house property but upon the " annual value of the property ".

6. Section 22 is the charging section in respect of income from house property whereas Section 23 provides as to how the annual value of house property is determined for the purpose of Section 22. u/s 23(1) the annual rent shall be

deemed to be the annual value notwithstanding the fact that the annual rent is in excess of the aforesaid sum in respect of the house property which was actually let out for rent. Where the house property is not let out or let out for an annual rent which is lesser than the notional annual value, it is the notional annual value that should be taken for the purpose of assessment. However, it must be noticed that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of such property shall be deductible in determining the annual value. Sub-Section (2) of Section 23 which is relevant and material for our purpose, may be noticed:

"(2) Where the property consists of-

(i) a house in the occupation of the owner for the purposes of his own residence, the annual value of such house shall first be determined in the same manner as if the property had been let and further be reduced by one-half of the amount so determined or one thousand and eight hundred rupees, whichever is less ;

(ii) more than one house in the occupation of the owner for the purposes of his own residence, the provisions of clause (i) shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf:

Provided that for the purposes of clauses (i) and (ii), where the sum so arrived at exceeds ten per cent, of the total income of the owner (the total income for this purpose being computed without including therein any income from such property and before making any deduction under Chapter VIA), the excess shall be disregarded.

Explanation.--Where any such residential unit as is referred to in the second proviso to Sub-section (1) is in the occupation of the owner for the purposes of his own residence, nothing contained in that proviso shall apply in computing the annual value of that residential unit."

6. In order to attract the provisions of Section 23(2) it must be established that, (i) the house property must be in the occupation of the owner during the relevant accounting year, and (ii) the occupation of the owner must invariably be " for the purpose of his own residence ". Unless and until the aforesaid two conditions are satisfied the relief provided to the assessee thereunder cannot be earned by him. The stress is on the words " owner"s occupation of his house property for the purpose of his own residence ".

7. As pointed out earlier, the charging Section 22 creates a liability to pay tax on the income from house property upon the person who owns the house property be it legal or beneficial. A tenant or a person, who is the occupant without any authority of the owner of the house property, is not liable to be charged for the income from such house property. As the charge created u/s 22 in respect of income from house property being admittedly upon the owner, legal or beneficial the relief or benefit provided under Sub-section (2) of Section 23, which is enacted as to how the annual value of house property is determined for the

purpose of Section 22, can come to the aid of only the owner, legal or beneficial, of the house. The intendment and object of providing this beneficial method of determining the annual value of the house property under Sub-section (2) of Section 23 is to provide relief to the owner when he, in his capacity as owner, occupies the same for his own residence. The relief contemplated under Sub-section (2) would not be applicable to a case where the house property had in fact been let out for rent. The determination of the annual value of the owner's self-occupation for his own residence has to be made in the same manner as if the property had been let and further be reduced by one-half of the amount so determined or Rs. 1,800 whichever is less. Where there is self-occupation by the owner for his own residence, the annual value of such house would, under no circumstances be beyond Rs. 1,800 per annum. Where half of the rental value is really less than Rs. 1,800 that lesser amount alone must be considered to be the rental value. If the house has been occupied by the owner himself for the purpose of his own business, Section 22 or Section 23 would not be attracted.

8. The proviso to Section 23(3), which requires to prove that no benefit from the house either by letting it out or by any other way is derived by the owner, would also support this view of ours. A house may be a residential house and it was not occupied actually by the owner on account of his employment or business or profession carried on in any other place. The annual value of such house shall be taken to be nil if it was not actually occupied by him during the whole of the previous year or as determined under Sub-section (2) if it was actually occupied by the owner for a fraction of the previous year. However, the aforesaid benefit would not accrue to the owner assessee if the house is let out or any benefit is derived therefrom by him.

9. We are, therefore, of the firm view that the provisions of Section 23(2) cannot be applied to cases where the owner of the house is not occupying his own house for his own residential purpose. In the case on hand, the owner assessee was not actually occupying the house as owner for his own residence. As he had let out the house to his employer company which had allotted it to him as rent-free quarters, he must be held to have been in occupation of the house belonging to him in his capacity as sub-tenant of his employer company although his occupation is for his own residential purpose. The fact that he was not occupying the house in question for his residential purposes in his capacity as owner, upon whom a charge is created u/s 22 in respect of the income from that house property, does not also entitle him to have the benefit of Section 23(2) which provides for a beneficial method to determine the annual rental value for the purpose of Section 22. To put it differently, it is only the house owner who occupies his own house, for his own residence that would be entitled to the beneficial determination of the annual rental value provided u/s 23(2) of the Act, but not in any other capacity.

10. Judged from any angle, we are satisfied that what has been decided by the Tribunal is in accordance with the provisions of Sections 22 and 23 and there is

no legal flaw or error therein. For all these reasons, stated above, our answer to the question must be and is in the negative and against the assessee holding that the assessee is not entitled to claim the statutory allowance for self-occupation provided in Section 23(2) of the Act. There shall be no order as to costs.