(1984) 03 BOM CK 0013

In the Bombay High Court

Case No : IT APPEAL No''s. 5772 AND 5773 (BOM.) OF 1983

DUNGERSHI HARIDAS — APPELLANT

Vs

TWELFTH Income Tax OFFICER. — RESPONDENT

Date of Decision : 27-03-1984

Acts Referred:
Income Tax Act, 1961 — Section 22

Citation : (1984) 9 ITD 129

Hon'ble Judges : D. V. Junnarkar, A.M.

Bench : Division Bench

Judgement

Per Shri D. V. Junnarkar, Accountant Member - The assessee was the owner of a building with some open land appurtenant thereto. There are already some tenants in the building. He entered into an agreement for sale of the entire property for an amount of Rs. 2 lakhs in June 1971 to Shri Shantikumar Dharamshi and Smt. Shobhna Shantikumar. The final conveyance of the property in favour of Shantikumar has not been made. The possession was, however, handed over to Shantikumar, who had made some additions and alterations in the property. The assessee had ceased to recover the rents from the tenants. The assessee stated that as he had ceased to recover the rents from the tenants and the property was already the subject-matter of the agreement for sale, the income from the property should not be included in the total income of the assessee. In support of this argument, the assessee relied on the Supreme Court decision in the case of R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, . The ITO, however, relied on another decision of the Supreme Court in the case of Alapati Venkataramiah Vs. Commissioner of Income Tax Hyderabad, wherein it was held that the title to the land and building could not pass till the final conveyance was executed and registered in favour of the purchaser. He, therefore, proceeded to include the income from the property in the hands of the assessee.

2. The assessee appealed before the AAC. Having heard the arguments on behalf

of the assessee, the AAC followed the Bombay High Court decision in the case of Commissioner of Income Tax, Bombay City-IV Vs. Sultn Brothers Pvt. Ltd., and rejected the assessee, s appeal.

3. The assessee has, therefore, filed the present appeals before the Tribunal. On behalf of the assessee, reliance is placed on the Supreme Court decision in the case of R. B. Jodha Mal Kuthials (supra). Further reference is also made to the Punjab and Haryana High Court decision in the case of Smt. Kala Rani Vs. Commissioner of Income Tax, and the Patna High Court decision in the case of Addl. Commissioner of Income Tax Vs. Sahay Properties and Investment Co. (P.) Ltd., On behalf of the revenue, reliance is placed on the Bombay High Court decisions in the cases of Commissioner of Income Tax, Bombay City I Vs. Union Land and Building Society Pvt. Ltd. [1972] 83 I.T.R. (Sh. N.) 1, , Commissioner of Income Tax, Bombay City III Vs. Zorostrian Building Society Ltd., and finally in the case of Sultan Bros. (P.) Ltd. (supra).

4. Having carefully considered the facts and circumstances of the case, we find that the facts lie within a narrow compass. The assessee agreed to sell his immovable property to Shantikumar Dharamshi and Shobhna Shantikumar by an agreement dated June 1971. The final conveyance was, however, not made or registered. The question is whether the assessee has ceased to be the owner of the property. We find that under similar circumstances the Bombay High Court in the case of Sultan Bros. (P.) Ltd. (supra) has held that the assessee continued to be the owner. While doing so, they have followed therein own decision in the case of Zorostrian Building Society Ltd. (supra). Further, they have also considered the Punjab and Haryana High Court decision in the case of Smt. Kala Rani (supra) and the Supreme Court decision in the case of R. B. Jodha Mal Kuthials (supra) relied upon by the assessee. We find that the earlier Bombay High Court decision in the case of Union Land & Building Society (P.) Ltd. (supra), they have held that under an agreement to sell house property where the transferor receives earnest money and hands over possession of the property to the purchaser with all other rights incidental thereto and due at tornments are made by informing the tenants to pay rent to the purchasers and the balance sale consideration is received by the vendor later, in the absence of a registered sale deed where the value of the property exceeds Rs. 100, the transferee cannot be regarded as the owner of the property. The vendor continued to be the owner of the property and was liable to be assessed on the income from the house property u/s 22 of the Income Tax Act, 1961 (the Act). In view of this clear pronouncement of the law on the subject as late as on 11-2-1982 by the learned judges of the Bombay High Court, we are unable to see how the AAC could have arrived at a different conclusion. He was fully justified in following the Bombay High Court decision on this subject. There is no substance in the appeal filed on behalf of the assessee.

5. In the result, the appeals filed by the assessee fail and are, accordingly, dismissed.

