

(1984) 08 AP CK 0004
In the Andhra Pradesh High Court
Case No : R.C. No. 283 of 1978

J.V. Desai

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-08-1984

Acts Referred:

Income Tax Act, 1961 — Section 23(1), 23(2)

Citation : (1985) 45 CTR 52 : (1985) 154 ITR 828 : (1985) 20 TAXMAN 179

Hon'ble Judges : G. Ramanujulu Naidu, J;A. Raghuvir, J

Bench : Division Bench

Advocate : A. Satyanarayana, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Ramanujulu Naidu, J.—The following question is referred to this court by the Income Tax Appellate Tribunal at Hyderabad under s. 256(1) of the I.T. Act, 1961 (the Act) :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to a deduction of Rs. 2,400 per annum in respect of two residential units let out for commercial purposes under clause (b) of the second proviso to section 23(1) of the Income Tax Act of 1961 ?"

2. The assessee owns a two-storeyed residential building. The entire building was let out to the National Textile Corporation during the assessment years 1974-75 and 1975-76. While the first floor of the building was used for housing the office of the National Textile Corporation, the ground floor of the building was used as a guest house. The building was constructed between April 1, 1970, and April 1, 1978. The assessee claimed deduction of a sum of Rs. 2,400 from the annual rent received from the building consisting of two units relying upon clause (b) of the second proviso to s. 23(1) of the Act. The claim was rejected by the ITO as also by the AAC on appeal. The appeal preferred before the Income Tax Appellate Tribunal at Hyderabad also met with the same fate. The Tribunal held that the benefit conferred under clause (b) of the second proviso to s. 23(1) of the Act

could only be availed of if the building was actually used for residential purposes and not otherwise. In other words, the nature of user of the building let out, according to the Income Tax Appellate Tribunal, determines grant or denial of relief envisaged by clause (b) of the second proviso to s. 23(1) of the Act.

3. It is not denied that the building of the assessee let out was constructed after April 1, 1970, and before April 1, 1978. The building consists of two units. Both the units are residential when the building was let out.

4. Sri A. Satyanarayana Rao, learned counsel appearing for the assessee, submits that so long as the two units of the building let out are residential, the assessee is entitled to the benefit irrespective of its user by the tenant either with or without or against his consent. The submission of the learned counsel is full of substance and has to be given effect to. The benefit envisaged under clause (b) of the second proviso to s. 23(1) of the Act is to a building comprising one or more residential units constructed during the period specified therein and is not dependent upon its user by the tenant to whom the building was subsequently let out. There are no express words employed in the second proviso of s. 23(1) of the Act restricting grant of relief envisaged therein with reference to the subsequent user of the building. In a fiscal enactment, nothing is to be read in and nothing is to be implied. The reasoning adopted by the Tribunal for denying the relief to the assessee, to our mind, is fallacious. In the case of occupation of a residential building by the owner thereof, the benefit conferred under clause (b) of the second proviso to s. 23(1) of the Act is taken away for the reason that the owner of the building in such a situation gets a larger benefit under sub-s. (2) of s. 23 of the Act. We, therefore, hold that the assessee is entitled to deduct a sum of Rs. 1,200 from out of the annual rent received from each unit of his building while computing his assessable income. The question is accordingly answered in the affirmative and in favour of the assessee and against the Revenue. We, however, make no order as to costs.