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(1988) 12 BOM CK 0058

In the Bombay High Court

Case No : Income-tax Reference No. 141 of 1976

M.V. Sonavala APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-12-1988

Acts Referred:
Income Tax Act, 1961 — Section 23, 23(1)

Citation : (1989) 75 CTR 74 : (1989) 177 ITR 246

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—The questions of law referred to us for opinion in this reference are:

"1967-68 to 1970-71 assessments years:

1. Whether, on the facts and in the circumstances of the case, the annual value of the property in the Commerce Center, Bombay, could be taken at Rs. 41,328 for 1967-68 and 1968-69, at Rs. 41,638 for 1969-70 and at Rs. 38,073 for 1970-71 assessment being the actual compensation received from Pfizer Pvt. Ltd., as against the municipal ratable value of Rs. 13,955, Rs. 21,170, Rs. 23,470 and Rs. 23,470 for the respective assessment years ?

2. Whether, on the facts and in the circumstances of the case, the annual value of the property at Prabhu Kutir, Bombay, could be taken at Rs. 1,500 per month as against the lower municipal annual ratable value of Rs. 4,011 for the first year and Rs. 8,811 for the subsequent years ?

1968-69 and 169-70 assessment years:

3. Whether, on the facts and in the circumstances of the case, the annual value of the property in Sewree, Bombay, could be taken at Rs. 6, 324 based on the actual rent as against the lower municipal annual ratable value of the same ?

1970-71 assessment year:

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4. (i) Whether, on the facts and in the circumstances of the case, the annual value of flat No. 103, Valentina, could be taken at Rs. 1,400 per month on the basis of actual rent receipt as against the lower municipal annual ratable value for the same ?

(ii) Whether, on the facts and in the circumstances of the case, the annual value of flat No. 104, Valentina, could be taken at Rs. 900 per month on the basis of actual rental as against the lower municipal annual ratable value for the same ?"

2. The questions of law referred are many, but the issue involved is only one, namely, computation of annual value of the properties within the meaning of section 23(1)(a) of the Income Tax Act, 1961, as applicable to the relevant assessment years. The department authorities as well as the Tribunal have held that the annual value of the properties requires to be taken at the amounts received by the assessee as actual compensation in respect of different properties and not at their municipal ratable value. The Tribunal has for the purpose relied upon a Supreme Court decision in the case of Motichand Hirachand and Others Vs. Bombay Municipal Corporation, .

3. Smt. Jagtiani, learned counsel for the assessee, relied on the recent Supreme Court decision in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and Dr. Balbir Singh and Others Vs. M.C.D. and Others, for the proposition that in the cases of properties subject to rent control legislation which provided for fixation of standard rent, the standard rent alone could be the basis for fixation of municipal ratable value for the purpose of levy of municipal taxes. Inviting then our attention to another Supreme Court decision in the case of Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, , learned counsel stated that this was a direct decision on the issue. It was held in this decision that the annual value of the property is required to be determined with reference to "standard rent" and not the actual rent received.

4. However, the questions posed to us are not whether the annual value of the property for the purpose of section 23(1)(a) should be taken at the actual compensation received or on the basis of standard rent. The question is whether the annual value should be taken at the amount which is the actual compensation received or at the amount which is the actual compensation received or at the amount fixed as municipal ratable value cannot be equated to standard rent.

5. In this context, it may be desirable to refer to the Calcutta High Court''s decision in the case of Commissioner of Income Tax Vs. Prabhabati Bansali, . One of the questions involved in that case was whether the Tribunal was justified in directing the Income Tax Officer to redetermine the annual value of the property u/s 23(1) afresh with reference to its ratable value as determined by the municipal corporation. The question was answered in the affirmative and the court held that the income from house property had to be computed on the basis of the sum for which the property might reasonably be let from year to year and

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the annual municipal value.

6. Following the Calcutta High Court decision Commissioner of Income Tax Vs. Prabhabati Bansali, , which we think, has taken the right view, we answer the questions in the negative and against the Department with a direction that the annual value of different properties will now be determined by the Tribunal in accordance with the directions set out above. No order as to costs.

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