

(1977) 04 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 182 of 1975

Nihalkaran (Rao) and another		APPELLANT
	Vs	
State of M.P. and others		RESPONDENT

Date of Decision : 19-04-1977

Acts Referred:

Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 — Section 4(1), 6, 6(c)

Citation : (1977) JLI 712

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.L. Oza, J.—This is a petition filed by the petitioners against a demand of property tax issued by the Property Tax Officer Indore alleging that the petitioners are trustees and possessed of properties in the nature of houses in Indore. The list of properties has also been mentioned In the petition. It is alleged that u/s 4 (1) of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam 1954 (here-in-after referred to as "the Adhiniyam") tax is charged on the annual letting value of the houses and section 4 provides different rates in accordance with the annual letting value of the property. According to the petitioner as this tax is levied on the property each property is a unit and therefore tax could be charged on the basis of the annual letting value of each of the properties individually where as the respondents have assessed the tax on the basis of the rate applicable on the basis of the total of the annual letting value of all the properties of the petitioner put together. According to the petitioners, even the Urban Property Tax Commissioner, to whom revision was taken up has accepted the assessments and consequently they have filed the present petition alleging that notices for recovery of the tax have been issued against the petitioners.

2. It was contended on behalf of the petitioners that section 4 of the Adhiniyam

levies a tax on urban lands and buildings and the scheme of the Adhiniyam clearly indicates that the unit of taxation is the property and not the person as the tax levied on the urban property and not on the income of the person earned from the urban property. It was therefore contended that for the purpose of rate at which the tax is to be charged each individual property which is the unit for taxation will have to be considered separately and the rate could only be fixed on the basis of the annual letting value of each individual property and not on the basis of the total of the annual letting value of all the properties in the hands of the petitioners. It was also contended that the proviso to clause (c) of section 6 of the Adhiniyam which talks of totalling up in case of exemption itself goes to show that the scheme of taxation u/s 4 is on the basis of the unit i.e. one property ; and therefore the proviso to clause (c) of section 6 could not be used for interpreting section 4. Learned counsel for the petitioners in support of his contentions placed reliance on the decisions reported in Omprakash Agrawal v. Deputy Properly Tax Commissioner, 1973 J.L.J. 9697: 1973 M.P.L.J. 918 and Central Provinces Manganese Ore Co. Ltd. v. Head Quarter Deputy Collector, Balaghat, 1960 J.L.J. 360: 1960 M.P.L.J. 265.

3. On behalf of the respondents it is contended that for the purposes of determining the rate at which tax should be charged the basis will be the total amount of annual letting value being obtained by the petitioners although the tax would be levied on each of the units of the property. According to learned counsel for the respondents the proviso to clause (c) of section 6 of the Adhiniyam goes to show that for the purpose of taxation the annual letting value has to be totalled up. Similar are the contentions raised in the return.

4. It is not in dispute that the Adhiniyam is passed by the State Legislature exercising powers of legislation under Item 49 of List II in the Seventh Schedule of the Constitution. Item 49 reads :--

49. Taxes on lands and buildings.

It is also clear that income in the hands of the person could not be taxed by the State Legislature under Item 49 of List II as that would fall under Item 82 of List I of the Seventh Schedule which is within the competence of the Union Legislature. Item 82 of List I, reads :--

82. Taxes on income other than agricultural income.

It is therefore clear that while interpreting the provision of this Adhiniyam we will have to keep in view that it is a State Law enacted in exercise of the powers under Item 49 of the State List.

5. Section 4 of the Adhiniyam provides :--

4. Levy of tax on immovable property.--(1) There shall be charged, levied and paid for each year, a tax on lands or buildings or both situate in an urban area at the rate specified in the table below;--

(i) Where the annual letting value does not exceed Rs. 4000/-- Ten per centum of the annual letting value,

(ii) Where the annual letting value exceeds Rs. 4000/-- but does not exceed Rs. 20,000/-- Fifteen per centum of the annual letting value,

(iii) Where the annual letting value exceeds Rs. 20000/-- Twenty per cent of the annual letting value

(2) The tax levied under sub-section (i) shall fall due on such dates as may be prescribed and be payable to the State Government by the owner of the land or building, as the case may be.

(3).....

This section goes to show that the tax is levied on lands or buildings situated in the urban area at the rates specified in this section and different rates have been provided where the annual letting value does not exceed the limit provided in sub-section (1) of this section.

6. "Annual letting value" has been defined in Clause (a) of section 2 of the Adhiniyam :--

2. (a) "Annual letting value" in relation to any land or building means the annual letting value as determined u/s 5.

This sub-clause indicates that annual letting value in relation to any land or building means the annual letting value as determined in accordance with section 5 of the Adhiniyam. Reading section 4 along with this definition it would be clear that there is annual letting value in regard to each building or land situated in the urban area. Section 5 provides for the process of determining the annual letting value. This provision in the light of the fact that it is a tax levied on the property in the urban area makes it clear that the unit of taxation is the property situated in the urban area and it is a tax on the property and not on the person who owns it. Admittedly, it is not a tax on the income from property earned by a person but it is a tax on property on the basis of its annual letting value.

7. Section 6 of the Adhiniyam provides for certain exemptions from taxation and Clause (c) provides the limit of annual letting value upto which no tax will be chargeable. The proviso to this clause (c) reads :--

Provided that if any such building or land is in the ownership of a person who owns any other building or land in the same urban area, the annual letting value of such building or land shall, for the purposes of this clause, be deemed to be the aggregate annual letting value of all buildings or lands owned by him in that area ;

This proviso therefore indicates that if any property which falls within the ambit under clause (c) of S. 6 is in the ownership of a person who owns any other building or land in the same urban area, then the annual letting value of such

building or land for the purpose of this clause shall be deemed to be the aggregate of the annual letting value of all buildings or lands owned by him in that area put together. This proviso therefore clearly establishes that the aggregate of the annual letting value could only be considered for the purpose of this clause (c) and for no other. If the contention advanced by the respondents is accepted that for the purpose of assessment of tax u/s 4 the annual letting value of all the properties in the hands of a person is to be totalled up, then automatically while applying clause (c) of section 6 the annual letting value of all the properties in the hand of a person will have to be added up in order to find out whether he is entitled to the exemption as provided in section 6(c). But it appears that this could not be done without the proviso which has been provided to clause (c) of section 6. It could not be contended that the proviso to clause (c) is redundant or unnecessary as it is clear from the scheme of the law itself that without the proviso to clause (c) even for the purposes of exemption the annual letting value could not be added up. This proviso therefore also further goes to support the contention advanced by learned counsel for the petitioner that in the scheme of the Adhiniyam the unit of taxation is the property and not the income of the person. Consequently, while assessing the tax in regard to each unit of property the rate shall have to be fixed on the basis of the annual letting value of that property and not the total annual letting value of all the properties standing in the name of one person.

8. In Omprakash Agrawal, Indore Vs. Deputy Property Tax Commissioner, M.P., Gwalior and others, a question arose about the consideration of exemption under clause (h) of section 6 of the Adhiniyam and in that context it was observed.--

The proviso to clause (c) of section 6 clearly states that if in the same urban area a person owns more than one building, then for the purposes of this clause the aggregate annual letting value of all the buildings owned by him in that area will be considered. Clause (c) of section 6 therefore, clearly indicates that where the Legislature intended that the annual letting value of all the houses of a particular owner should be added up for consideration of exemption, it has specifically so provided. It was contended on behalf of the respondents that in clause (h), the words buildings and lands" have been used which are in plural, and in the latter part of that clause the phrase used is "the annual letting value of such buildings" and therefore, this indicates that the total of the annual letting value of such buildings has to be considered. This contention cannot be accepted as it is clear that even in clause (c) the words "buildings and lands" are used in plural and in place of such the phrase used is "value of which. But on the basis of the phraseology no inference can be drawn as it is clear that the proviso to clause (c) specifically provided for totalling up of the annual letting value while in clause (h) no such provision has been added. Consequently a perusal of the language of the various clauses of this section goes to show that the exemption granted in clause (h) is for a building or land independently. It is also clear that under the scheme of the Act the unit of tax is a building (property) and not a person.

A similar question, although not under this Adhiniyam but under the C.P. and Berar Panchayats Act, came up before a Division Bench of this Court in Central Provinces Manganese Ore Company, Ltd. Vs. Head Quarters Deputy Collector, Balaghat, where tax on buildings and non agricultural lands was imposed under that Panchayat Act and Rules. Speaking for the Division Bench his Lordship Dixit C.J. observed :--

It would be seen from the above provision that the tax is against a building and non-agricultural land dependent on its valuation and it is payable by the occupier of the property and where there is no occupier by the owner himself. The unit of assessment is a building or a piece of land and not the owner or the occupier. The tax is not in the nature of a fixed or graduated levy on the ownership or occupancy of the property. The provision that the tax shall be payable by the occupier and where there is no occupier by the owner has been made with a view to providing a convenient mode for the realization of the tax by the Gram Panchayat. It is not a provision making the individual owner or occupier as the unit of assessment and making the valuation dependent upon the aggregate value of the property owned or occupied by him. This being the nature and import of the tax imposed by the Gram Panchayat on all buildings and lands within its area, it follows that for the purpose of taxation each building and each piece of non-agricultural land has to be valued separately and the owner or occupier, as the case may be, is liable to pay the tax in respect of each item of property so valued.

It is therefore clear that the tax could only be levied at a rate determined on the basis of annual letting value of each of the property treating it as a separate unit; and in this view of the matter therefore the demand made by the respondents of tax which is determined on the basis of the rate derived from the aggregate of the annual letting value of properties in the hands of the petitioners is not justified.

9. The petition is therefore allowed. The orders of assessment passed against the petitioners in regard to properties mentioned in the petition are set aside and it is directed that the respondents shall proceed to assess the tax on the basis of the annual letting value of each of the properties at a rate determined on the basis of the annual letting value of the property treating each of the properties as a separate unit. The petitioners shall be entitled to costs of this petition. Counsel fee Rs. 100/- (one hundred) if certified. Security amount be refunded to the petitioners after verification.