

(2002) 01 KAR CK 0077

In the Karnataka High Court

Case No : IT Appeal No. 274 of 2001 17 January 2002 A.Y. 1995-96 & Income Tax A. No. 274 of 2001

S. Ujjannappa

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Income Tax Act, 1961 — Section 22, 23 (2), 23 (3)

Citation : (2002) 255 ITR 455

Hon'ble Judges : G.C. Bharuka, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : S.N. Shyanbhog, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—The assessee has presented this appeal with a prayer to set aside the order dated April 25, 2001, passed in I. T. A. No. 863 of 1998, on the file of the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore, by which the Tribunal upheld the assessment order passed by the Assessing Officer quantifying the income from letting out the first floor of the premises owned by the assessee at Rs. 1,74,060 and subjecting it to tax under the Act.

2. The assessee is an individual owning a property at No. 380, 15th Cross, II Stage, II Phase, West of Chord Road, Bangalore. The building consisted of two floors, viz., ground and first. The assessee had filed return of income disclosing a rental income of Rs. 3,000 per month in respect of the ground floor. In respect of the first floor the assessee had not declared the annual letting value but claimed that it was mortgaged to one Harish Babu for Rs. 1,50,000 for a period of five years and he was not deriving any income from it. The Assessing Officer did not accede to the no income claim of the assessee in respect of the first floor and added Rs. 36,000 to the income declared by the assessee as notional income from the first floor. In appeal, the Commissioner of Income Tax concurred with

the assessment made by the Assessing Officer and dismissed the appeal. The Tribunal also concurred with the assessment order. Hence, the present appeal.

3. Heard learned counsel for the petitioner, Mr. S.N. Shyanbhog and Mr. M. V. Seshachala, learned standing counsel for the Department.

4. The income from property is an artificially defined income and the liability arises from the fact that the assessee is the owner of the property. The question whether the assessee actually earned income or not from the property is beside the point for the purpose of determining the annual value. The situation is no different even in the case of a mortgage. This position in law is clearly brought out by the wording contained in Section 22 of the Act, which reads :

"22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax, shall be chargeable to Income Tax under the head "Income from house property".

5. The exemption provided in respect of annual value of property u/s 22 of the Act is restricted only to such portion of such property as may be in the occupation of the owner for the purposes of any business or profession the profits of which are chargeable to Income Tax. Where the property is not self-occupied or rented out, Section 23(1)(a) provides the mode for the purposes of determining its annual value. It reads :

"(1) For the purposes of Section 22, the annual value of any property shall be deemed to be(a) the sum for which the property might reasonably be expected to let from year to year ; or . . ."

Sub-section (2) of Section 23 alone provides for total exemption from charging the annual value of the property to tax. It reads :

"(2) Where the property consists of a house or part of a house which-

(a) is in the occupation of the owner for the purposes of his own residence ; or

(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house or part of the house shall be taken to be nil."

Sub-section (3) of Section 23 also makes it abundantly clear that the provisions of Sub-section (2) shall not apply if the landlord receives some benefit from the property. It reads :

"(3) The provisions of Sub-section (2) shall not apply if-

(a) the house or part of the house is actually let during the whole or any part of the previous year ; or

(b) any other benefit therefrom is derived by the owner."

Barring the circumstance covered under Sub-section (2) of Section 23, no exemption could be claimed under the Act from charging the annual value of the property to Income Tax under the head "Income from house property". This would be so even in the case of a mortgage which will be squarely covered by Sub-section (3)(b) of Section 23 because under the mortgage the assessee has received some benefit from the property, even if no actual income is derived from the property. Since, no sum is received as rent from the property for purposes of Section 22 the annual value of the property, in the present case, shall be deemed to be the sum for which the property might reasonably be expected to be let from year to year. The Assessing Officer having assessed the annual value on that basis, we find no merit in this appeal.

6. Learned counsel for the appellant cited the decision in *M.C. Narasimhaswamy v. Poornegowda* [1963] MYs. LJ 198, to drive home the point that in the case of a property which is mortgaged under an agreement whereunder the rent receivable by the mortgagor from the property is set off against the interest payable to the mortgagee on the mortgage amount, the annual property value cannot be charged to Income Tax. Such a submission cannot be entertained in the light of the clear recitals contained in Sub-section (3) of Section 23 of the Act whereunder the annual value of the property is liable to be charged to Income Tax even in a case where some benefit is derived therefrom by the owner.

7. In this view of the matter, we find no merit in this appeal and it is, accordingly, dismissed.