
(1982) 12 CAL CK 0030

In the Calcutta High Court

Case No : Income-tax Reference No. 820 of 1979

S.C. Majumdar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-12-1982

Acts Referred:

Income Tax Act, 1961 — Section 23(1)

Citation : (1983) 35 CTR 202 : (1983) 141 ITR 486 : (1983) 13 TAXMAN 184

Hon'ble Judges : Suhas Chandra Sen, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : S. Bhattacharjee and Dipti Bhattacharjee, for the Appellant;S.K. Mitra and S.K. Chakraborty, for the Respondent

Judgement

Sabyasachi Mukherjee J.

1. In this reference for the assessment year 1974-75, u/s 256(1) of the I.T. Act, 1961, the following questions of law have been referred to us :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that for relief u/s 23(1), second proviso, Clause (b) of the Income Tax Act, 1961, each residential unit should be considered separately and the entire building cannot be considered as a whole ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee was not entitled to claim any deduction for any of the three floors u/s 23(1), second proviso, Clause (b) of the Income Tax Act, 1961 ?"

2. The ITO, in his assessment for the relevant assessment year, pointed out that the assessee had income from house property of which the third floor flats were occupied by the assessee, who was an individual, from April, 1972, after its final completion. The assessee claimed deduction u/s 23(1), second prov., Clause (b) of the said Act in respect of six residential units let out and also for the third floor occupied by the assessee for his dwelling. It was submitted before the ITO that

the deduction u/s 23(1), second prov., Clause (b) of the said Act is allowable to buildings, erection of which was begun after the 1st April, 1961, and completed after the 31st March, 1970, and as the construction of the house property of the assessee was completed in the financial year 1971-72, the assessee was entitled to a deduction u/s 23(1), second prov., Clause (b) of the said Act in the assessment year 1973-74. Before the ITO the assessee laid stress on the completion of the building as a whole but the ITO held that this contention was not tenable. The ITO held that the deduction under this section was allowable for each of the residential units of the building if it was let out. The ITO took the view that the applicability of the section came into force as soon as the residential unit was completed and let out. He also held that the third floor of the building was completed in the financial year 1972-73 and was occupied by the assessee for dwelling in that year. He was of the view that the construction up to the second floor was completed by the financial year 1968-69 and was partly let out and partly occupied by the assessee and so the building up to the second floor was completed by that time. He also held that the completion of the third floor of the building was merely an extension of the existing completed building consisting of six residential units. He was of the view that since the deduction is allowable for each residential unit in the building, it was the completion of the residential unit that had to be considered, and not the completion of the building as a whole. The ITO, therefore, held that the deduction u/s 23(1), second prov., Clause (b) of the said Act claimed by the assessee cannot be allowed in respect of six residential units completed by the financial year 1968-69 and the third floor of the building completed by 1972-73 did not come into consideration as it was occupied by the assessee for self dwelling and not let out. For calculating the house property income he considered the gross rental income and allowed 3/4ths of the municipal tax and 3/4ths for the service charges and thus calculated the house property income from letting out at Rs. 12,487. As regards the dwelling house portion he calculated the annual letting out value at Rs. 8,400 and after allowing the proportionate deduction of municipal tax, for repairs, collection charges, vacancy allowances and interest he calculated the income at Rs. 12,430 after further allowing Rs. 1,800 as deduction u/s 23(2) of the I.T. Act, 1961.

3. The assessee appealed before the AAC. The AAC agreed with the finding of the ITO. He also pointed out that in the case of the assessee the construction of the house up to the second floor was completed by the end of the financial year 1968-69 and so the assessee was not entitled to a deduction u/s 23(1), second prov., Clause (b) of the said Act in respect of six residential units let out. The AAC also held that the ITO disallowed the assessee's claim for deduction in respect of the unit which was completed during the financial year. The AAC agreed with the ITO that the assessee was not entitled to any deduction u/s 23(1), second prov., Clause (b) of the said Act since it was in the occupation of the assessee.

4. There was a further appeal before the Tribunal and the only ground, which was presented before the Tribunal, was to the effect that the construction of the

whole building was completed after 31st March, 1970, and so the completion of the construction of some individual residential units comprising of the buildings earlier should not and could not be considered in considering the claim under the second prov. to Clause (b) of Section 23(1) of the said Act. It was also pleaded before the Tribunal that if two interpretations were possible of the second prov. to Clause (b), then one, which was in favour of the assessee, should have been applied. The Tribunal considered the rival contentions, set out the relevant facts and observed as follows :

" 12. We find that Section 23(1), second proviso, Clause (b) lays down that in the case of a building comprising one or more residential units, the erection of which is begun after the first day of April, 1970, the deduction is allowable for a period of three years from the date of the completion of the building, proviso (a), Clauses (i) and (ii) refer to the residential unit. The Income Tax Officer and the Appellate Assistant Commissioner have both held that the first and second floor consisted of six residential units which were completed in the financial year 1968-69 and thus the assessee could claim the relief for these six residential units within three years from the assessment year 1968-69. Thus, the assessee could get relief u/s 23(1), second proviso, Clause (b) for these six residential units only up to the assessment year 1971-72. Thus, it is evident that for the first and second floors consisting of six residential units, the assessee could not get relief in the assessment year 1974-75, as these six residential units were completed before the first day of April, 1970.

13. Admittedly, the third floor of the building was completed by the financial year 1972-73, u/s 23(1), second proviso, Clause (b), in the case of a building comprising one or more residential units, erection which is begun after the first day of April, 1961, and completed after the 31st day of March, 1970, the assessee is entitled to deductions for a period of 5 years from the date of the completion of the building in respect of the residential units. However, the Explanation to Section 23(2) of the said Act lays down that where a residential unit is in occupation of the owner for the purpose of his own residence then nothing contained in the second proviso to Sub-section (1) shall apply in computing the annual value of that residential unit. The ITO and the AAC have both pointed out that the third floor of the building was completed in the financial year 1972-73, but it was occupied by the assessee for self-dwelling and not let out and so the assessee is not entitled to relief u/s 23(1), second proviso, Clause (b).

14. The learned counsel for the assessee has submitted that the residential units should not be taken separately but the entire building should be considered as a whole. But we find that in the second proviso to Section 23(1) residential units have been referred to which clearly goes to show that each residential unit will be entitled to relief on the basis of its completion; we cannot agree with the learned counsel for the assessee the building refers to the completion of all the residential units. The second proviso to Section 23(1) clearly refers to the

building relating to each residential unit. We, therefore, hold that the Appellate Assistant Commissioner and the Income Tax Officer were correct in holding that the assessee is not entitled to claim any deduction for any of the three floors u/s 23(1), second proviso, Clause (b) of the said Act. We, therefore, uphold the order of the Appellate Assistant Commissioner and the assessment order of the Income Tax Officer. "

5. In order to appreciate the contention it is necessary to determine the actual provisions of the relevant section. We must mention that this section has undergone from time to time certain amendments. In order to get the full meaning of the provisions of that section it is necessary to set out the section in extenso :

" 23(1) For the purposes of Section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year :

Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner, be deducted in determining the annual value of the property :

Provided further that the annual value as determined under this Sub-section shall,--

(a) in the case of a building comprising one or more residential units, the erection of which is begun after the 1st day of April, 1961, and completed before the 1st day of April, 1970, for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of-

(i) in respect of any residential unit whose annual value as so determined does not exceed six hundred rupees, the amount of such annual value ;

(ii) in respect of any residential unit whose annual value as so determined exceeds six hundred rupees, an amount of six hundred rupees;

(b) in the case of a building comprising one or more residential units, the erection of which is begun after the 1st day of April, 1961, and completed after the 31st day of March, 1970, for a period of five years from the date of completion of the building, be reduced by a sum equal to the aggregate of-

(i) in respect of any residential unit whose annual value as so determined does not exceed one thousand two hundred rupees, the amount of such annual value ;

(ii) in respect of any residential unit whose annual value as so determined exceeds one thousand two hundred rupees, an amount of one thousand two hundred rupees ;

so, however, that the income in respect of any residential unit referred to in Clause (a) or Clause (b) is in no case a loss.

(2) Where the property consists of one or more houses and such house or houses is or are in the occupation of the owner for the purposes of his own residence, the annual value of such house or where there are two such houses, the annual value of each such house or where there are more than two such houses, the annual value of two of such houses (which the assessee may, at his option, specify in this behalf), shall first be determined in the same manner as if the property had been let and further be reduced, in each case, by one-half of the amount so determined or one thousand eight hundred rupees, whichever is less:

Provided that where the sum so arrived at exceeds ten per cent, of the total income of the owner (the total income for this purpose being computed without including therein any income from such property and before making any deduction under Chapter VIA), the excess shall be disregarded.

Explanation 1.--Where any such residential unit as is referred to in the second proviso to Sub-section (1) is in the occupation of the owner for the purposes of his own residence, nothing contained in that proviso shall apply in computing the annual value of that residential unit.

Explanation 2.--Where any such property as is referred to in this Sub-section consists of more than two houses, the annual value of the houses other than those the annual value of which is required to be determined under this Sub-section shall be determined under Sub-section (1) as if such houses had been let.

(3) Where the property referred to in Sub-section (2) consists of one residential house only and it 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 shall-

(a) if the house was not actually occupied by the owner during the whole of the previous year, be taken to be nil, or

(b) if the house was actually occupied by the owner for a fraction of the previous year, be taken to be that fraction of the annual value determined under Sub-section (2):

Provided that the following conditions are in either case fulfilled :

(i) the house is not actually let, and

(ii) no other benefit there from is derived by the owner."

6. The question, therefore, is what would be the proper construction to be given to the expressions, building, residential unit and annual value in the context of the scheme of the section read with the second prov. to Clause (b) to Section 23(1) and Expln. 1 to Sub-section (2) of Section 23. In this connection our attention was drawn to some of the authorities including the observation of this court, i.e., in the case of B.B. Sarkar Vs. Commissioner of Income Tax, , and in

the case of *Bilaspur Spinning Mills and Industries Ltd. Vs. Commissioner of Income Tax*, . The principles are well settled. Those are : (a) that the statute should be read as a whole, (b) the intention of the Legislature to the extent it is discernible in the language expressed should be given effect to, (c) there should be a harmonious construction between the different provisions of the sections dealing with the matter, (d) where two interpretations are reasonably possible, the one which is in favour of the assessee should be given effect to, and (e) the fiscal-statute should be strictly construed. These principles are well settled by a long series of decisions and it is not necessary for us to refer to any decision in greater detail for this purpose. But the question, in this case, is to find out the meaning of the given expression and the intention of the Legislature. We have noted that the proviso to Sub-section 23(1) used the expression " building " and it also used the expression " residential unit ". The building, as such, is not defined nor is the residential unit denned in the Act. Therefore, in construing this provision, we must give meaning to these expressions in the ordinary sense. The building should certainly be one which is habitable and complete and it may either be one-storeyed, two-storeyed or three-storeyed. Therefore, on reading the second proviso to Section 23(1), Clause (b), it seems to us that the assessee is right in contending that because in the case of a building comprising one or more residential units, the erection of which had begun after 30th April, 1966, and completed on 31st March, 1971, as in the instant case, five years, deduction is allowable from the date of completion of the building, he is entitled to a deduction as mentioned in Clause (i) of the second proviso to Section 23(1). Therefore, the assessee's full claim should have been allowed if we go by the second proviso to Section 23(1), which we have set out hereinbefore. But we must bear in mind the first Explanation to Sub-section (2) of Section 23 and construe that provision along with the provisions of Sub-section (1). The Expln. 1 makes it clear that where such residential unit, as referred to in the second proviso to Sub-section (1) is in the occupation of the owner, which is a residential unit in which the owner is staying, comes within the mischief of this provision, then it clearly stipulated that nothing contained in the proviso to this section shall apply to the computation of the annual (value of the) residential unit. It appears to us that the whole scheme is to pay the annual value of the building (sic). But for that, the computation of the annual value of the residential units is necessary in order to measure the relief to be granted to the assessee. In case any residential unit comes within the mischief of Expln. 1 to Sub-section (2) of Section 23 then, to the extent the annual value of that residential unit comes within the mischief of Expln. 1 it has to be eliminated and the assessee is not entitled to get any relief. Therefore, in so far as the Tribunal held that for that residential unit, the assessee was not entitled to a relief, the Tribunal seems to be right. But on that ground the assessee cannot be denied complete relief. The harmonious effect of the provisions of the section would be to say that on completion of the entire building, including the residential unit which is in the occupation of the assessee, the assessee is entitled to a relief. But, in computing that relief, the annual value of the residential unit which is in the occupation of

the assessee should be deducted or the assessee should not be given any relief for that residential unit. Apart from that, the assessee would be entitled to get the full relief for the assessment year in question.

7. In the premises, we would answer question No. 1 by saying that the Tribunal was wrong in not allowing relief to the assessee. The relief that the assessee should get was that the annual value of the building should be computed after deduction, to which the assessee is entitled throughout, except the annual value of the residential unit, which is in the occupation of the assessee. The question No. 1 is, therefore, answered accordingly.

8. Second question is also answered by saying that the assessee is entitled to a relief for the relevant assessment year not for the entirety of the building but after deducting the annual value of the residential unit, which is in the occupation of the assessee. The second question is, therefore, answered accordingly.

9. Mr. Mitra, advocate on behalf of the Department, orally asks for leave to appeal to the Supreme court. We do not consider it a fit case to grant certificate for leave to appeal to the Supreme Court because the relief sought for has been considered by us and we have given our views on the construction of the relevant section. Moreover, the construction of this section, has become academic after 1971. For the reasons aforesaid, we are unable to grant the certificate asked for.

10. In the facts and circumstances of the case, the parties will pay and bear their own costs.

Suhas Chandra Sen, J.

11. I agree.