
(1980) 03 AHC CK 0042

In the Allahabad High Court

Case No : Income-tax Reference No. 33 of 1976

Smt. Radha Devi Dalmiya

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-03-1980

Acts Referred:

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

Citation : (1980) 17 CTR 67 : (1980) 125 ITR 134 : (1980) 4 TAXMAN 183

Hon'ble Judges : Satish Chandra, C.J.; H.N. Seth, J

Bench : Division Bench

Advocate : N.B. Singh, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Judgement

Satish Chandra, C.J.—For the assessment year 1971-72 the Appellate Tribunal held that for the purposes of Section 22 of the I.T. Act, 1961, the annual letting value of the house be fixed at Rs. 14,000. Aggrieved by this finding, this reference has been made at the instance of the assessee.

2. It appears that the assessee constructed a house in Tilak Nagar, Kanpur. Taking into consideration the investment made by the assessee as well as the likely return, the ITO determined the annual letting value at Rs. 18,000. This finding was affirmed by the AAC. The assessee took the matter in appeal to the Tribunal. The Tribunal held :--

"The assessee has taken an objection that annual letting value taken by the Appellate Assistant Commissioner at Rs. 18,000 was not justified and the annual letting value should be taken at Rs. 8,700, as shown, by her. Section 23(2) states how the annual value would be determined. The Appellate Assistant Commissioner has taken the investment in the house and also the rent which the property would fetch in the open market while determining the annual letting value at Rs. 18,000. If these two factors are taken into consideration, the value taken by the assessee at Rs. 8,700 could not be accepted, but, however, if a fair return of about 7% is taken on the investment made by the assessee, the annual

letting value in round figures would be taken at Rs. 14,000, Accordingly, the annual letting value taken by the Appellate Assistant Commissioner is substituted for the same figure."

3. The figure of Rs. 8,700 was the annual letting value determined by the municipal authorities. The assessee was relying upon it. It appears that the assessee had spent a sum of Rs. 1,90,000 for making the house in Tilak Nagar, Kanpur. The conclusion of the Tribunal that for the year 1971-72 a fair return of about 7% on the investment be taken as the correct criterion is, in our opinion, eminently just and proper. The annual letting value determined by the municipal authorities at Rs. 8,700 would mean an expected return of about 3% only. It is well known that no one would invest such an amount to expect such a low return. There is, on the record, no evidence to show as to what factors or materials were taken into consideration by the municipal authorities while determining the annual letting value at Rs. 8,700.

4. Learned counsel for the assessee invited our attention to a decision of the Kerala High Court in C.J. George Vs. Commissioner of Income Tax, . That case is distinguishable. There, the municipal authorities determined the annual letting value at Rs. 18,000, though they were aware of the fact that the building was let out on an annual rent of Rs. 33,000. They took into consideration various circumstances and relevant factors such as the prevailing rent in the area and what a similar building of the same nature would fetch in that locality and then fixed the monthly rent at Rs. 1,500. The High Court observed that it is inconceivable that the authority who has as much interest in imposing as much legitimate tax as possible would have ignored this aspect before fixing the annual letting value. In the present case there is nothing to indicate as to what circumstances or factors were actually taken into consideration by the municipal authorities. That case is distinguishable on facts. However, in our opinion, the determination of the annual letting value on the basis of 7 per cent. of the investment was a just and a fair method of determining the annual letting value for the year 1971-72.

5. We, therefore, answer both the questions referred to us in favour of the department and against the assessee. The Commissioner would be entitled to costs which are assessed at Rs. 200.