(1972) 03 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2713 of 1965

T. Bhandari — APPELLANT

Vs

The Punjab State and Others — RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:
Punjab Urban Immovable Property Tax Act, 1940 — Section 5

Citation : AIR 1972 P&H 308

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. The petitioner owns Bungalow No. 10 in Amritsar Cantonment. It is a residential house and is surrounded by residential buildings which are similar bungalows in which officers of the Army generally reside. The annual value of this house was assessed at Rs.1800/- for purposes of tax under the Punjab Urban Immovable Property Tax Act, 1940, hereinafter referred to as the Act, prior to 1961. The annual value once determined under the Act endures for a period of five years. On February 10, 1961, the Assessing Authority, Amritsar, determined the annual value of the house at Rs.18,000/- and levied the tax on that value. A copy of that order is Annexure ''A'' to the writ petition. The petitioner went up in appeal and the Appellate Authority reduced the annual value to Rs.12,960/- by order dated May 16, 1963, a copy of which is Annexure ''B'' to the writ petition. A revision was filed against that order by the petitioner which was partly accepted by the Joint Excise and Taxation Commissioner, Punjab, by order dated January 27, 1965, and the annual value was reduced to Rs. 10,000/-. The petitioner is not satisfied with the determination of the annual value for the purposes of levying the tax under the Act and has, therefore, filed the present petition challenging all the three orders set out above. Written statement has been filed on behalf of the respondents in which the orders have been justified.

2. The learned counsel for the petitioner has submitted that the annual value for

the purposes of tax under the Act has to be determined in accordance with Section 5 of the Act which reads as under:--

"The annual value of any land or building shall be ascertained by estimating the gross annual rent at which such land or building together with its appurtenances and any furniture that may be let for use or enjoyment with such building might reasonably be expected to let from year to year, less--

(a) any allowance not exceeding twenty per centum of the gross annual rent as the assessing authority in each particular case may consider reasonable rent for the furniture let with any such building;

(b) an allowance of fifteen per centum for the cost of repairs and for all other expenses necessary to maintain such building in a state to command such gross annual rent. Such deduction shall be calculated on the balance of the gross annual rent after the deduction, if any, under clause (a); and

(c) any land revenue actually paid in respect of such building or land;

Provided that in calculating the annual value of any building or land under this section the value of any machinery in such building or on such land shall be excluded".

He has also emphasized that the gross annual rent cannot be determined on the basis of gains and profits derived therefrom by the owner of the property and in support of this submission, reliance has been placed on Ram Partap Vs. State of Punjab and Others, . There is force in the submission of the learned counsel. The language of Section 5 shows that the annual value of the building has to be ascertained by estimating the gross annual rent at which such building together with its appurtenances and any furniture that may be let for use or enjoyment with such building might reasonably be expected to let from year to year and from the amount so determined, deductions mentioned in clauses (a),(b) and (c) have to be allowed. The method of determination of gross annual rent of any building, according to Section 5, is to determine for how much rent the building can be rented out to a reasonable tenant who is in need of the accommodation comprised therein and is able to pay the reasonable rent therefor. The use to which the building is being put is not a criterion mentioned in the said section. The rent that the petitioner''s house can reasonably fetch can be determined on the basis of the accommodation comprised therein let out as a unit as it has been constructed and not on the basis of each room or servant''s quarter or garage being rented out to different tenants. That is not the way how residential bungalows or houses are let out. The servant''s quarters, motor garages, tank, kitchen etc., from appurtenances to the building and those appurtenances have to be taken into consideration while determining the annual rent of the building as a whole. As is clear from the impugned orders, this bungalow has two portions, one is the ground floor and the other is the first floor and the ground floor is not easily divisible into more self-contained units. It is, therefore, to be determined at what rent the ground floor as one unit can be let out to a reasonable tenant in the open market. In order to determine the rental value on that basis, it will also have to be taken into consideration how many people and in what income group are there to take that accommodation and pay reasonable rent therefor. The mere fact that the petitioner is using the ground floor to earn some money out of it by running it as a paying guest establishment cannot be said to affect the rental value thereof. The Assessing Authority should address himself to the question as to at what rent could the ground floor of the bungalow be let out to one tenant and then determine the annual gross rent of the ground floor. After determining that annual gross rent, the deductions prescribed under clauses (a),(b) and (c) of Section 5 have to be allowed to determine the annual value on which the tax has to be levied. To that amount may be added the annual value of the upper portion which has been determined at Rs.960/- per annum. This method has not been adopted by any of the authorities who passed the impugned orders. I, accordingly, accept this writ petition with costs and quash the impugned orders. The Assessing Authority is directed to determine the annual value of the bungalow of the petitioner on the basis of the principles set out above. While determining the annual value, the petitioner will be afforded an opportunity of hearing. Counsel''s fee Rs.100/-.

3. Petition allowed.

