
(1988) 11 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 63 of 1978

Tilak Raj

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-11-1988

Acts Referred:

Income Tax Act, 1961 — Section 23(2)

Citation : (1989) 178 ITR 327

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : None, for the Appellant; L.K. Sood, for the Respondent

Judgement

Gokal Chand Mital, J.—The following question of law has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Amritsar Bench :

"Whether, on the facts and circumstances, the Tribunal was right in holding that for determining the annual letting value of a self-occupied property, it is the open market rent which is to be considered and not the standard rent to be fixed under any Rent Control Act ?"

2. The assessee and his brothers are co-owners of a residential house in Tagore Colony, Mall Road, Amritsar. The house was in self-occupation and was never let out to a tenant for the assessment year 1975-76. The gross annual letting value of half share in the house relating to the assessee was estimated by him at Rs. 3,000 which was enhanced by the Income Tax Officer to Rs. 8,400, On appeal, the Appellate Assistant Commissioner reduced it to Rs. 7,200 and on further appeal by the assessee to the Tribunal, the annual value was maintained. In maintaining the annual value, the Tribunal rejected the argument raised on behalf of the assessee that the annual value has to be determined in accordance with the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called "the Act"), on the reasoning that the house was never let out and the standard rent should be determined only by the Rent Controller under

the Act and the same not having been determined, the open market rent was payable, it followed the decision of the Supreme Court in *M.M. Chawla Vs. J.S. Sethi*, .

3. To our mind, the matter is fully covered by the later decisions of the Supreme Court and one of our court. In *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, the Supreme Court observed as follows (headnote) :

"In relation to a building within the jurisdiction of the New Delhi Municipal Committee or the Corporation of Delhi, even if the standard rent has not been fixed by the Controller under the Delhi Rent Control Act, 1958, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under that Act. This would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of standard rent or the building is occupied by the owner himself. Therefore, in all such cases, the annual value of the building for purposes of house tax, whether u/s 3(1)(b) of the Punjab Municipal Act, 1911, or u/s 116 of the Delhi Municipal Corporation Act, 1957, is limited to the measure of the standard rent determinable on the principles laid down in the Rent Control Act and it cannot exceed such measure of standard rent. The assessing authority would have to arrive at its own figure of the standard rent by applying the principles laid down in the Rent Control Act for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent."

"(i) It is difficult to see how the annual value of a building could vary according as it is tenanted or self-occupied.

(ii) When the rent control legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the landlord. Any rent which exceeds this norm of reasonableness is regarded by the Legislature as unreasonable or excessive. The Legislature obviously regards recovery of rent in excess of the standard rent as exploitative of the tenant and would it be proper for the Court to say that it would be reasonable on the part of the landlord to expect to recover such exploitative rent from the tenant ?"

4. While recording the aforesaid observations, the decisions rendered by them in *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, was followed in preference to the decision rendered in *M.M. Chawla Vs. J.S. Sethi*, . The facts of the case are closer to the decision in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, because a reading of the quotation above clearly goes to show that the standard rent can be fixed not only by the Rent Controller but can also be determined on the

principles laid down in the Act by the municipal authorities when they are to impose property tax. Similarly, if the Income Tax Officer proposes to find out the gross annual income of a self-occupied building, it will have to determine the same on the principles laid down in the Act.

5. There are two direct decisions, one of this court in Panna Lal Talwar Vs. Commissioner of Income Tax, and the other of the Supreme Court in Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, as they were between the assessee and the department of Income Tax on the precise question as is now before us. In Panna Lal Talwar Vs. Commissioner of Income Tax, in the question referred for the opinion of this court, it was mentioned whether the Tribunal was right in relying on the decision in M.M. Chawla Vs. J.S. Sethi, and this court held that M.M. Chawla's case was of no assistance in determining the matter in issue and after following the decision of the Supreme Court in New Delhi Municipal Committee v. M. N. Sot AIR 1977 SC 302 expressed the following view (headnote) :

"The Income Tax Officer is bound to consider the fair rent determinable under the provisions of the East Punjab Urban Rent Restriction Act, 1949, for determining the annual letting value of self-occupied property for which fair rent has not been determined by the Rent Controller,"

6. In Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, M.M. Chawla Vs. J.S. Sethi, was referred to as also Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, . In that case, up to the Tribunal, M.M. Chawla Vs. J.S. Sethi, was followed and the matter was decided against the assessee. The High Court had declined to call for reference and after entertaining the special leave petition, special leave to appeal was granted and the matter was decided in favour of the assessee that standard rent was determinate under the provisions of the Rent Act by the Income Tax Officer and the actual rent received by the assessee could not be taken to be the annual value.

7. Accordingly, we are of the opinion that the Income Tax Officer had the jurisdiction to determine the gross annual letting value of the house on the principles laid down in Section 4 of the Act, and after allowing permissible rebates and deductions, to include his share of the balance in the income of the assessee.

8. For the foregoing reasons, we answer the question in the negative, that is, in favour of the assessee and against the Revenue but with no order as to costs as there is no representation on behalf of the assessee.