

(1983) 09 BOM CK 0048

In the Bombay High Court

Case No : I. T. APPEAL NO. 1076 (BOM.) OF 1982

WIM MANINTVELD

APPELLANT

Vs

ADDITIONAL FIRST Income Tax OFFICER.

RESPONDENT

Date of Decision : 03-09-1983

Acts Referred:

Income Tax Act, 1961 — Section 22, 23

Citation : (1986) 17 ITD 561

Hon'ble Judges : K. B. Menon, J.M.;K. B. Menon, J

Bench : Division Bench

Judgement

Per Shri K. B. Menon, Judicial Member - This appeal by the assessee relates to the assessment year 1977-78 for which the previous year ended on 31-3-1977.

2. The only ground taken is that the Commissioner (Appeals) erred in confirming the determination of the perquisite value in respect of the rent-free accommodation provided to the assessee at Rs. 16,800 as against the perquisite value of Rs. 7,716 based on the municipal valuation.

3. The assessee is an individual deriving income from salary and other sources. During the relevant previous year, the assessee was occupying a residential accommodation in Manek Building at Nepean Sea Road, Bombay, provided by his employer. The municipal valuation of the accommodation was Rs. 7,716 only and the perquisite value was returned by the assessee on this basis. The ITO relying upon Explanation 2 to rule 3(a) of the Income Tax Rules, 1962 (the Rules), estimated the market rent of the property at Rs. 48,000, and after the statutory deductions, arrived at the net assessable value of the perquisite at Rs. 16,800.

4. The commissioner (Appeals) did not go into the merits of the question as he found that the issue is decided against the assessee by the decision of the Tribunal in the case of the very same assessee for the assessment year 1976-77. During that assessment year also, the assessee had claimed that the perquisite value should be determined on the basis of the municipal valuation. The Tribunal

rejected the contention, after referring to the provision of Explanation 2 to rule 3(a) under which the valuation has to be the fair rental value of accommodation or the municipal valuation, whichever is higher.

5. Before us, it was fairly conceded by the learned representative for the assessee that the contention now advanced by the assessee had been rejected by the Tribunal for the assessment year 1976-77. But it was pointed out by the learned representative that the decisions of the Supreme Court in the cases of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, *Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi*, and *Amolak Ram Khosla Vs. Commissioner of Income Tax, Delhi II*, were not available and have not been considered by the Tribunal when it gave its earlier ruling. It was claimed that in the light of these rulings, the rent which a similar accommodation would realise in the same locality should be treated as the standard rent.

6. As against this, it was contended by the learned departmental representative that the Supreme Court ruling applies only to a case when the owner of the building is being assessed, that in the present case, there is no landlord-tenant relationship, that the relationship is that of an employer and employee, that Explanation 2 specifically provides for determining the perquisite value at the rent fetched by similar accommodation or municipal rent, whichever is higher and that there is, therefore, no scope for adopting standard rent for determining the perquisite value. It was also contended by the departmental representative that the decisions of the Tribunal for the assessment year 1976-77 holds good. The learned departmental representative also relied upon the ruling in the case of *Murlidhar Dalmia Vs. Commissioner of Income Tax, Delhi-II*,

7. In reply, it was contended by the learned representatives for the assessee that the rulings of the Supreme Court, relied on by him, should prevail over the decision of the High court relied upon by the learned departmental representative, that what is required under Explanation 2 is to find out rent, which a similar accommodation would fetch, that the supreme court ruling will apply to all cases where rent is to be determined and that only standard rent can be treated as reasonable rent, anything over and above the standard rent, being excess rent.

8. We have carefully considered the matter. The contention raised by the assessee before the Tribunal in the appeal for the assessment year 1976-77 [IT Appeal No. 2712 (Bom.) of 1979] was that the perquisite value of the building should be taken as the municipal valuation. In the light of Explanation 2 to rule 3(a) it was held by the tribunal that the fair rental value or the municipal valuation, whichever is higher, is to be taken into consideration. The further question whether the fair rental value should be taken as the standard rent was not considered by the Tribunal. In any case, the ruling of the Supreme Court in the cases of *Mrs. Sheila Kaushish (supra)* and in *Amolak Ram Khosla (supra)* were not available to the Tribunal and the impact of these rulings have not been

considered by the Tribunal. The question has, therefore, to be decided in the light of these rulings.

9. The ruling of the Delhi High Court in the case of Murlidhar Dalmia (*supra*), relied upon by the learned representative for the department, was one relating to the interpretation of rule 3(b). In that case residential accommodation had been provided the assessee-employee at a concessional rent. It was held that in such cases there was no scope for invoking the rent control law in determining the rental value. This ruling is not applicable to the facts of the present case.

10. We would now consider the effect of the ruling of the Supreme Court in the case of Mrs. Sheila Kaushish (*supra*). In the case of Amolak Ram Khosla (*supra*) the Supreme court had merely followed the decision in the case of Mrs. Sheila Kaushish (*supra*). The question that arose for consideration in the case of Mrs. Sheila Kaushish (*supra*) was the determination of the annual value of a house property under sections 22 and 23 of the Income Tax Act, 1961 (the Act). Section 23, so far as it is relevant for the present purpose, provided that the annual value of the property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. The Supreme Court held that the sum for which the property might reasonably be expected to let from year to year will be the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the land-lord from the tenant. The decision was with reference to section 23 as it stood prior to the amendment by the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-1976. By this amendment the annual value has to be deemed to be the annual rent actually received or receivable where the property had been let out. The Supreme Court took note of this amendment to hold that the sum for which the property might reasonably be expected to let can only mean the standard rent, which may be smaller than the amount for which the property was actually let.

11. We may now consider how far the above ruling of the Supreme Court will be applicable in interpreting the provisions of Explanation 2 to rule 3(a). The Explanation provides that for the purpose of sub-clause (iii) the fair rental value of the accommodation shall be the rent which a similar accommodation would realise in the same locality or the municipal valuation in respect of the accommodation, whichever is higher. Although it is claimed in the grounds of appeal that the rental value should be calculated on the basis of the municipal valuation, at the time of the hearing of the appeal, the learned representative for the assessee relied only upon the alternative contention raised in the grounds of appeal that the rental value should be determined on the basis of the standard rent. It was contended by the learned representatives for the assessee that the expression the rent which a similar accommodation would realise in the same locality occurring in Explanation 2 to rule 3(a) carries the same connotation as the expression the sum for which the property might reasonably be expected to let occurring in section 23. We are inclined to accept this submission. In our view, the expression the rent which a similar accommodation would realise in the

same locality occurring in Explanation 2 to rule 3(a) can be equated with the expression the sum for which the property might reasonably be expected to let occurring in section 23. It has been clarified by the Supreme Court in the case of Dewan Daulat Rai Kapoor (*supra*) that in a locality where the rent control legislation is in force the landlord cannot reasonably expect to receive from a hypothetical tenant anything paid over and above the standard rent is regarded by law as unreasonable or excessive. It was by following this ruling that the Supreme court held in the case of Mrs. Sheila Kaushish (*supra*) that the standard rent should be taken to be the rent for which the property might reasonably be expected to let. This would equally apply to Explanation 2 to rule 3(a) which provides that the rental value shall be the rent which a similar accommodation would realise in the same locality. It may also be stated in this connection that in the present case an Inspector deputed by the department found that no other flat had been rented out in the same building. The Inspector could not also report any case of actual letting in similar buildings in the locality. It cannot, therefore, be even said that a similar flat is actually fetching a rent higher than the standard rent. Even otherwise, as already stated, in the light of the ruling of the Supreme Court in the case of Mrs. Sheila Kaushish (*supra*) the standard rent has to be taken as the rent which a similar accommodation would realise in the same locality for the purpose of Explanation 2 to rule 3(a).

12. It has also to be noted that in the light of the ruling of the Supreme court the annual value of the property for the purpose of assessment of the employer will be based on the standard rent and there appears to be no justification for adopting a different rental value for the purpose of assessment of the employee who has been allowed the use of the building free of rent.

13. We, therefore, hold that the perquisite value of the rent-free accommodation has to be determined on the basis of the standard rent of the flat. The same may be taken as Rs. 1,870 as computed by the registered valuer subject to further verification by the ITO with regard to the correctness of the calculation.

14. In the result, the appeal is allowed to the extent indicated above.