The Commissioner of Income-Tax, Lucknow

Vs

Sh. Madho Pd. Jatia

Civil Appeal Nos. 1540-1542 of 1971

(H.R. Khanna, R.S. Sarkaria, Jaswant Singh JJ)

17.08.1976

JUDGMENT

KHANNA, J. -

1. These three appeals on certificate by the Commissioner of Income-tax are against the judgment of the Allahabad High Court whereby the High Court answered the following question referred to it under Section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act) in favour of the assessee-respondent and against the revenue :

> Whether in the facts and circumstances of the case, the assessee is entitled for each of the years under consideration to the exclusion from the income under the head 'property' of the amount equal to the irrecoverable rent of the Grand Hotel property for one year which has not been so excluded in the preceding assessments ?

2. The matter relates to the assessment years 1957-58, 1958-59 and 1959-60. The assessee is the owner of a building known as Grand Hotel in Civil Lines, Delhi. The income from this building was assessed from year to year under Section 9 of the Act as income from property. Subsequently there was a dispute between the assessee and her tenant. Protracted litigation followed and ultimately a compromise was reached between the assessee and the tenant as per compromise deeds dated December 8, 1954 and July 9, 1955. According to the assessee, a total amount of Rs. 1,85,892 representing rent due on account of Grand Hotel became irrecoverable from the tenant. At the time of the assessment year 1956-57 the assessee was able to secure deduction under item No. 38 of the Government of India Notification No. 878F dated March 21, 1922, as regards unrealised rent in previous years. The assessee made similar claims for deduction at the time of the assessment for the years 1957-58, 1958-59 and 1959-60. The claim was not specifically made before the Income-tax Officer but was made in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner declined to entertain the claim made at such a late stage. When the matter went up before the tribunal in further appeal, the tribunal permitted the assessee to raises that point before it. It was then urged on behalf of the department that in view of the deduction made for the assessment year 1956-57, no further deduction could be claimed by the assessee for the subsequent years. This contention advanced on behalf of the department was not accepted by the tribunal. The tribunal took the view that the claim could properly be made for the deduction in the assessment for the three years with which we are concerned in spite of the fact that such claim had been allowed in assessee's favour in the year 1956-57. On this view the tribunal directed the Income-tax Officer to compute the total rent which had become irrecoverable in respect of Grand Hotel property. The tribunal further directed that to the extent their irrecoverable rent had not been exempted in the previous assessment for 1956-57 should be exempted during the years under appeal in so far as

income from property was concerned. On application filed by the Commissioner of Income-tax the question reproduced above was referred to the High Court. The High Court, as stated above, answered the question in the affirmative and in favour of the assessee.

3. In appeal before us Mr. Sharma on behalf of the appellant has assailed the judgment of the High Court. As against that, Mr. Manchanda on behalf of the assessee-respondent has canvassed for the correctness of the view taken by the High Court.

4. Before dealing with the contentions advanced before us, it would be appropriate to refer to the relevant provisions on the subject. Section 9 of the Act deals with tax payable under the head "Income from property". According to that section, the tax shall be payable by an assessee under the head "Income from property" in respect of the bona fide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax, subject to certain allowances. Those allowances have been specified in Section 9, but for the purpose of the present appeals it is not necessary to refer to them. "Annual value" of any property, for the purpose of Section 9 shall, according to sub-section (2) of that section, be deemed to be the sum for which the property might reasonably be expected to let from year to year. Sub-section (2) is followed by a number of provisos, but we are not concerned with them in these appeals. Section 60 of the Act empowers the Central Government to make exemptions. According to that section, the Central Government may, by notification in the official gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour or any class of income, or in regard to the whole or any part of the income of any class of persons. In exercise of the powers conferred by the above section, the Central Government issued notification No. 878F dated March 21, 1922. Item 38 of that notification reads as under :

> "The following classes of income shall be exempt from the tax payable under the said Act . . .
>
> #* * * * ** * * * *##
>
> (38) Such part of income in respects of which the said tax is payable under the head 'property' as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where -
>
> (a) the tenancy is bona fide;
>
> (b) the defaulting tenant has vacated or steps have been taken to compel him to vacate the property;
>
> (c) the defaulting tenant is not in occupation of any other property of the assessee;
>
> (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Income-tax Officer that legal proceedings would be useless; and
>
> (e) the annual value of the property to which the unpaid rent relates has been included in the assessee's income of the year during which that rent was due and income tax has been duly paid on such assessed income.

5. Section 9 of the Act makes provision of or computation of income from property on a notional basis. According to this section, the income shall be taken to be the bona fide annual value of the property. In making the computation, certain allowances which are mentioned in Section 9 would have to be deducted. In case the property in question was in occupation of a tenant, the taxing authorities have, while computing the income from that property, to take into account its bona fide annual value. The question as to whether the tenant who was in occupation of the property has, in fact, paid the rent or not would not enter into the consideration at that stage, unless it be found that the rent due from the tenant has become irrecoverable. The fact that the rent due from the tenant has become irrecoverable would in a majority of cases be known only in subsequent years and not in the year during which the tenant has remained in occupation. None of the clauses dealing with allowances which are permissible under Section 9(1) of the Act deal with rent due from a tenant which remains irrecoverable. It was to meet such an eventuality that exemption was granted as per item No. 38 in notification No. 878F dated March 21, 1922. Item 38 exempts from payment of tax such part of the income in respect of which tax is payable under the head 'Property' as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable. In order to claim the benefit of the above exemption, the assessee has also to show that the requirements of clauses (a) to (e) of item 38 have been satisfied. It was not disputed before the High Court that conditions mentioned in clauses (a) to (e) item 38 had been fulfilled in the instant cases. The dispute between the parties centers on the point as to whether in the event of the amount of the irrecoverable rent being more than the amount of rent payable for a year, the assessee can claim the deduction only in one year equal to the amount of rent payable for a year, or whether the assessee can claim deductions for the balance of the irrecoverable rent in subsequent years also. In other words, the question is whether in the event of the amount of irrecoverable rent being more than the amount of the rent payable for a year of the property, the assessee can claim the benefit of the exemption mentioned in item 38 only once or whether the assessee can claim the benefit of that exemption in successive years also till such time as the assessee gets relief in respect of the whole of the amount of irrecoverable rent. Both the tribunal and the High Court took the view that it would be permissible to claim the benefit of the exemption in successive years. After hearing the learned Counsel for the parties, we find no cogent ground to take a different view.

6. The language of item 38 which has been reproduced above shows that if other conditions are satisfied, the deduction which can be claimed by the assessee at an assessment cannot exceed the amount of rent payable for a year. The item thus places a limit in respect of the deduction which is permissible in an assessment for one year. In case, however, the amount of irrecoverable rent exceeds the amount of rent payable for a year, the right of the assessee to claim the benefit of the above exemption does not, in our opinion, get exhausted by his having claimed exemption in one year. We find no cogent reason as to why the assessee should become disentitled to claim the benefit of the above exemption in respect of the balance of the irrecoverable rent in subsequent years subject to the condition that in no year the deduction would exceed the amount of rent payable for a year. The assessee, it has to be borne in mind, seeks exemption in respect of the notional rental income which he, in fact, never received but on which he had in terms of Section 9 of the Act to pay tax. The underlying object of the exemption granted by item 38 is that the assessee shall be entitled to claim deduction under the head 'property', in respect of the notional rental income which, it subsequently so transpired, was never received by him but on which he had so pay tax. Although item 38 fixes the limit of deduction which is permissible in one year, there is nothing in the language of that item to warrant the inference that the benefit of the exemption can be claimed only once. There is also nothing in the languages of that item to indicate that in respect of the balance of the irrecoverable rent, no relief is permissible even though tax on that balance amount too has been

paid by the assessee. It is well settled that there is no equity about tax. If the provisions of a taxing statute are clear and unambiguous, full effect must be given to them irrespective of any consideration of equity. Where however the provisions are couched in language which is not free from ambiguity and admits of two interpretations, a view which is favorable to the subject should be adopted. The fact that such an interpretation is also in consonance with ordinary notions of equity and fairness would further fortify the court in adopting such a course.

7. Mr. Sharma has invited our attention to the judgment of the Punjab High Court in the case of Daljit Singh v. C.I.T., Delhi ((1964) 52 ITR 933 (Punj)) wherein the Punjab High Court took a different view. For the reasons stated above, we prefer the view taken by the Allahabad High Court in the judgment under appeal (C.I.T v. M.P. Jatia, (1970) 76 ITR 201 (All)) to that of the Punjab High Court in Daljit Singh's case.

8. The appeals consequently fail and are dismissed with costs. One hearing fee.

</html