

Mrs. Shiela Kaushish

Vs

Commissioner of Income Tax, Delhi

Civil Appeals Nos. 2110 & 2111 of 1978

(P.N. Bhagwati, Baharul Islam JJ)

18.08.1981

JUDGMENT

BHAGWATI, J. –

1. These appeals by special leave raise a common question of law relating to the determination of annual value of a building for the purpose of chargeability to tax under the Income Tax Act, 1961 where the building is governed by the provisions of the rent control legislation but the standard rent has not yet been fixed. The facts giving rise to these appeals are few and may be briefly stated as follows :

2. The assessee constructed a warehouse in Delhi some time in 1961 at a total cost of Rs. 4,13,000. The warehouse consisted of two portions on the ground floor, one on the north and the other on the south and also a mezzanine floor and a first floor. On March 19, 1962, the assessee let out the whole of the first floor to the American Embassy at the rent of Rs. 5810 per month and subsequently on April 1, 1964 she let out the northern portion of the ground floor together with the mezzanine floor to the same tenant at of the rent of Rs. 6907 per months and on December 7, 1964 the northern portion of the ground floor was let out to the same tenant at the rent of Rs. 6640 per month. Thus the entire warehouse was let out by the assessee to the American Embassy with different portions let out under different tenancies commencing on different dates. On July 17, 1967, however, a new lease was entered into between the assessee and the American Embassy for letting out of the entire warehouse at the rent of Rs. 34,797 per month and this lease came into effect from April 1, 1968. The assessee thus started receiving rent at the rate of Rs. 34,797 per month in respect of the entire warehouse from April 1, 1968.

3. The question arose in the course of assessment of the assessee to income tax for the assessment years 1969-70 and 1970-71 as to how the annual value of the warehouse should be determined for the purpose of chargeability to income tax under the head "Income from house property." Now income from house property chargeable to tax is computable under Section 22 which provides that the annual value of property consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, shall be chargeable to income tax under the head "Income from house property". Where, therefore, the assessee owns a building, the annual value of such building is chargeable to income tax under the head "Income from house property" under Section 22. But the question immediately arise : how is the annual value to be determined ? The answer is provided by Section 23 which lays down the mode of determination of annual value. Sub-section (1) of that section as it stood at the material time provided that "for the purposes of Section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonable be expected to let from year to year". The assessee therefore claimed that on a proper construction of

sub-section (1) of Section 23, it was not the actual rent received by the assessee for the warehouse that was material for determining the annual value of the warehouse but the hypothetical amount for which the warehouse might reasonably be expected to let from year to year and since the Delhi Rent Control Act, 1958 (hereinafter referred to as the "Rent Act") was applicable in the area in which the warehouse was situate, the warehouse could not reasonably be expected to let from year to year at a rent exceeding the standard rent determinable under the provisions of that Act. The Income Tax Officer however, took the view that the actual rent received by the assessee provided the most accurate and satisfactory measure of the amount for which the warehouse might reasonably be expected to let from year to year and the annual value of the warehouse must therefore be taken to be the actual rent received by the assessee and he accordingly assessed the assessee to tax on the basis of the actual rent received by her. The assessee preferred an appeal to the Appellate Assistant Commissioner for each of the two assessment years challenging the correctness of the view taken by the Income Tax Officer and contending that the annual value of the warehouse must be taken to be the standard rent determinable under the provisions of the Rent Act, but the appeals were unsuccessful and the determination of the annual value made by the Income Tax Officer was affirmed. The Tribunal also took the same view on further appeals by the assessee and by a consolidated order dated September 28, 1973, confirmed the assessments made on the assessee on the basis of the actual rent received by her. The Tribunal held relying on the decision of this Court in *M.M. Chawla v. J.S. Sethi* [(1970) 1 SCC 14 : (1970) 2 SCR 390], that in the absence of fixation of standard rent, the agreed rent which is legally recoverable and not tainted by fraud, relationship or any other consideration must be taken to be the standard rent and hence the actual rent received by the assessee was rightly taken as the annual value of the warehouse. In the meantime, an application was made for fixation of the standard rent of the warehouse by the new tenant who came to occupy the warehouse after the American Embassy vacated it and on this application, the Rent Controller by an order dated March 13, 1973 fixed the standard rent at Rs. 34,848 per annum under the provisions of the Rent Act. The assessee aggrieved by the order dated September 28, 1973 made by the Tribunal, preferred two applications one in respect of each assessment year, seeking reference of five questions which, according to the assessee, arose out of the order of the Tribunal, but the Tribunal by a common order dated February 26, 1974, rejected the applications on the ground that there was only one question of law which arose out of the order of the Tribunal but that was concluded by the decision of this Court in *M.M. Chawla* case [(1970) 1 SCC 14 : (1970) 2 SCR 390] and so far as the other questions were concerned, they were all questions of fact and hence not referable under Section 256(1) of the Income Tax Act, 1961. The assessee thereupon preferred two applications before the High Court of Delhi under Section 256(2) of the Income Tax Act, 1961 for direction the Tribunal to make a reference, but these applications also met with the same fate and on the same grounds which found favour with the Tribunal, they were rejected by the High Court by judgment dated February 1, 1978. This led to the filing of two petitions for special leave to appeal, one in respect of each assessment year, and these petitions were allowed and special leave granted by this Court, giving rise to Civil Appeals 2110 and 2111 of 1978. Since these two appeals were directed against the judgment of the High Court refusing to call for a reference from the Tribunal, the only question which could have been considered by the Court in these appeals was as to whether any questions of law arose out of the order of the Tribunal requiring to be referred to the High Court and therefore even if the assessee succeeded in the appeals there would not be an end to the litigation but the questions of law formulated by this Court would have to be referred by the Tribunal to the High Court and then the High Court would have to hear the reference and answer the questions referred to it. This would have delayed considerably the final determination of the questions of law arising out of the order of the Tribunal and it was, therefore, agreed between the parties that the following two questions of law should be decided by the Court in these appeals,

since they admittedly arose out of the order of the Tribunal :

(1) Whether, on the facts and in the circumstances of the case, the actual rent received by the assessee or the standard rent under the Delhi Rent Control Act, should be taken to be the "annual value" of the property within the meaning of Section 23 of the Income Tax Act, 1961;

(2) Whether, there was any material on record on which the Tribunal could hold that the receipt of Rs. 4,17,674 from the American Embassy would be reasonable rent for which the property might be let in spite of the fact that properties in the immediate neighbourhood let out to the Bank of Baroda and Indian Oxygen Company Ltd. were let at rents considerably lower.

This Court accordingly made an order directing that these two questions of law should be disposed of by the Court directly, without calling for a reference from the Tribunal. However, since some doubt was felt whether this Court could directly dispose of the two questions of law arising out of the order of the Tribunal without calling for a reference, the assessee by way of abundant caution preferred two petitions for special leave to appeal directed against the order of the Tribunal dated September 28, 1973 and on these petitions, special leave was granted by this Court and that is how Civil Appeals 1184-1185 of 1981 have come up for hearing before us along with C.A. Nos. 2110 and 2111 of 1978.

4. Though two questions have been formulated by this Court as arising out of the order of the Tribunal dated September 28, 1973, it is the first which really formed the subject-matter of controversy between the parties and since, in our view, that question has to be answered on favour of the assessee, it is not necessary to embark upon a consideration of the second question. So far as the first question is concerned, it stands concluded by the recent decision of this Court in *Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee* [(1980) 2 SCR 607 : (1980) 1 SCC 685 : AIR 1980 SC 541 : (1980) 122 ITR 700]. There were three appeals decided by a common judgment in that case and the question which arose for determination in these appeals was as to how the annual value of a building should be determined for levy of house tax where the building is governed by the provisions of the Rent Act, but the standard rent has not yet been fixed. One of these appeals related to a case where the building was situate within the jurisdiction of the New Delhi Municipal Committee and was liable to be assessed to house tax under the Punjab Municipal Act, 1911 while the other two related to cases where the building was situate within the limit of the Corporation of Delhi and was assessable to house tax under the Delhi Municipal Corporation Act, 1957. The house tax under both statutes was levied with reference to the "annual value" of the building. The "annual value" was defined in both statutes in the same terms, barring a second proviso which occurred in Section 116 of the Delhi Municipal Corporation Act, 1957, but was absent in Section 3(1)(b) of the Punjab Municipal Act, 1911. This proviso was however not material as it dealt with a case where the standard rent was fixed under the provisions of the Rent Act, while in none of the cases before the Court was the standard rent fixed in respect of the building involved in such case. According to the definition given in both statutes, the "annual value" of a building meant the gross annual rent at which the building might reasonably be expected to let from year to year. The controversy between the parties centered round the question as to what is the true meaning and effect of the expression "the gross annual rent at which such house or building....may reasonably be expected to let from year to year" occurring in the definition in both statutes. The argument of the municipal authorities was that since the standard rent of the building was not fixed by the Controller under Section 9 of the Rent Act in any of the cases before the Court and in each of

the cases the period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of the standard rent had expired, the landlord in each case was entitled to continue to receive the contractual rent from the tenant without any legal impediment and hence the annual value of the building was not limited to the standard rent determinable in accordance with the principles laid down in the Rent Act, but was liable to be assessed by reference to the contractual rent recoverable by the landlord from the tenant. The municipal authorities urged that if it was not penal for the landlord to receive the contractual rent from the tenant, even if it be higher than the standard rent determinable under the provisions of the Rent Act, it would not be incorrect to say that the landlord could reasonably expect to let the building at the contractual rent and the contractual rent therefore provided a correct measure for determination of the annual value of the building. This argument was however rejected by the Court and it was held that even if the standard rent of a building has not been fixed by the Controller under Section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent 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 for the standard rent by the reason of expiration of the period of limitation prescribed by Section 12 of the Rent Act or the building is self-occupied by the owner. Therefore, in the either case, according to the definition of "annual value" given in both statutes, the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant would constitute the correct measure of the annual value of the building. The Court pointed out that in each case the assessing authority would have to arrive at its own figure of the standard rent by applying the principles laid down in the Rent Act for determination of the standard rent and determine the annual value of the building on the basis of such figure of the standard rent. The Court, on this view, negatived the attempt of the municipal authorities in each of the cases to determine the annual value of the building on the basis of the actual rent received by the landlord and observed that the annual value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Rent Act and it could not exceed such measure of the standard rent. Now this was a decision given on the interpretation of the definition of "annual value" in the Delhi Municipal Corporation Act, 1957 and the Punjab Municipals Act, 1911 for the purpose of levy of house tax, but it would be equally applicable in interpreting the definition of "annual value" in sub-section (1) of Section 23 of the Income Tax Act, 1961, because these definition are in identical terms and it is impossible to distinguish the definition of "annual value" in sub-section (1) of Section 23 of the Income Tax Act, 1961 from the definition of that term in the Municipal Corporation Act, 1957, and the Punjab Municipal Act, 1911. We must therefore hold, on an identical line of reasoning, that even if the standard rent of a building has not been fixed by the Controller under Section 9 of the Rent Act and the period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of the standard rent having expired, it is no longer competent to the tenant to have the standard rent of the building fixed, the annual value of the building according to the definition given in sub-section (1) of Section 23 of the Income Tax Act, 1961 must be held to be the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant. This interpretation which we are placing on the language of sub-section (1) of Section 23 of the Income Tax Act, 1961, may be regarded as having received legislative approval, for we find that by Section 6 of the Taxation Laws (Amendment) Act, 1975 sub-section (1) of Section 23 has been amended and it has now been made clear by the introduction of clause (b) in that sub-section that where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum for which the property might reasonably be expected to let from year to year, the amount so received or receivable shall be deemed to be the annual value of the property. The newly added clause (b) clearly postulates that the sum for which a

building might reasonably be expected to let from year to year may be less than the actual amount received or receivable by the landlord from the tenant. We are therefore of the view that in the present case the standard rent of the warehouse determinable under the provisions of the Rent Act must be taken to be the annual value within the meaning of sub-section (1) of Section 23 of the Income Tax Act, 1961 and the actual rent received by the assessee from the American Embassy cannot of itself be taken as representing the correct measure of the annual value.

5. We must therefore address ourselves to the question as to what would be the standard rent of the warehouse determinable under the provisions of the Rent Act for the assessment years 1969-70 and 1970-71 the relevant accounting years being April 1, 1968 to March 31, 1969 and April 1, 1969 to March 31, 1970. Now "standard rent" is defined in Section 2(k) to mean the standard rent referred to in Section 6 or where the standard rent has been increased under Section 7, such increased rent. Section 6 lays down deferent formulae for determination of standard rent according to deferent situations. Clause (A) of sub-section (1) enacts provisions for determination of standard rent in case of residential premises, but we need not refer to those provisions, since we are concerned in the present case not with residential premises but with a warehouse which constitutes non-residential premises. The provisions applicable for determination of the standard rent in the case of non-residential premises are set out in clause (B) of sub-section (1) and there also, we are concerned only with sub-clause (2) because the warehouse was admittedly let out for the first time after June 2, 1944. Since the standard rent of the warehouse was not at any time fixed under the Delhi and Ajmer Merwara Rent Control Act, 1947, or the Delhi and Ajmer Rent Control Act, 1952, the standard rent was liable to be determined under paragraph (b) of sub-clause (2) which provides that the rent calculated on the basis of seven and one-half per cent per annum of the aggregate amount of the reasonable cost of contraction and the market price on the land comprised in the premises on the date of the commencement of the construction shall be taken to be the standard rent of the premises. There is a proviso to this paragraph which says that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "seven and one-half per cent" the words "eight and five-eighth per cent" had been substituted.

But all these provisions for determination of standard rent are subject to the overriding provision enacted in sub-section (2) which provides in clause (b), which is the clause applicable in the present case since the warehouse was constructed on or after June 19, 1955, that in case of such premises.

....the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out.

Now the first floor of the warehouse was first let out at the rent of the Rs. 5810 per month from March 19, 1962 and therefore under clause (b) of sub-section (2) the rent of Rs. 5180 per month would be the standard rent of the first floor of the warehouse for the period of five years from March 19, 1962 up to March 18, 1967 and thereafter the standard rent would have to be determined under paragraph (b), sub-clause (2) of clause (B) of sub-section (1) and this latter figure would represent the standard rent of the warehouse determinable under the provisions of the Rent of Act for the accounting years April 1, 1968 to March 31, 1969 and April 1, 1969 to March 31, 1970. The next portion of the warehouse let out to the American Embassy was the northern portion of the ground floor together with the mezzanine floor for the period of five years from April 1, 1964 up to March 31, 1969 under clause (b) of sub-section (2) and thereafter it would have to be determined under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). Thus for the accounting year April 1, 1968 to March 31, 1969 the standard rent of the northern portion of the ground floor and

the mezzanine floor determinable under the provisions of the Rent Act would be Rs. 6907 per month while for the accounting year April 1, 1969 to March 31, 1970, the standard rent would be that determinable under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). That leaves the southern portion of the ground floor which was first let out to the American Embassy at the rent of Rs. 6640 per month from December 7, 1964, and according to clause (b) of sub-section (2), the standard rent of this portion would be Rs. 6640 per month for the period of five years from December 7, 1964 up to December 6, 1969 and thereafter it would be determinable under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). Thus for the accounting year April 1, 1968 to March 31, 1969 and April 1, 1969 to December 6, 1969 the standard rent of the southern portion of the ground floor determinable under the provisions of the Rent Act would be Rs. 6640 per month, while for the remaining portion of the accounting year from December 7, 1969 to March 31, 1970, the standard rent would be determinable under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). The annual value of the warehouse for the purpose of chargeability to income tax for the assessment years 1969-70 and 1970-71 would have to be determined on the basis of the standard rent of different portions of the warehouse determinable under clause (b) of sub-section (2) and paragraph (b) of sub-clause (2) of clause (B) of sub-section (1) of Section 6 of the Rent Act as discussed above.

6. We accordingly answer Question 1 in favour of the assessee by holding that the standard rent of different portions of the warehouse determinable under the provisions of the Rent Act as indicated above and not the actual rent received by the assessee from the American Embassy should be taken to be the annual value of the warehouse within the meaning of sub-section (1) of Section 23 of the Income Tax Act, 1961. On this view taken by us, the assessee did not press Question 2 and hence it is not necessary to answer it. We allow the appeals of the assessee to this limited extent and direct that the Revenue will pay the costs of the appeals to the assessee.

</html