

Amolak Ram Khosla

Vs

Commissioner of Income Tax Delhi II

Civil Appeals No. 1179-1183 of 1981

(P.N. Bhagwati, Baharul Islam JJ)

19.08.1981

ORDER

1. These appeals arise out of assessment of the assessee to income tax for the assessment years 1967-68 to 1971-72. There is a common question of law arising in these appeals and hence they have been consolidated together and are being disposed of by a single judgment. The question arising in these appeals relates to the annual value of a house belonging to the assessee and situate in New Delhi for the purpose of assessment to income tax under Section 22. The Income Tax Authorities as also the Tribunal in appeal determined the annual values of the building on the basis of the actual rent received by the assessee in respect of the portion of the house let out to the tenant and on an artificial basis of 10 per cent of the other total income of the assessee in respect of the portion of the house which was self-occupied. The Income Tax Authorities and the Tribunal rejected the contention of the assessee that the annual values of the house was liable to be determined with reference to the standard rent determinable under the provisions of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Rent Act). The assessee thereupon made applications to the Tribunal for reference of the question of law arising out of the Order of the Tribunal but the applications for reference were rejected by the Tribunal. The assessee thereupon made applications to the High Court calling for reference from the Tribunal but the High Court also rejected these applications on the ground that the question of law arising out of the Order of the Tribunal was concluded by the decision of the Full Bench of the Delhi High Court in *Dewan Daulat Ram Kapur v. New Delhi Municipal Committee* [ILR (1973) 1 Del 363]. Hence the present appeals by special leave obtained from this Court.

2. Now there can be no doubt that a question of law did arise out of the Order of the Tribunal, namely, whether the annual value of the house belonging to the assessee was liable to be determined on the basis of the actual rent received by the assessee or it was liable to be determined with reference to the standard rent of the house determinable under the provisions of the Rent Act. But the High Court refused to call for a reference of this question from the Tribunal because, according to the High Court, this question was concluded by the decision of the Full Bench of the High Court in *Dewan Daulat Ram Kapur v. New Delhi Municipal Committee* [ILR (1973) 1 Del 363], where the view was taken that in a case where 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 standard rent having expired, the landlord is entitled to recover the agreed rent from the tenant, it is the agreed rent which must be taken to be the annual value of the building. But this Full Bench decision of the High Court has been overturned by a recent decision given by this Court in *Dewan Daulat Ram Kapur v. New Delhi Municipal Committee* [(1980) 2 SCR 607 : (1980) 1 SCC 685] and it has been held by this Court that even where the standard rent of a building has not been fixed by the Controller under Section 9 and the

period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of standard rent having expired, the landlord is entitled to recover the agreed rent from the tenant, the annual value of the building must be taken to be the standard rent of the building determinable under the provisions of the Rent Act and not the actual rent received by the assessee from the tenant. In this view of the matter, it is clear that the High Court was in error in not requiring the Tribunal to refer the question of law relating to the determination of the annual value of the house to the High Court. We should have ordinarily in these circumstances made an order requiring the Tribunal to refer this question of law arising out of the Order of the Tribunal to the High Court and left it to the High Court to answer this question of law when referred by Tribunal. But this would be a futile exercise because having regard to the decision just rendered by us in *Shiela Kaushish v. I.T.O.* [(1981) 4 SCC 121 : 1981 SCC (Tax) 286], this question of law must be answered in favour of the assessee and against the Revenue. We therefore propose to decide this question of law ourselves instead of calling for a reference from the Tribunal and leaving the High Court to answer the question so referred. This course has the consent of both parties.

3. We accordingly allow the appeals, set aside the common Order of the High Court rejecting the applications for a reference and decide the question of law arising out of the Order of the Tribunal by holding that the annual value of the house belonging to the assessee must be taken to be the standard rent of the house determinable under the provisions of the Rent Act. The Revenue will pay the costs of the appeals to the assessee.

</html