PUNJAB AND HARYANA HIGH COURT

Daljit Singh

Vs

Commissioner of Income-Tax

(Dayak Kishan Mahajan J.)

31.07.1963

JUDGMENT

Dayak Kishan Mahajan J.

1. This order will dispose of Income-tax References Nos. 34-D of 1960 and 2-D of 1961. The first reference is in the matter of Sardar Daljit Singh and the second in the matter of Sardar Bhagwant Singh. The assessee in the first reference is an individual and the assessee in the second reference is a Hindu undivided family whose karta is Sardar Bhagwant Singh. One of the questions that has been referred to this court under section 66(1) of the Income-tax Act, 1922 (XI of 1922), by the Income-tax Appellate Tribunal, Delhi, is common to both the references. That question is the only question in the first reference and is the third question in the second reference. The other two questions in the second reference are in these term :

> "(1) Whether on the facts and in the circumstances of the case, the property at No. 7, Prithviraj Road, New delhi, èvalued at Rs. 1,40,000 and given to S. Bhagwant Singh by his father on the partition of the family belonged to S. Bhagwant Singh in his individual capacity?

(2) Whether on the facts and in the circumstances of the case, the share of S. Bhagwant Singh in the profits of the firms styled M/s. Sir Sobha Singh & Co. (Builders), Nagpur and M/s. Narbada Construction Co. as well as the salary paid by the former company was the income of S. Bhagwant Singh in his individual capacity?"

The first and the third questions in the first and the second references respectively is as follow :

> "Whether on a true interpretation of the Finance Departments Notification No. 878-F (Income-tax) dated March 21, 1952, the assessee was entitled in computing the income from house property under section 9, to a deduction for the unabsorbed irrecoverable rent of the preceding year not exceeding one years rent?"

So far as the first and the second questions in the second reference are concerned it is conceded by the learned counsel for the assessee that they stand concluded by two decisions of this court in S. Bhagwant Singh v. Commissioner of Income-tax and Sri Mohan Tayal v. Commissioner of Income-tax. The only contention advanced by the assessees counsel is that these aforesaid decisions do not lay down the correct rule of law. He has tried to argue in a half-hearted manner that the decisions in the aforesaid two cases need reconsideration but has not bene able to place any matterial before us which would justify us in referring the matter to a larger Bench. Therefore, following the aforesaid two decisions, we answer the first and second questions against the assessee. It may be incidentally mentioned that the decision in S. Bhagwant Singh v. Commissioner of Income-tax was in a matter of the present assessee. The only matter now left for determination is the first question in the first reference which is the third question in the second reference. It will be, therefore, proper to briefly set out the facts in both these references wherein the question has been referred for our decision. The facts in both the references are common and so far as they are necessary for our purposes are given belo : The assessee, Sardar Daljit Singh, is an individual. He owns half share in a building situate in Connaught circus, New Delhi, known as the Regal Building. The owner of the other half building is the Hindu undivided family headed by his brother Sardar Bhagwant Singh. They are the sons of Sir Sobha Singh. The income from the whole of the building is computed in the assessment file of Sardar Bhagwant Singh. Half of the net income so computed from this building is assessed thereafter in the hands of the assessee. In computing the income from this building for the assessment year 1952-53, a sum of Rs. 10,059 was claimed as a deduction on account of irrecoverable rent, The amount did not represent the actual irrecoverable rent for that year. In the preceding year 1951-52 a sum of Rs. 17,646 on account of irrecoverable rent was claimed. The income-tax authorities allowed a sum of Rs. 7,587 being the amount equivalent to the rent payable for one year but not paid by the tenant. This deduction was allowed in terms of the Finance Departments Notification No. 878-F è(Income-tax) dated March 21, 1952, as amended form time to time. The claim for the balance of Rs. 10,059 was not entertained. This balance was claimed as a deduction in the assessment for the next year 1952-53 and a similar claim for the deduction of the unabsorbed irrecoverable rent was made for the years 1953-54 and 1954-55. The relevant amounts are Rs. 41,129 for 1953-54 and Rs. 20,249 for 1954-55. The contention before the department as well as before the Tribunal was that the balance of the unabsorbed irrecoverable rent which had not been and could not have been allowed as a deduction in the earlier year should be allowed as a deduction in the subsequent years. In other words, it was urged that in each of the years concerned the assessee was entitled to deduct one years rent on account of irrecoverable rent in terms of the notification referred to above. This contention was negatived by the department as well as by the Tribunal on the short ground that there was no provision in the notification whereby any balance of unabsorbed irrecoverable rent could be carried forward and deducted against the next years

income. The assessees in the respective references made applications to the Tribunal under section 66(1) of the Income-tax Act requiring the Tribunal to refer to this court the questions of law which, according to the assessee, arise out of the Tribunals order. These applications were granted and the Tribunal referred the questions of law for our decision which have already been set out in the earlier part of this order. The assessment years with regard to which the question was referred for the opinion of this court are the assessment years 1952-53, 1953-54 and 1954-55. The relevant account years are the financial years ending 31st March, 1952, 31st March, 1953, and 31st March, 1954, respectively. It will be proper, therefore, at this stage to set out the notification along with the relevant provisions of the statute which have been referred to before us before dealing with the various contentions pressed before us by the assessees counsel. The notification is in these term :

> "The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purposes of the said Act except for the purposes of sub-section (4) of section 4 : - .....

(38) Such part of income in respect 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 assessed income of the year during which that rent was due and income-tax has been duly paid on such assessed income....."

Section 2(15) of the Income-tax Act defined "total income" èand is in these term :

"total income means total amount of income, profits and gains referred to in sub-section (1) of section 4 computed in the manner laid down in this Act."

Section 3 is the charging section and is in these term :

> "Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

Section 9, omitting the portion that is not necessary for our purposes, is in these term :

"(1) 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.....

(2) For the purposes of this section, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to yea :....."

Section 60 is a section in pursuance of which the aforesaid notification has been issued. This section is in these term :

> "60. (1) 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 of any class of income, or in regard to the whole or any part of the income of any class of persons, (2) Where, by reason of any portion of an assessees salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant the appropriate relief.

(3) After the commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section 91) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made." The contention of the learned counsel for the assessee is that in case all property tax is paid on the annual value except where deductions are allowed by the Act and but for the notification the question whether the rent was irrecoverable would be of no consequence. The notification, however, gives relief to the assessees from tax in the event where the rent from property due from tenants becomes in fact irrecoverable. The assessee have already paid tax on the basis of the annual value of a building

which is deemed to be the sum for which the building might reasonably be expected to be let out. According to the assessee there is no provision in the notification which debars him from claiming the deduction from the subsequent years annual value of the building on account of the unabsorbed irrecoverable rent, whereas, on the other had, the contention of the department is that èthe assessees cannot allow the arrears of rent to accumulate and then try to set them off in the subsequent years. According to the notification it is only one years rent which can be allowed as a deduction where the tax on the annual value up to that stage has been paid. It is there contentions which have to be examined. As already observe,d the tax on properties is on the notional annual letting value. It is not a tax on income. The notification provides that if tax has been paid on this notional income and the income does not subsequently accrue on account of the default of the tenant, the assessee should get relief. This relief is limited to one years rent, that is the maximum, though the relief will be granted only with regard to the rent which has actually become irrecoverable and that may be in come cases less than one years rent and in others the whole years rent. The words in the notification "such part of income in respect of which the tax is payable under the head property as is equal to the amount of rent payable for a year" leave no manner of doubt that at the time when the relief is granted only the amount equal to the rent payable in a year is to be deducted. This would obviously indicate that the balance of the rent due after this deduction would lapse and would not fall within the exemption notification. I am further fortified in this conclusion from the fact that wherever in the Income-tax Act relief allowed under the Act can be carried forward into the next year or years in case where the relief in the nature of things cannot be allowed wholly in a particular year, a specific provision has seen made. (See in this connection the provisions relation to the carrying forward of business losses, sections 10 and 24 of the Act.) By implication, the provisions of the notification cannot be enlarged inasmuch as the notification is an exempting notification, and only that allowance can be made which the notification specifically mentions and no further. If the contention of the learned counsel for the assessee is accepted we would be in a way enlarging the scope of the notification. I feel no hesitation in holding that the notification limits the quantum of relief to the extent of a years rent in cases where such rent has become irrecoverable. There is also another way of looking at the matter. In orderto obtain relief under the exemption the assessee cannot sleep over the matter and let the rent accumulate for a number of years and then try to take benefit of the exemption for the entire accumulation. The contingency of a higher accumulation than one years rent as arrears is due to the negligence on the part of the owner of the property. There is nothing in law which prevents an owner to take effective steps within a year and then have recourse to the exemption on the basis that the rent had become irrecoverable. In that way no hardship could ever accrue to any assessee and, therefore, the argument on the basis of the hardship in the present case has no significance. I am, therefore, clearly of the view that the Tribunal came to the right conclusion that unabsorbed èpart of the irrecoverable rent cannot be

carried forward to the subsequent years. Therefore, our answer to the first question in the first reference and third question in the second reference is in the negative. These petitions, therefore, fail and are dismissed. The department will be entitled to the costs of both these petitions. We assess the costs at Rs. 100 in each petition.

Shamsher Bahadur J. - I Agree.

Petitions dismissed.