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IN THE HIGH COURT OF DELHI AT NEW DELHI

(12)

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ITA Nos.260, 262, 335 and 363/2007

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Date of Decision: 25.01.2011

The Commissioner of Income-Tax-V ....Appellant

Through: Ms. Rashmi Chopra

VERSUS

R.J. Wood Pvt. Ltd. .....Respondent

Through: Mr. Ajay Vohra with Ms.Kavita

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. For orders, see ITA No.261 of 2007.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JANUARY 25, 2011
HP.

Signature Not Verified
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A.K. SIKRI, J. (Oral)

1. One common issue arises in these appeals except in ITA No.363/2007. However, even in that appeal shadow of earlier appeals falls. Moreover, all these appeals except ITA No.363/2007 arise out of same judgment, though these appeals relate to different assessment years, i.e., assessment years 1996-97 to 1999-2000 (ITA No.363/2007 pertains to assessment year 2000-01). The issue relates to the Annual Letting Value (ALV), which is to be arrived at under Section 23 of the Income-Tax Act (hereinafter referred to as the 'Act'). The issue has arisen in the same factual backdrop casting its reflection on all these years. This would become amply clear when we take stock of the factual premise in which the issue has arisen. The assessee is the owner of 71-72, New Markers Chamber-IV, Nariman Point, Mumbai. He had let out

these premises in the relevant assessment years to five tenants. Lease agreements were entered into in this behalf wherein rent to be received by the assessee from those tenants was specified. The tenancies became operative with effect from October, 1992. Rent was, thus, contractual rent mutually agreed upon. However, dispute arose about payment of said rent. The said premises are in a multi-storied building and maintenance charges are payable by the occupier to the agency/builder maintaining the building. The tenants claimed that the rent payable by them to the assessee included maintenance charges and therefore, it was the obligation of the assessee to pay the maintenance charges. The assessee, on the other hand, wanted these tenants to pay the maintenance charges exclusive of contractual rent. Because of this dispute, the tenants filed a suit in Small Causes Court for fixation of standard rent. In that case, the Small Causes Court passed an interim order in 1994 fixing the rent at Rs.30,000/- per month, which was less than the contractual rent agreed upon between the parties in the rent agreement. Since the rent was fixed on lump sum basis at Rs.30,000/- per month, the assessee had to pay the maintenance charges, which were claimed as deduction. The Assessing Officer disallowed the claim on the ground that as per the lease agreement these maintenance charges were to be borne by the tenants. The CIT(A), however, allowed this claim which view of the CIT(A) was affirmed by the Tribunal as well.

2. In so far as the rentals are concerned, the assessee kept on receiving the interim rent of Rs.30,000/- per month fixed by the Small Causes Court from 1994. The suit was finally decided in November, 1999 as per which, the contractual rent as agreed upon between the assessee and the tenants was

fixed as the standard rent by the Court. Since during the pendency of the suit assessee got the rent at lesser rate than the contractual rate because of the aforesaid decision of the Small Causes Court, in the financial year 1999-2000 (corresponding to assessment year 2000-2001) the assessee received arrears of rent for earlier periods as well.

3. In the income-tax return filed for the assessment year 1996-97, 1999-2000, the assessee had shown the ALV as per Section 23 of the Act on the basis of Rs.30,000/- per month which was received by it under the interim orders of the Court. On that basis, assessments were completed and assessment orders were passed for these assessment years.

4. After the orders of the Small Causes Court, the Assessing Officer issued notice under Section 148 of the Act in respect of these assessment years thereby seeking to reopen the assessment on the ground that the ALV was wrongly fixed at a lesser rate as the rent payable was higher, which was, in fact, received by the assessee and therefore, the ALV should have been fixed at the contractual rent. The additions on this basis were made by the Assessing Officer after re-assessment relating to assessment years 1996-97 to 1999-2000.

5. When the matter was still at the stage of notice under Section 148 pertaining to the aforesaid assessment year, the assessee filed its return for the year 2000-2001. In this return, the assessee disclosed receiving of arrears of rent and appended a note stating that this amount was not taxable in this year. In the assessment order passed, the Assessing Office accepted this position and did not tax the said receipt pertaining to arrears of rent albeit on the

ground that in respect of this receipt notice under Section 148 for the relevant years had already been issued. Coming back to the re-assessment qua assessment year 1996-97 to 1999-2000, the assessee challenged the order of the Assessing Officer by filing appeal which was allowed by CIT(A) and the re-assessment was set aside. The Tribunal by impugned order has confirmed the order of the CIT(A). According to the Tribunal, even when the contractual rent was higher, because of the interim order of the Small Causes Court passed under Section 11(5) of the Act, which was a special enactment, the assessee was forced to accept lesser rent as fixed thereby. There was no provision of appeal and thus, the assessee had no option but to receive that rent. Therefore, this became the rent receivable as per the provisions of Section 23 of the Act and was rightly made the basis of fixing the ALV while passing the original assessment orders. While doing so, the Tribunal concurred with the view taken by the CIT(A) that arrears of rent had become payable to the assessee pursuant to the final order passed by the court in the accounting year relevant to the assessment year 2000-01, which could not be taxed in the assessment year 1996-97 to 1999-2000. In respect of these assessment years, therefore, the question of law that arises for consideration and on which appeals are admitted is as under:-

> " Whether the ITAT was correct in law in holding that the arrears of rent relating to assessment year 1996-97 to 1999-2000 are not to be included in the income of the assessee and thus, not taxable?"

6. We have finally heard the arguments on this question of law also and therefore, proceed to answer the same as well.

7. Before we take note of the submissions of learned counsel for the Revenue, we would like to take note of certain judgments, some of which are referred to by the Tribunal in the impugned order, because of the reason that the learned counsel for the Revenue has ventured to argue that those cases are distinguishable and would not apply to the present case.

8. The first case which needs to be referred to is the judgment of Calcutta High Court in ***Hamilton & Co. Pvt. Ltd.* v. *CIT***, 194 ITR 391 (Cal.). That was a case where the assessee/landlord was receiving rent on the basis of agreement between the assessee and the tenant. This rent was received at a later date but with retrospective effect. As a result, the assessee received arrears of rent for prior years in the accounting year 1981-82. The Assessing Officer taxed the said receipt of arrears of rent for prior years in the accounting year in which it was received under the head "Income from other sources", as arrears of rent was not chargeable under Sections 22 and 23 in the year of receipt. The question was as to whether this receipt could be taxed under the head "Income from other sources". The Court answered the question in the negative. Though that was not the issue before it, the High Court specifically spelled out that the Tribunal proceeded on the implicit premise that the arrears of rent could not be roped in by the provisions of Sections 22 and 23 and the Revenue had also not filed any cross-objections on this particular issue as to whether the arrears of rent relating to past years received in a later year of account could be part of actual rent for such later ~~previous~~ previous year in terms of Explanation I below Section 23 of the Act, which defines annual rent. However, the Court was of the opinion that this particular issue was an inherent aspect of the question falling for

determination and therefore, addressed the same as well. It is for this reason that this judgment of the Calcutta High Court becomes relevant for our purposes. The Court answered the aforesaid aspect as under:-

> "The question is whether the arrears of rent relating to another previous year are taxable as income from house property of the later previous year in which they were received. If the arrears of rent of past years are not part of the annual rent of the year of account in which such arrears are received, then the only rational inference should be that the annual rent or annual rents of the past year or years to which they pertain can be brought to charge only in the assessment years relevant to such past years of account. The receipt of arrears of rent cannot, by any stretch of imagination, be said to have shed their character as rent from property and to have ceased to be liable to tax as income from house property. The simple case is that the rent of a past year increased retrospectively shall be the annual rent of such past year or years but not the annual rent of the year in which it is received consequent upon subsequent increase."

9. This judgment was followed by the same High Court in ***Hope (India) Ltd.* v. *CIT***, 238 ITR 740 (Cal.). There the same question fell for consideration directly. After quoting from ***Hamilton and Co. Pvt. Ltd.*** (supra), the Court put a stamp of approval on the position of law stated vis-a-vis Sections 22 and 23 of the Act. We may point out here that as per Section 23(1)(b), the rent received or receivable, whichever is higher, would be the basis of calculating the ALV. The entire dispute relates to the meaning which is to be attributed to the word "receivable", as according to the learned counsel for the Revenue, the contractual rent, which was higher of the two, was receivable and therefore, that should be treated as ALV. In ***Hope (India)***

Ltd. (supra) the Court considered the matter and answered in the following manner:-

> "With a view to consider the question involved in this reference it is profitable to note the meaning of the word "receivable" as defined in *Black's Law Dictionary*, sixth edition, 1268 and *Stround's Judicial Dictionary*, fourth edition, 2280, which are:
>
> "*Black's Law Dictionary*.—That which is due and owing a person or company (e.g., account receivable). In book keeping the name of an account which reflects a debt due.
>
> *Stroud's Judicial Dictionary*.-(1) 'I myself should have held that the words "receivable" and "payable" were the same thing, and that both were equivalent to "vested", but I am happy to find that the judgment of the M.R. in *Hayward* v. *James* (29 L.J. Ch. 822) expresses exactly the same conclusion' (per Malins V.C., *West* v. *Miller* [1986] Lr. 6 Eq. 59): See further Watson Eq. (2nd Ed.) 1228.
>
> (2) 'Receivable' may be construed as 'received' (Wms. Exs. (12th ed.), 689, citing *Re Dodgson*, I Drew. 440). In that case there was a gift over if any member of a class died 'before receiving' his share ; held, that that phrase meant 'before being entitled to receive'.
>
> (3) Under section 5 of the Income-tax Act, 1918 (c. 40) : see *IRC* v. *Pakenham*, 96 LJKB 882 (CA), affirmed (1928) AC 252 (HL); *Leigh* v. *IRC*, 43 TLR 528."

The apex court in *E.D. Sassoon and Co. Ltd.* v. *CIT* [1954] 26 ITR 27, had the occasion to consider the meaning of the words, "accrue", "arises", and "is received" in the context of the definition of income. The apex court held (page 50) :

> "Now what is income? The term is nowhere defined in the Act ... In the absence of a statutory definition we must take its ordinary dictionary meaning – 'that which comes in as the periodical produce of one's work, business, lands or investments (considered in reference to its amount and commonly expressed in terms of money) ; annual or periodical receipts accruing to a person or corporation' (Oxford Dictionary). The word clearly implies the ideal of receipt, actual or constructive. The policy of the Act is to make the amount taxable when it is paid or received either actually or constructively. 'Accrue',

> 'arises' and 'is received' are three distinct terms. So far as receiving of income is concerned there can be no difficulty; it conveys a clear and definite meaning, and I can think of no expression which makes its meaning plainer than the word 'receiving' itself. The words 'accrue' and 'arise' also are not defined in the Act. The ordinary dictionary meanings of these words have got to be taken as the meanings attaching to them. 'Accruing' is synonymous with 'arising' in the sense of springing as a natural growth or result. The three expressions 'accrues', 'arises' and 'is received' having been used in the section, strictly speaking 'accrues' should not be taken as synonymous with 'arises' but in the distinct sense of growing up by way of addition or increase or as an accession or advantage; while the word 'arises' means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable. It is difficult to say that this distinction has been throughout maintained in the Act and perhaps the two words seem to denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases. It is clear, however, as pointed out by Fry., L.J., in *Colquhoun* v. *Brooks* [1888] 21 QBD 52, 59 [this part of the decision not having been affected by the reversal of the decision by the House of Lords [1889] 14 AC 493] that both the words are used in contradistinction to the word 'receive' and indicate a right to receive. They represent a state anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate."

10. After taking note of many other judgments touching upon various issues, the Court answered the question formulated by it (which is squarely the question in the instant case as well) in the following manner:

> "In the instant case, as indicated hereinbefore, the Government Departments agreed to enhance the rent with retrospective effect from 1982, and thus, the parties were not ad idem in their mind as regards the actual quantum of rent payable to the assessee by its

> tenants and, thus, the actual amount was not ascertainable. Fair rent, keeping in view the provisions of the West Bengal Premises Tenancy Act, has to be determined and till such fair rent is determined, actual rent has to be paid by the tenants. Although the said provisions have no application in case the Government is the tenant the rent has to be paid on the basis of the agreement entered into by the parties. A claim made by a landlord for enhancement of rent cannot, thus, be said to be an amount receivable within the meaning of section 23(1) of the Act. A claim or a demand by itself does not come within the purview of the word "income received or receivable" and keeping in view the provisions of section 5 of the Income-tax Act there cannot be any doubt whatsoever such income either received or deemed to be received, accrued or arose or is deemed to accrue or arise to him or accrues or arises in India or accrues or arises outside India during the previous year.
>
> An agreement entered into between the parties in terms whereof the quantum of rent is determined with retrospective effect, in our considered view, does not come within the purview of any of the provisions of section 5 aforementioned."

11. At this juncture, we would also like to refer to an order passed by the Authority for Advance Rulings (AAR) in ***Jagtar Singh Purewal* v. *Commissioner of Income-Tax, Jalandhar (Punjab)***, 213 ITR 512. That was also a case where arrears of rent were received in subsequent years and AAR ruled that these were neither assessable under Section 23 nor assessable as income from other sources. The AAR had followed the judgment of Calcutta High Court in ***Hamilton & Co. Pvt. Ltd.*** (supra) while coming to this conclusion. In fact, there may not be any necessity to even take note of these judgments as amendment made in the Income-tax Act by Finance Bill 2000 with the insertion of Section 25B of the Act would clinch the issue. Section 25B reads as under:-

> "**25B. Special provision of arrears or rent received.**—Where the assessee –
>
> (a) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and
>
> (b) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year,
>
> the amount so received, after deducting a sum equal to thirty per cent of such amount, shall be deemed to be the income chargeable under the head 'Income from house property' and accordingly charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not."

12. No doubt, it has come into effect from 1.4.2001. However in ***B.M. Gupta and Sons (HUF)*** **v.** ***Assistant Commissioner of Income-Tax***, 299 ITR 410 (Del.), this Court has made it clear that the said provision is clarificatory in nature. In that case, the question which arose for consideration is posed in the following terms:-

> "Whether the arrears of rent relating to the earlier year(s) could be brought to tax as income from house property of the previous year in which these are actually received?."

13. It is held in that case that Section 25B of the Act only clarifies the position that if any arrears of rent are received in subsequent year, the same will be taxed in the year of receipt. Once we proceed on this basis, the obvious conclusion would be that the arrears of rent received in the assessment year 2000-01 would not relate to the previous years and are to be taxed in that year. For this reason, as far as these assessment years are concerned, the Tribunal was right in holding that the arrears of rent received

in the assessment year 2000-01 could not be spread over the previous years, i.e., 1996-97 to 1999-2000. The question of law, thus, framed is answered in favour of the assessee and against the Revenue.

14. In view of the aforesaid and having regard to the provisions of Section 25B of the Act, the amount received as arrears of rent could be taxed at the hands of the assessee in the assessment year 2000-01. However, the Assessing Officer chose not to include the said arrears in the income of the assessee in the said assessment year. Therefore, in this year this question has not even fallen for consideration. Had the issue been alive for this assessment year, we could have given the directions that the amount received should be exigible to tax in this year. In the absence of any such issue, we cannot pass any directions.

15. In so far as other issue, which arises in these appeals is concerned, that relates to the maintenance and other charges paid by the assessee while computing the ALV of the property. Since this amount was paid by the assessee, it was rightly held to be deductible from the rent while computing the ALV. On this aspect we are of the opinion that no question of law arises. These appeals are accordingly dismissed.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JANUARY 25, 2011
HP.