The Indian Law Reports

INCOME-TAX REFERENCE

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

THE COMMISSIONER OF INCOME-TAX, DELHI,—*Applicant*

versus

THE DELHI CLOTH AND GENERAL MILLS, CO., LTD.,—*Respondent.*

I. T. Case No. 15-D of 1959.

1965

February, 8th.

Income-tax Act (XI of 1922)—Ss. 9 and 10—Rental income from property let out to employees—Whether chargeable as income from property under S. 9 or as profits and gains of business under S. 10.—Conflict—How to be resolved.

Held, that the rental income arising out of the buildings and lands appurtenant thereto owned by the assessee and let out to its employees or wage-earners has to be assessed under section 10 of the Indian Income-tax, Act, 1922, as 'income from business' and not under section 9 as 'income from property'. Such buildings are part of the business equipment of the owner or, in other words, it is the business asset of the owner. It is also now well established that in a welfare State, it is the duty of the employer to provide residential accommodation to the employees. Not only that, certain facilities, such as, canteens, clubs for the recreation of the employees and baths, lavatories and dispensaries have also to be provided for them. All this is done not because the company is trying to earn or is engaged in the business of earning rental income from the employees but for the purpose that the employees carry on efficiently the business of the company. The housing accommodation is an amenity which is provided for the purposes of the business of the company and is not *dehors* that business.

Held, that where there is a conflict as to whether "income from property" has to be assessed under section 9 or section 10, what has to be determined is whether such income does or does not arise from

property occupied by him for purposes of his business. This question is essentially a question of fact. What has to be discovered is whether the property is subservient to the main business of the assessee. In other words, is the provision of residential quarters to its employees a part of the business of the company ? It will depend on the meaning of the word "occupy". The word "occupy" has various shades of meaning and that meaning is to be assigned to it which fits in with the context in which this word is used. In the context of sections 9 and 10, an occupation by a tenant would be occupation by the owner and, therefore, legally the property would be in the occupation of the owner though not in his physical occupation. In law, whenever premises are let out to a tenant, it is the tenant who is in physical occupation of the premises; but against the entire world, the landlord is in occupation of the premises, for the tenant's occupation is treated as landlord's occupation. The landlord's occupation through his tenant would only come to an end, when the tenant sets up a hostile title to the landlord; otherwise the occupation of the tenant is occupation of the landlord. If both sections 9 and 10 of the Act are read together, it will be apparent that where the property is held and used for the purposes of business, income therefrom would be "income from business" and not "income from property". The property held by the assessee for his business, though not in his actual occupation, will entitle him to depreciation under section 10.

Income-Tax, reference under Section 66(2) *of the Indian Income-*tax *Act (XI of* 1922) *by the Income-tax Appellate Tribunal, Delhi Bench, Delhi referring the following questions of law for the opinion of their Lordships* :—

(1) *Whether the assessee company was chargeable to tax under section* 9 *or under section* 10 *of the Indian Income-tax Act,* 1922, *in assessments for* 1948-49 *and* 1949-50 *in respect of income from buildings or land appurtenant thereto;*

(2) *Whether the assessee is entitled to a deduction of* 7 *per cent commission on the rental income paid to its managing directors in computing its assessable income for the assessment year* 1949-50.

H. HARDAY, ADVOCATE, for the Petitioner.

S. T. DESAI, RAMESHWAR NATH AND R. L. TANDON, ADVOCATES, for the Respondent.

ORDER

Mahajan, J.

MAHAJAN, J.—The assessee is a public limited company. It has various sources of income from interest on securities, rent from house property and profits from various businesses such as cloth, chemicals, sugar, distillery,

The Commissioner of Income-tax, Delhi. *v.* The Delhi Cloth and General Mills Co. Ltd.

Mahajan, J.

printing, confectionary, tent-making and manufacture of Vanaspati. The assessee owns several buildings, such as, chawls, quarters and shops near about its cloth mill at Delhi. These chawls, etc., are let out by the assessee to its employees and also to some outsiders. It is common ground that out of the total rent recovered from these premises, a sum of Rs. 1,03,964 is deducted from the wages of its employees and only an amount of Rs. 8,163 as rent is recovered from persons other than the employees, i.e., from outsiders. In the assessment years 1948-49 and 1949-50 (account years) ending June, 1947 and June, 1948, respectively), the department proceeded to assess its rental income from employees as "income from property" under section 9 of the Indian Income-tax Act (hereinafter referred to as the Act).

The assessee's contention before the department was that the premises were let out to the employees for the purposes of its business and the rental income fell to be computed under section 10 of the Act. This contention of the assessee was rejected by the Income-tax Officer, and in appeal, by the Appellate Assistant Commissioner. On further appeal, the assessee succeeded in his contention; but here too, members constituting the Bench hearing the assessee's appeal differed. Mr. K. N. Rajagopal Sastri, Judicial Member, affirmed the order of the Appellate Assistant Commissioner to the effect that the rental income in question was "income from property" and, thus, had to be assessed under section 9 of the Act, whereas the Accountant Member Mr. P. C. Malhotra took the view that the aforesaid income was not "income from property" but was "income from business" and, therefore, was assessable under section 10 of the Act.

There being difference of opinion between the two members constituting the Bench, the following points of difference were referred by the Bench, to the President of the Income-tax Appellate Tribunal; under section 5A(7) of the Act:—

"(1) Whether the assessee company was rightly assessed under section 9 in respect of its income from buildings or lands appurtenant thereto, of which it is the owner and which had been let to its own employees or wage-earners?

The Commissioner of Income-tax. Delhi. *v.* The Delhi Cloth and General Mills Co. Ltd.,

Mahajan, J.

(2) Whether the undistributed profits earned by the assessee company during the 12 months ending 30th June, 1947, the amount of which was subsequently ascertained at Rs. 65,30,195 was reserve and should be included in computing the capital as on 1st July, 1947, for the purpose of ascertaining the abatement allowable".

We are not concerned in this reference with the decision on the second question. But so far as the first question is concerned, the President agreed with the opinion expressed by the Accountant Member and held that the rental income of the assessee from the property let out to its employees fell to be computed under section 10 as "profits and gains of business." The department being dissatisfied with this order moved the Appellate Tribunal under section 66(1) of the Act for referring the questions of law arising out of the order of the Tribunal for a decision by this Court. The Tribunal rejected this application with the result that the Department moved this Court under section 66(2) of the Act. That application was allowed by this Court and by its order, dated the 6th October, 1955, the following two questions of law have been referred for our opinion along with the statement of the case, as required to be drawn up under section 66(2) of the Act:—

"Whether the assessee company was chargeable to tax under section 9 or under section 10 of the Indian Income-tax Act, 1922 in the assessments for 1948-49 and 1949-50 in respect of income from buildings or lands appurtenant thereto;

(2) whether the assessee is entitled to a deduction of 7 per cent commission on the rental income paid to its managing directors in computing its assessable income for the assessment year 1949-50?"

It is not disputed that the answer to the second question turns on the answer to the first question. Therefore, it is really the first question that has to be decided in this case.

The admitted facts are that the buildings in question are owned by the assessee. The bulk of the buildings is

The Commissioner of Income-tax, Delhi. v. The Delhi Cloth and General Mills Co. Ltd., Mahajan, J.

occupied by the employees and only a small fraction of the buildings is occupied by non-employees. The annual rent recovered from employees is Rs. 1,03,964 and from the non-employees Rs. 8,163. There is a post office, some shops and stalls, which according to annexure 'A' are essential for the benefit of the employees. The remaining buildings are chawls, single quarters, double quarters, upper-storey rooms and are occupied by the employees of the assessee for residence. The rent of the residential accommodation is fixed rent and is deducted out of the pay or wages paid to the employees.

It was pointed out to us that the matter in dispute has been set at rest by a circular issued by the Central Board of Revenue, containing the following instructions to all the Commissioners of Income-tax. This communication is in these terms:—

> "Doubts have recently been expressed regarding the admissibility of the depreciation allowance on the quarters built by employers for the accommodation of their employees. In this connection, attention is invited to the instructions already issued and printed on page 447 of the Income-tax Manual, Part III (10th Edition) to the following effect:—
>
> Building belonging to the owner of a business and used by him in order to house his employees, are buildings used for the purpose of business where the occupation by the employees of property owned by the employer who carries on a business is subservient to and necessary for the purpose of their duties.
>
> The Patna High Court has also approved this view in *Jamshedpur Engineering and Machine Manufacturing Company Limited* vs. *Commissioner of Income-tax, Bihar and Orissa* (1). The above quoted instructions should be followed and buildings belonging to this category treated as falling under section 10 and not section 9 of the Act."

(1) 32 I.T.R. 41.

The Commissioner of Income-tax, Delhi
v.
The Delhi Cloth and General Milk Co., Ltd.

Mahajan. J.

It is not disputed by the counsel for the Department that this instruction would bring the case of the assessee under section 10 and not section 9. But, apart from this, on the correct interpretation of sections 9 and 10 of the Act, we have come to the conclusion that the majority decision of the Income-tax Appellate Tribunal is correct and the first question referred to us must be answered against the Department so as the rental income arising out of the buildings owned by the assessee and let out to its employees or wage-earners is concerned. In our opinion, such rental income has to be assessed under section 10 and not under section 9.

The ambit of the first question covers "rental income from strangers," but it was conceded before us that we are not called upon in this reference to determine whether such income would fall for assessment under section 10. The Tribunal has held that the "rental income from strangers" would be "income from property" and assessable under section 9 of the Act. It is only that part of the rental income from property which is occupied by the employees or wage-earners of the company engaged in company business, which according to the majority decision of the Tribunal, has to be assessed under section 10 of the Act and not under section 9. We agree entirely with the majority decision. We may now state our reasons for having arrived at the same conclusion.

It is apparent from the statement of the case that the company is engaged in a number of manufacturing businesses, such as, cloth, chemicals, sugar, distillery, printing and the manufacture of hydrogenated oils (Vanaspati). A large number of employees are engaged in these businesses. The premises where the employees are housed and for which they pay rental to the company are in the near vicinity of the mills. The rental of these premises is fixed and does not change with the change of the occupant. The rental is deducted from the wages of the employee or employees occupying the premises. These employees are engaged in the main business of the company and their residence in the buildings in dispute is incidental to their main occupation, that is, the carrying on of the business of the company. In true perspective, these buildings are part of the business equipment of the owner, or, in other words, it is the business asset of the owner. It is also

The Commissioner of Income-tax, Delhi *v.* The Delhi Cloth and General Mills Co. Ltd.

Mahajan, J.

now well established that in a welfare State, it is the duty of the employer to provide residential accommodation to the employees. Not only that, certain facilities, such as, canteens, clubs for the recreation of the employees and baths, lavatories and dispensaries have also to be provided for them. All this is done not because the company is trying to earn or is engaged in the business of earning rental income from the employees but for the purpose that the employees carry on efficiently the business of the company. The housing accommodation is an amenity which is provided for the purposes of the business of the company and is not *dehors* that business.

Moreover, in such cases, in order to arrive at a correct conclusion, one is to read sections 9 and 10 together and not in an isolated manner and as divorced from one another. In section 9, an assessee is liable to pay tax on "rental income from property" under the head "income from property" of which he is the owner other than the income from such portions of such property as he may occupy for the purposes of any of his businesses, etc. The income from excepted property necessarily falls for assessment under section 10. Therefore, in each case, where there is a conflict as to whether "income from property" has to be assessed under section 9 or section 10, what has to be determined is whether such income does or does not arise from property occupied by him for purposes of his business. This question is essentially a question of fact. What has to be discovered is whether the property is subservient to the main business of the assessee. In other words, is the provision of residential quarters to its employees a part of the business of the company? The question then arises—what does the word "occupy" means in this context. It was contended by the learned counsel for the Department that the word "occupy" means "actual physical occupation," while on the other hand, it was contended by the learned counsel for the assessee that the word "occupy" has a broader meaning and the "physical occupation" of an owner's premises by a tenant would be "occupation by the owner," inasmuch as an owner can occupy his property through his tenants who attorn to him and do not lay any hostile claim against him. In our opinion, the word "occupy" cannot be given a restricted meaning, as is contended by the counsel for the Department. In the context of sections 9 and 10, an occupation by a tenant would be

The Commissioner of Income-tax, Delhi.
v.
The Delhi Cloth and General Mills Co. Ltd.

Mahajan, J.

occupation by the owner and, therefore, legally the property would be in the occupation of the owner though not in his physical occupation.

To illustrate our point, we may mention an illustration that was put by us to the counsel for the Department and the counsel was constrained to admit that the "income from property" in the illustration would be "income from business" and not "income from property." This was the illustration: A company like the respondent company constructs a "club house" for the recreation of its employees and gives it on rent to the association of the employees, would the rental income from this club-house be "income from business" or "income from property"? The learned counsel for the Department conceded that in this illustration, the income would be treated as "income from business" and not "income property." This illustration is, more or less, analogous to the question in dispute in the present reference.

It will be appropriate at this stage to mention that Mr. Rajagopal Sastri decided against the assessee's contention on the basis that the word "occupy" in section 9 means physical occupation" or, in other words, "actual occupation" and not "legal occupation." In law, whenever premises are let out to a tenant, it is the tenant who is in physical occupation of the premises; but against the entire world, the landlord is in occupation of the premises, for the tenant's occupation is treated as landlord's occupation. The landlord's occupation through his tenant would only came to an end, when the tenant sets up a hostile title to the landlord; otherwise the occupation of the tenant is occupation of the landlord. If both sections 9 and 10 of the Act are read together, it will be apparent that where the property is held and used for the purposes of business, income therefrom would be "income from business" and not "income from property." In the present case, there can be no manner of doubt that the company holds the property in the occupation of its employees for the purposes of its business. If it be held, as was held by the Judicial member, that income from that part of the property only can be assessed under section 10 which is in the actual occupation of the assessee for the purpose of its business, this would create an anomaly because property which is admittedly the business asset of the assessee but not in the

physical occupation of the assessee would not entitle him to claim depreciation thereon, while on the other hand, its income would not be treated as "income from property." But if the narrow interpretation placed by the Judicial Member is not accepted, full effect can be given to sections 9 and 10, and this anomaly would disappear. The property held by the assessee for this business, though not in his actual occupation, will entitle him to depreciation. In other words, property held and used by the assessee for his business, though not in his physical possession, would entitle the assessee to depreciation under section 10. Therefore, the income from such property would fall to be assessed under section 10 and not 9. We are not prepared to put a narrow and pedantic construction on the word "occupy," as has been done by Mr. Rajagopal Sastri, the Judicial Member of the Tribunal.

The view we have taken finds support from the decision of the Patna High Court in *Jamshedpur Engineering and Machine Manufacturing Company Limited* v. *Commissioner of Income-tax, Bihar and Orissa* (1), wherein in somewhat similar circumstances, the rental income from buildings let out to its employees by a manufacturing concern was held not to be covered by section 9. In the *Jamshedpur Engineering and Machine Manufacturing Company's* case the assessee made a claim for allowance of certain expenditure on account of repairs and maintenance of the residential quarters let out to its employees as "business expenditure" under section 10(2) (xv) of the Act and the assessee's contention was allowed and the view of the Tribunal to the contrary that such income fell to be assessed under section 9 was repelled.

The learned counsel for the Department relied upon the decisions in *Queen* v. *The Assessment Committee* (2), *Pegler* v. *Craven* (3) *and Brown* v. *Ministry of Housing and Local Government and others. Ford* v. *Same* (4), for his contention that the word "occupy" must be restricted to "actual physical occupation." These decisions are clearly distinguishable and have no application to the facts of the present case. Word "occupy" has various

(2) (1877) 2 Q.B.D. 581.
(3) (1952) 1 A.E.R. 685.
(4) (1953) 2 A.E.R. 1385.

The Commissioner of Income-tax, Delhi
v.
The Delhi Cloth and General Milk Co., Ltd.

Mahajan, J.

shades of meaning and that meaning is to be assigned to it which fits in with the context in which this word is used. We are clearly of the opinion that in the context of sections 9 and 10 of the Act, it would be wrong to give a limited and restricted meaning to the word "occupy".

For the reasons given above, we answer the first question against the Department and hold that the income of the assessee from the buildings or lands appurtenant thereto rented out to its employees is income from business and falls for assessment under section 10 and not under section 9 of the Income-tax Act, 1922. In view of the answer to the first question, the second question must necessarily be answered against the Department. However, we leave the parties to bear their own costs of this reference.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

DHIAN SINGH,—*Petitioner*

versus

DEPUTY COMMISSIONER, KANGRA, AND OTHERS,—*Respondents.*

Civil Writ No. 2680 of 1964

1965

February 8th.

Punjab Gram Panchayat Election Rules (1960)—*Rule* 9(1)—*Joint withdrawal by several candidates—Whether valid.*

Held, that a plain reading of Rule 9(1) of the Punjab Gram Panchayat Election Rules, 1960, shows that the withdrawal notice by a candidate must be in writing and subscribed by him. There is no bar if a number of candidates put in a joint written application duly subscribed by them. A joint withdrawal by several candidates is, therefore, valid provided it is duly subscribed by all of them.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued quashing the order of the Prescribed Authority (Ilaqa Magistrate, First Class, Hamirpur) dated the 17th October, 1964, *by which the election of the petitioner has been set aside.*

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

NEMO, for the Respondents.