

Commissioner of Income Tax v. Mr. Justice P. C. Jain
(V. Ramaswami, C.J.)

*Mr. Justice M. S. Liberhan in Civil Misc. No. 5085-CII of 1988 and in Civil Revision No. 138 of 1988.
Civil Misc. No. 4164 of 1989.*

*Petition under section 151 C.P.C., praying that the filing of the judgments of the learned Rent Controller and learned Appellate Authority may be dispensed with at this stage.
Civil Misc. No. 4165 of 1989.*

Application under section 151 C.P.C. praying that the operation of the impugned order may kindly be stayed during the pendency of the appeal in the Hon'ble Court.

H. N. Mehtani, Advocate, for the appellant.

ORDER

(1) The appeal which is sought to be filed is against the order made in C.M. No. 5085 of 1988 in C.R. No. 138 of 1988. Therefore, the order made by the learned Judge partakes the nature of the revisional jurisdiction which can be exercised by him in disposing of C.R. No. 138 of 1988. The order cannot stand *de hors* the civil revision petition. In the circumstances, the order sought to be appealed against shall also be treated as one made in exercise of revisional jurisdiction. As against the order made in revisional jurisdiction, no appeal lies under clause X of the letters patent. This appeal is accordingly dismissed as being not maintainable.

S.C.K.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

COMMISSIONER OF INCOME TAX,—Applicant.

versus

MR. JUSTICE P. C. JAIN,—Respondent.

Income Tax Reference No. 51 of 1978.

June 1, 1989.

Income Tax Act (XLIII of 1961)—Ss. 22, 23 and 24—Income from house property—Annual letting value—Determination of such value—Deductions permissible while determining such value.

Held, that while Section 22 of the Income Tax Act, 1961 provided that the profits chargeable to income tax from house property in the annual value of such house property, S. 23 provided as to how annual value has to be determined, S. 24 for the deductions to be made in computing the income from house property. If the house property is not one which would come within clause (b) of second proviso, then under the main part, annual value of the property shall be determined when it is let out on the amount of rent received or where the property is not let out, the sum for which the property might reasonably be expected to let from year to year. The deductions provided under S. 24 shall also have to be made from such amount or sum as is referred to above. In our view, the Parliament could not have intended that while permitting the amount of interest payable on borrowed capital to be deducted under S. 24 in respect of such a building, wanted to take away such a benefit in respect of a building which would fall within second proviso to that Section, obviously for the reason both are borrowed capital and the interest is paid on such borrowed capital. Further, the provision of S. 23 itself is for the purpose of S. 22 as specially stated therein and, therefore, it could not affect the deductions referred to in S. 24. Nor is there any reason to restrict the deduction only to the extent of the income from the property and not beyond.

(Para 8)

Reference under section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Chandigarh Bench to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 10th January, 1978 in R.A. No. 123 of 1977-78 in I.T.A. No. 412 of 1977-78, assessment year 1974-75.

- (i) *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the word "income" used in the penultimate line of second proviso to section 23(1) of the I.T. Act, 1961, means 'annual letting value' ?*
- (ii) *If the answer to the above question is in affirmative, whether the Tribunal was right in law in allowing loss which exceed the ALV from the house property by Rs. 2,089 after allowing deduction of Rs. 1,200 under section 23(1) of the Act ?*

Sh. Ashok Bhan, Senior Advocate, Shri A. K. Mittal, Advocate with him, for the appellants.

Sh. R. S. Aulakh, Advocate, for the respondents.

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JUDGMENT

V. Ramaswami, C.J.

Two references (I.T.R. No. 51 of 1978 and I.T.R. No. 168 of 1980) under section 256(1) of the Income-tax Act, 1961 relate to the Assessment Years 1974-75 and 1975-76, respectively. In the first reference, the following two questions of law have been referred by the Tribunal :-

- “1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the word “income” used in the penultimate line of second proviso to section 23(1) of the I.T. Act, 1961, means annual letting value ?”
2. If the answer to the above question is in affirmative, whether the Tribunal was right in law in allowing loss which exceed the ALV from the house property by Rs. 2089 after allowing deduction of Rs. 1,200 under section 23(1) of the Act ?”

(2) In the reference relating to the Assessment Year 1975-76, one compendious question has been referred though the point involved is the same and that question reads as follows :—

“Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in allowing a loss of Rs. 1,000 representing loss from a newly constructed property in the computation of the total income by holding that the word ‘income’ used in the closing line of second proviso to section 23(1) of the Income-tax Act, 1961 should be taken to mean ‘annual letting value’.”

(3) For the Assessment Year 1974-75, the assessee, who is an individual, had disclosed a loss of Rs. 2,089 in respect of his house property bearing No. 707, Sector 8-B, Chandigarh, which was let out

by him on a monthly rent of Rs. 700 on the basis of the following calculations :—

A.L.V.	Rs. 8,400
Less deduction u/s 23 (1)	Rs. 1,200
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	Rs. 7,200
Loss 1/6th for repairs :	Rs. 1,200
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	Rs. 6,000
Less collection charges	Rs. 400
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	Rs. 5,600
Less interest on borrowings :	
(i) Smt. Vidya Jain	3136
(ii) On Government loan	2700
(iii) Sh. Lal Chand Jain	1853
	Rs. 7,609
	<hr/>
	Rs. 2,089

(4) The Income-tax Officer by his order dated January 7, 1976, disallowed the claim of loss of Rs. 2,089 entirely on the ground that after claiming the deduction of Rs. 1200 under section 23(1) of the Act, no loss from the said property could be allowed in view of the provisions of second proviso to sub-section (1) of section 23. On appeal, the Appellate Assistant Commissioner, however, held that neither the provisions of sub-section (1) of section 23 warrant such disallowance nor was there any logic or reason for disallowing the loss especially in view of the provisions of section 24. The Tribunal agreed with the view of the Appellate Assistant Commissioner and accepted the claim made by the assessee. At the instance of the Revenue, the two questions relating to the Assessment Year 1974-75 were referred by the Tribunal.

(5) In respect of the Assessment Year 1975-76 also, the income-tax Officer disallowed the claim of loss of Rs. 1,057 in respect of the very same house property. The appeal of the assessee against

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that assessment order was heard by a different Appellate Assistant Commissioner, who, without reference to the earlier order relating to Assessment Year 1974-75, dismissed the appeal. The assessee went up in appeal before the Tribunal. By the time the appeal came on for orders, the appeal filed by the Revenue in respect of the Assessment Year 1974-75 had already been disposed of and following the earlier decision, the Tribunal accepted the claim of the assessee and allowed the loss of Rs. 1,057. At the instance of the Revenue, the question as set out above for the Assessment Year 1975-76 has been referred to this Court under section 256(1).

(6) There is no dispute that the house property in respect of which the claim of loss has been made, is a residential unit, the erection of which began after the first day of April, 1961 and completed after the 31st day of March, 1970 and that therefore this is a case to which clause (b) of second proviso to sub-section (1) of section 23 is applicable.

(7) Section 22 provides that the annual letting value of property consisting of any building shall be chargeable to income-tax under the head "Income from House Property". This annual letting value is taxable subject to the allowances provided in sub-section (1) of section 24.

(8) Under section 24, the income chargeable under the head "Income from House Property" shall be computed after making the deductions provided in sub-section (1) of that section. Under clause (vi) of that sub-section, where the property has been acquired or constructed with borrowed capital, the amount of any interest payable on such capital shall be deducted from the income from house property. That was the interest that was shown as Rs. 7,689 for the Assessment Year 1974-75, which we have extracted above. Section 23 provides for the determination of annual letting value. The main part of sub-section (1) provides that for the purposes of section 22, the annual value of any property shall be deemed to be the same for which the property might reasonably be expected to let from year to year or where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable. The relevant portion of second proviso to sub-section (1) of section 23 may conveniently be set out at this stage :—

"Provided further that the annual value as determined under this sub-section shall,

(a) x x x x x x x x

- (b) in the case of a building comprising one or more residential units, the erection of which is begun after the 1st day of April, 1961, and completed after the 31st day of March, 1970, for a period of five years from the date of completion of the building, be reduced by a sum equal to the aggregate of—
- (i) in respect of any residential unit whose annual value as so determined does not exceed one thousand two hundred rupees, the amount of such annual value;
- (ii) in respect of any residential unit whose annual value as so determined exceeds one thousand two hundred rupees, an amount of one thousand two hundred rupees, so, however, that the income in respect of any residential unit referred to in clause (a) or clause (b) is in no case a loss.”

Thus, while section 22 provided that the profits chargeable to income-tax from house property is the annual value of such house property, section 23 provided as to how annual value has to be determined, section 24 for the deductions to be made in computing the income from house property. If the house property is not one which would come within clause (b) of second proviso, then under the main part, annual value of the property shall be determined when it is let out on the amount of rent received or where the property is not let out, the sum for which the property might reasonably be expected to let from year to year. The deductions provided under section 24 shall also have to be made from such amount or sum as is referred to above. In our view, the Parliament could not have intended that while permitting the amount of interest payable on borrowed capital to be deduction under section 24 in respect of such a building, wanted to take away such a benefit in respect of a building which would fall within second proviso to that section, obviously for the reason both are borrowed capital and the interest is paid on such borrowed capital. Further, the provision of section 23 itself is for the purpose of section 22 as specially stated therein and therefore, it could not affect the deductions referred to in section 24. Nor is there any reason to restrict the deduction only to the extent of the income from the property and not beyond. In the light of this set up, the proviso to sub-section (1) of section 23 shall be read, interpreted and understood as relating to the determination of annual value and, therefore, that portion which referred

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that "the income in respect of any residential units referred to in clause (a) or clause (b) 'is in no case a loss' shall be related only to the determination of the annual value with reference to the main part of sub-section (1) of section 23 and not for the purposes of admissibility of the total amount of deductions that could be made under section 24. In fact the second proviso specifically states that "the annual value as determined under this sub-section shall" be reduced by the amounts specified in the clauses. It is true, as pointed out by the learned counsel for the Revenue that the words "is in no case a loss" will be meaningless if those will have to be restricted to the provisions of section 23 alone. That may be so, but on that ground, we cannot enlarge the scope of section 23 and restrict the applicability of the deductions under section 24. It may be pointed out that section 23 itself does not make any restrictions on the deductions referred to therein, nor had it subjected the provisions of that section to the provisions of section 23. On the other hand, when any restriction of that category is to be made, the section specifically referred so as seen from sub-section (2) of section 24. If there was any intention for the Parliament to restrict the deductions, that could have been made in section 24 itself. It may also be noted that by the Taxation Laws (Amendment) Act, 1984, the last portion of second proviso to sub-section (1) of section 23 was omitted and the explanatory note relating to the same reads as follows :—

"9.2. Apprehensions had been expressed that the above quoted words may be construed to imply that no loss shall be allowed in respect of such new residential units even when the loss may arise as a result of other deductions claimed by the assessee, as for instance, interest paid on borrowed capital for purposes of constructing the residential building. With a view to removing any controversy or doubt in the matter, the above-quoted words have been omitted from the aforesaid second proviso. This would secure that the deduction admissible to the assessee under the provisions of section 24 of the Income-tax Act in computing the income from house property shall not be limited to the annual letting value of the house property as arrived at after providing for the deduction under the said second proviso."

This explanatory note and the deletion of the two lines at the end of the proviso only bring out the real scope of the provision and

in order to make it abundantly clear they have omitted the provision.

(9) We are, therefore, of the view that the loss claimed by the assessee is allowable. Accordingly, we answer the questions in respect of the Assessment Year 1974-75 in the affirmative and the question referred for the Assessment Year 1975-76 in the negative and in favour of the assessee. The assessee will be entitled to his costs. Counsel's fee Rs. 500 (one set).

S.C.K.

Before S. S. Kang and J. S. Sekhon, JJ.

INDIAN OIL CORPORATION,—*Petitioner.*

versus

MUNICIPAL CORPORATION, JULLUNDUR and others,—*Respondents.*

Amended Civil Writ Petition No. 3361 of 1984.

June 2, 1989.

Punjab Municipal Corporation Act (XLII of 1976)—S. 113—Constitution of India, 1950—Entry 52, List II, Schedule VII—Levy of octroi—Legislative power of the State—Extent of that power—Validity of S. 113—Section held valid.

Held, Entry 52 of List II of Schedule VII of the Constitution empowers the legislatures of the States to frame laws for imposing taxes on the entry of goods into local areas for consumption, use or sale therein. In other words, negatively put, the State Legislature do not possess the power and authority to enact laws imposing taxes on the entry of goods into local areas which are not meant for consumption, use or sale therein. The powers of the State Legislatures are circumscribed by the entries in List II of Schedule VII. The State Legislature cannot empower municipal committees to levy tax only on the entry of goods within the local areas even when those goods are not meant for consumption use or sale within the area. The authority of the State Legislature in these matters is subject to the restrictions imposed by Entry 52. If on exercising this authority, the State Legislature enacts a law on a permissible subject-matter, but in doing so employs words and phrases which are of wide content and general connotation, then such words and