

The Commissioner of Income-Tax, Punjab

v.
Dalmia Dadri Cement Ltd.
Sharma. J.

In the light of what has been said above initiation of the proceedings under section 34 (1) (b) of the Income-tax Act for recovery of excess amount of interest that was allowed to the assessee under section 18A (5) and for recovering interest under section 18A (6) which was not charged when the original demand was created was not proper and legal. Consequently, the reference is answered in the negative. We assess the counsel's fee at Rs. 100 to which the assessee will be entitled as costs.

Mehar Singh. J.

MEHAR SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

INDER MOHAN,—*Petitioner.*

versus

THE EXCISE AND TAXATION COMMISSIONER, PUNJAB,
AND OTHERS.—*Respondents.*

Civil Writ No, 2 of 1962.

1962

May.,

2nd.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 3—Punjab Urban Immovable Property Tax Rules, 1941—Rule 4(e) and (f)—Annual value—Whether can be assessed at a figure higher than rental value under the East Punjab Urban Rent Restriction Act (III of 1949).

Held. that if the property is subject to the provisions of the East Punjab Urban Rent Restriction Act, 1949, it cannot earn nor can it reasonably be expected to earn more rent than what that Act permits. It is, therefore, incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax under the Punjab Immovable Property Tax Act, 1940, with reference to the provisions of the East Punjab Urban Rent Restriction Act, 1949.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the orders passed by the Respondents.

dated the 16th July, 1960, 18th August, 1961 and 7th March, 1962, as regards the valuation of the property of the petitioner for assessing the property tax against him and directing them to assess this value as it was in the years, 1954 to 1956, in accordance with law.

D. C. GUPTA, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER

MAHAJAN, J.—This petition under Article 226 of the Constitution raises an interesting question as to whether the authorities under the Punjab Urban Immovable Property Tax and the rules framed thereunder can fix the rental value of the house more than what is its rental value under the East Punjab Urban Rent Restriction Act. So far as the facts go there is not much dispute. The house in dispute is an old house and adjoining it is a new house built by the family which is admittedly exempt from the provisions of the East Punjab Urban Rent Restriction Act. The old house has been under tenants right up to the year 1954 and the total realisation of rent of this house is in the neighbourhood of Rs. 605 per annum. The rent of the house, which is exempt from the East Punjab Urban Rent Restriction Act, is Rs. 2250. At the time of the revision of the annual letting value of the property the assessing authority fixed the rental value of the old house at Rs. 1,260. Objections were raised to this assessment by the owner and it is not necessary to restate all of them. Suffice it to say that the principal objection was that the owner can, in no circumstance, get Rs. 1,260 as rent for this house in view of the provisions of the East Punjab Urban Rent Restriction Act. This objection has been negated by the authorities who considered the objection, the appeal and the revision. The only exception that was made was that the revisional authority reduced the letting valuation from Rs. 1,260 to Rs. 900. It is against these orders that the present petition is directed.

Mahajan. J.

Section 2(f) of the Punjab Urban Immovable Property Tax Act, 1940, defines, 'tax'. Section 3 is

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Mahajan. J.

the charging section. The tax is charged on buildings and lands situate in the rating area at such rate not exceeding twenty per centum of the annual value of such buildings and land, as the State Government may by notification in the Official Gazette direct in respect of each such rating area. Section 7 provides for the making and operation of valuation list and section 8 deals with the draft valuation list, whereas section 9 contemplates amendment of current valuation list. Rule 4 of the Rules framed under this Act deals with the preparation of the valuation list and it is this list which really determines the annual valuation of the buildings as contemplated by section 3. The relevant parts of Rule 4, with which we are concerned, are clauses (e) and (f) which are in these terms:—

“(e) An enquiry shall be made about the gross annual rent earned or which could reasonably be earned in respect of the property during the financial year immediately preceding the current financial year.

(f) If in the opinion of the assessing authority the average gross annual rent of any property ascertained under clause (e), when compared with any other property in that locality, be not fair or reasonable, the assessing authority shall determine, from such other data as may be available, the gross annual rent at which such property may reasonably be expected to let from year to year.”

It will be apparent from the combined reading of these two clauses that it is the actual gross annual rent earned or which could reasonably be earned in respect of the property which will become the annual renting value. Clause (f) permits the assessing authority on the basis of any other property in the locality to revise the annual letting valuation if the average gross annual rent ascertained under clause (e) be not fair or reasonable. Even in this eventuality it is again the gross annual rent at which such property may reasonably be expected to be let from year to year. Therefore, if the property is subject to the

provisions of the East Punjab Urban Rent Restriction Act it must be held that it cannot earn or cannot be reasonably expected to earn more rent than what that Act permits. Therefore, fixing the annual rent in disregard of the restrictions on enhancement of rent by the East Punjab Urban Rent Restriction Act would be a violation of clauses (e) and (f) of Rule 4. Thus, it was incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax, with reference to the provisions of the East Punjab Urban Rent Restriction Act. This has not been done in this case and, therefore, it must be held that the order of the assessing authority and the consequential orders in appeal and in revision are wholly without jurisdiction. That being, so, this petition is allowed and the orders of the assessing and other authorities are quashed and they are directed to proceed to assess the annual rental value in accordance with law. The petitioner will have his costs of this petition, which I assess at Rs. 100.

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missioner,
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APPELLATE CIVIL

Before Prem Chand Pandit, J.

NAND SINGH VIRDI,—Appellant.

versus

PUNJAB ROADWAYS AND OTHERS,—Respondents.

First Appeal from Order No. 63 of 1961.

*Motor Vehicles Act (IV of 1939)—Sections 94 and 95—
Scope of —Accident occurring without any rash or negli-
gent act of the driver—Insurer—Whether liable to pay
compensation to passenger travelling in the vehicle and
getting injured as a consequence of the accident.*

1962
May 22nd

Held, that sub-sections (1) and (2) of section 95 of the Motor Vehicles Act, 1939 lay down that the Government-owned vehicle has to be insured to cover liability in respect of third party risk and the policy of insurance shall cover any liability incurred in respect of any accident