A

SHIELA KAUSHISH

v.

COMMISSIONER OF INCOME-TAX, DELHI

August 18, 1981

B

[P. N. BHAGWATI AND BAHARUL ISLAM, JJ.]

Income Tax Act, 1961, S. 23(1)—Income from house property—Chargeability to income tax—"Annual value" of building—Determination of—Whether standard rent determinable under provisions of Rent Act or actual rent received by landlord from tenant.

C

Words and Phrases—"Annual Value"—Meaning of—Income Tax Act, 1961, S. 23(1).

The appellant-assessee constructed a warehouse and let out different portions under different tenancies commencing on different dates. Later on a new lease was entered into between the assessee and her tenant for letting out of the entire warehouse and the assessee started receiving rent at the rate of Rs. 34,797/- per month in respect of the entire warehouse from 1st April, 1968.

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In the course of assessment of the assessee for the assessment years 1969-70 and 1970-71 the question arose as to how the "annual value" of the warehouse should be determined for the purpose of chargeability to income tax under the head "income from house property". The assessee claimed before the Income-Tax Officer that on a proper construction of sub-section (1) of section 23, it was not the actual rent received by her from the warehouse that was material for determining the annual value of the warehouse but the hypothetical amount for which the warehouse might reasonably be expected to be let from year to year, and since the Delhi Rent Control Act 1958 was applicable in the area in which the warehouse was situate, the warehouse could not reasonably be expected to be let from year to year at a rent exceeding the standard rent determinable under the provisions of that Act. The Income Tax Officer rejected this claim and took the view that the actual rent received by the assessee provided the most accurate and satisfactory measure of the amount for which the warehouse might reasonably be expected to let from year to year and the annual value of the warehouse must therefore be taken to be the actual rent received by the assessee and he accordingly assessed the assessee to tax on the basis of the actual rent.

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The assessee's appeals for each of the two assessment years to the Appellate Assistant Commissioner were unsuccessful. The Income-Tax Tribunal took the same view on further appeals by the assessee and held relying on the decision of this Court in *M. M. Chawla* v. *J. S. Sethi* [1970] 2 SCR, 390 that in the absence of fixation of standard rent, the agreed rent which is legally recoverable and not tainted by fraud, relationship or any other consideration must be taken to be the standard rent and hence the actual rent received by the assessee was rightly taken as the annual value of the warehouse.

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A The assessee's applications to the Tribunal as well as to the High Court for the making of a reference under section 256 of the Income-Tax Act, 1961 were also dismissed.

Allowing the appeals to this Court,

B HELD : 1.The annual value of the building according to the definition given in sub-section (1) of section 23 of the Income-Tax Act, 1961 is the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant. [316 H-317 A]

C 2. In *Dewan Daulat Rai Kapoor etc.* v. *New Delhi Muncipal Committee* [1980] 2 S.C.R. 607 a decision of this Court given on the interpretation of the definition of 'annual value' in the Delhi Municipal Corporation Act 1957 and the Punjab Municipal Act 1911 for the purpose of levy of house tax, it was held that even if the standard rent of a building has not been fixed by the Controller under section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be equally so whether the building has been let out to a tenant who has lost his right to apply for fixation D of standard rent by reason of expiration of the period of limitation prescribed by section 12 of the Rent Act or the building is self-occupied by the owner, and that the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord would constitute the correct measure of the annual value of the building. [314 H, 316 A-C]

E 3. This decision though given on the interpretation of the definition of 'annual value' in the Delhi Municipal Corporation Act 1957 and the Punjab Municipal Act 1911 for the purpose of levy of house tax, would be equally applicable in interpreting the definition of 'annual value' in sub-section (1) of section 23 of the Income-Tax Act, 1961 because these definitions are in identical terms and it is impossible to distinguish the definition of 'annual value' in sub-section (1) of section 23 of the Income Tax Act, 1961 from the definition of that term in the Municipal Corporation Act 1957, and the Punjab Municipal Act, 1911. [316 F]

F In the instant case the annual value of the warehouse for the purpose of chargeability to income-tax for the assessment years 1969-70 and 1970-71 would have to be determined on the basis of the standard rents of different portions of the warehouse determinable under clause (b) of sub-section (2) and paragraph (b) of sub-clause (2) of clause (B) of sub-section (1) of section 6 of the Rent Act. [319 C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2110 and 2111 of 1978.

H Appeals by special leave from the judgment and order dated the 1st February, 1978 of the Delhi High Court in I.T.C. Nos. 14 and 15 of 1974.

WITH

Civil Appeal Nos. 1184-85 of 1981.

Appeals by special leave from the order dated the 28th September, 1973 of the Income Tax Appellate Tribunal Delhi Bench in I.T.A. No. 386 and 387 of 1972-73.

Soli J. Sorabjee, T.A. Ramachandran, Parkash Sarup, Ravinder Narain and *Talat Ansari* for the Appellant in all the Appeals.

P.A. Francis, S.P. Nayar and *Miss A. Subhashini* for the Respondent in all the Appeals.

The Judgment of the Court was delivered by

BHAGWATI, J. These appeals by special leave raise a common question of law relating to the determination of annual value of a building for the purpose of chargeability to tax under the Income-tax Act, 1961 where the building is governed by the provisions of the Rent Control legislation but the standard rent has not yet been fixed. The facts giving rise to these appeals are few and may be briefly stated as follows :

The assessee constructed a warehouse in Delhi some time in 1961 at a total cost of Rs. 4,13,000/-. The warehouse consisted of two portions on the ground floor, one on the north and the other on the south and also a mezzanine floor and a first floor. On 19th March, 1962, the assessee let out the whole of the first floor to the American Embassy at the rent of Rs. 5810/- per month and subsequently on 1st April, 1964 she let out the northern portion of the ground floor together with the mezzanine floor to the same tenant at the rent of Rs. 6907/- per month and on 7th December, 1964 the northern portion of the ground floor was let out to the same tenant at the rent of Rs. 6640/- per month. Thus the entire warehouse was let out by the assessee to the American Embassy with different portions let out under different tenancies commencing on different dates. On 17th July, 1967, however, a new lease was entered into between the assessee and the American Embassy for letting out of the entire warehouse at the rent of Rs. 34,797/- per month and this lease came into effect from 1st April, 1968. The assessee thus started receiving rent at the rate of Rs. 34,797/- per month in respect of the entire warehouse from 1st April, 1968.

The question arose in the course of assessment of the assessee to income tax for the assessment years 1969-70 and 1970-71 as to how the annual value of the warehouse should be determined for the

purpose of chargeability to income tax under the head "Income from house property". Now income from house property chargeable to tax is computable under section 22 which provides that the annual value of property consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, shall be chargeable to income tax under the head "Income from house property". Where, therefore, the assessee owns a building, the annual value of such building is chargeable to income tax under the head "income from house property" under section 22. But the question immediately arises : how is the annual value to be determined ? The answer is provided by section 23 which lays down the mode of determination of annual value. Sub-section (1) of that section as it stood at the material time provided that "for the purposes of section 22, 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 year. The assessee therefore claimed that on a proper construction of sub-section (1) of section 23, it was not the actual rent received by the assessee for the warehouse that was material for determining the annual value of the warehouse but the hypothetical amount for which the warehouse might reasonably be expected to let from year to year and since the Delhi Rent Control Act 1958 (hereinafter referred to as the Rent Act) was applicable in the area in which the warehouse was situate, the warehouse could not reasonably be expected to let from year to year at a rent exceeding the standard rent determinable under the provisions of that Act. The Income Tax Officer however, took the view that the actual rent received by the assessee provided the most accurate and satisfactory measure of the amount for which the warehouse might reasonably be expected to let from year to year and the annual value of the warehouse must therefore be taken to be the actual rent received by the assessee and he accordingly assessed the assessee to tax on the basis of the actual rent received by her. The assessee preferred an appeal to the Appellate Assistant Commissioner for each of the two assessment years challenging the correctness of the view taken by the Income-tax Officer and contending that the annual value of the warehouse must be taken to be the standard rent determinable under the provisions of the Rent Act, but the appeals were unsuccessful and the determination of the annual value made by the Income-tax Officer was affirmed. The Tribunal also took the same view on further appeals by the assessee and by a consolidated order dated 28th September, 1973, confirmed the assessments made on the assessee on the basis of the actual rent received by her. The Tribunal held relying on the decision of this Court in *M.M. Chawala* v. *J S. Sethi*, [1970] 2 SCR 390 that, in the

absence of fixation of standard rent. the agreed rent which is legally recoverable and not tainted by fraud, relationship or any other consideration must be taken to be the standard rent and hence the actual rent received by the assessee was rightly taken as the annual value of the warehouse. In the mean time, an application was made for fixation of the standard rent of the warehouse by the new tenant who came to occupy the warehouse after the American Embassy vacated it and on this application, the Rent Controller by an order dated 13th March, 1973 fixed the standard rent at Rs. 34,848.00 per annum under the provisions of the Rent Act. The assessee aggrieved by the order dated 28th September 1973 made by the Tribunal, preferred two applications one in respect of each assessment year, seeking reference of five questions which, according to the assessee, arose out of the order of the Tribunal, but the Tribunal by a common order dated 26th February, 1974, rejected the applications on the ground that there was only one question of law which arose out of the order of the Tribunal but that was concluded by the decision of this Court in *M.M. Chawla's case* (supra) and so far as the other questions were concerned, they were all questions of fact and hence not referable under section 256 (1) of the Income-tax Act, 1961. The assessee thereupon preferred two applications before the High Court of Delhi under section 256 (2) of the Income-tax Act, 1961 for directing the Tribunal to make a reference, but these applications also met with the same fate and on the same grounds which found favour with the Tribunal, they were rejected by the High Court by judgment dated 1st February, 1978. This led to the filing of two petitions for special leave to appeal, one in respect of each assessment year, and these petitions were allowed and special leave granted by this Court, giving rise to civil appeals Nos. 2110 and 2111 of 1978. Since these two appeals were directed against the judgment of the High Court refusing two call for a reference from the Tribunal, the only question which could have been considered by the Court in these appeals was as to whether any questions of law arose out of the order of the Tribunal requiring to be referred to the High Court and therefore even if the assessee succeeded in the appeals there would not be an end to the litigation but the questions of law formulated by this Court would have to be referred by the Tribunal to the High Court and then the High Court would have to hear the reference and answer the questions referred to it. This would have delayed considerably the final determination of the questions of law arising out of the order of the Tribunal and it was, therefore, agreed between the parties that the following two ques-

A tions of law should be decided by the Court in these appeals, since they admittedly arose out of the order of the Tribunal :

(1) "Whether, on the facts and in the circumstances of the case, the actual rent received by the assessee or the standard rent under the Delhi Rent Control Act, B should be taken to be the "annual value" of the property within the meaning of section 23 of the Income Tax Act, 1961,

(2) Whether, there was any material on record on which the Tribunal could hold that the receipt of C Rs. 4,17,674/- from the American Embassy would be reasonable rent for which the property might be let in spite of the fact that properties in the immediate neighbourhood let out to the Bank of Baroda and Indian Oxygen Company Ltd. were let at rents considerably lower.

D This Court accordingly made an order directing that these two questions of law should be disposed of by the Court directly, without calling for a reference from the Tribunal. However, since some doubt was felt whether this Court could directly dispose of the two questions of law arising out of the order of the Tribunal without E calling for a reference, the assessee by way of abundant caution preferred two petitions for special leave to appeal directed against the order of the Tribunal dated 28th September, 1973 and on these petitions, special leave was granted by this Court and that is how Civil Appeal Nos. 1184-1185 of 1981 have come up for hearing before us along with C.A. Nos. 2110 and 2111 of 1978.

F Though two questions have been formulated by this Court as arising out of the order of the Tribunal dated 28th September, 1973, it is the first which really formed the subject matter of controversy between the parties and since, in our view, that question has to be answered in favour of the assessee, it is not necessary to embark G upon a consideration of the second question. So far as the first question is concerned, it stands concluded by the recent decision of this Court in *Dewan Daulat Rai Kapoor etc. etc.* v. *New Delhi Municipal Committee.*(1) There were three appeals decided by a common judgment in that case and the question which arose for H determination in these appeals was as to how the annual value of a

(1) [1980] 2 S.C.R. 607.

building should be determined for levy of house tax where the building is governed by the provisions of the Rent Act, but the standard rent has not yet been fixed. One of these appeals related to a case where the building was situate within the jurisdiction of the New Delhi Municipal Committee and was liable to be assessed to house tax under the Punjab Municipal Act, 1911 while the other two related to cases where the building was situate within the limit of the Corporation of Delhi and was assessable to house tax under the Delhi Municipal Corporation Act, 1957. The house tax under both statutes was levied with reference to the 'annual value' of the building. The 'annual value' was defined in both statutes in the same terms, barring a second proviso which occurred in section 116 of the Delhi Municipal Corporation Act, 1957, but was absent in section 3 (1) (b) of the Punjab Municipal Act, 1911. This proviso was however not material as it dealt with a case where the standard rent was fixed under the provisions of the Rent Act, while in none of the cases before the Court was the standard rent fixed in respect of the building involved in such case. According to the definition given in both statutes, the 'annual value' of a building meant the gross annual rent at which the building might reasonably be expected to let from year to year. The controversy between the parties centered round the question as to what is the true meaning and effect of the expression "the gross annual rent at which such house or building..... may reasonably be expected to let from year to year" occurring in the definition in both statutes. The argument of the Municipal Authorities was that since the standard rent of the building was not fixed by the Controller under section 9 of the Rent Act in any of the cases before the Court and in each of the cases the period of limitation prescribed by section 12 of the Rent Act for making an application for fixation of the standard rent had expired, the landlord in each case was entitled to continue to receive the contractual rent from the tenant without any legal impediment and hence the annual value of the building was not limited to the standard rent determinable in accordance with the principles laid down in the Rent Act, but was liable to be assessed by reference to the contractual rent recoverable by the landlord from the tenant. The Municipal Authorities urged that if it was not penal for the landlord to receive the contractual rent from the tenant, even if it be higher than the standard rent determinable under the provisions of the Rent Act, it would not be incorrect to say that the landlord could reasonably expect to let the building at the contractual rent and the contractual rent therefore provided a correct measure for determination of the annual value of the building. This argument

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A was hower rejected by the court and it was held that even if the standard rent of a building has not been fixed by the Controller under section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out to a B tenant who has lost his right to apply for fixation of the standard rent by reason of expiration of the period of limitation prescribed by section 12 of the Rent Act or the building is self-occupied by the owner. Therefore, in either case, according to the definition of 'annual value' given in both statutes, the standard rent determinable C under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant would constitute the correct measure of the annual value of the building. The court pointed out that in each case the assessing atuhority would have to arrive at its own figure of the standard rent by applying the priciples laid down in the Rent Act for determination of the standard rent and determine the D annual value of the building on the basis of such figure of the standard rent. The court, on this view, negatived the attempt of the Municipal Authorities in each of the cases to determine the annual value of the the building on theba sis of the actual rent received by the landlord and observed that the annual value of the building must be held to be limited by the measure of the standard rent determinable E on the principles laid down in the Rent Act and it could not exceed such measure of the standard rent. Now this was a decision given on the interpretation of the definition of 'annual value' in the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911 for the purpose of levy of house tax, but it would be equally applicable in interpreting the definition of 'annual value' in sub-sec. F (1) of section 23 of the Income-tax Act, 1961, because these definitions are in identical terms and it is impossible to distinguish the definition of 'annual value' in sub-sec. (1) of section 23 of the Income-tax Act, 1961 from the definition of that term in the Municipal Corporation Act, 1957, and the Punjab Municipal Act, 1911. We must therefore hold, on an indentical line of reasoning, G that even if the standard rent of a building has not been fixed by the Controller under section 9 of the Rent Act and the period of limitation prescribed by section 12 of the Rent Act for making an application for fixation of the standard rent having expired, it is no longer competent to the tenant to have the standard rent of the H building fixed, the annual value of the building according to the definition given in sub-section (1) of section 23 of the Income-tax Act, 1961 must be held to be the standard rent determinable under

the provisions of the Rent Act and not the actual rent received by the landlord from the tenant. This interpretation which we are placing on the language of sub-section (1) of sec. 23 of the Income-tax Act, 1961, may be regarded as having received legislative approval, for we find that by section 6 of the Taxation Laws (Amendment) Act, 1975, sub-section (1) of section 23 has been amended and it has now been made clear by the introduction of clause (b) in that sub-section that where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum for which the property might reasonably be expected to let from year to year, the amount so received or receivable shall be deemed to the annual value of the property. The newly added clause (b) clearly postulates that the sum for which a building might reasonably be expected to let from year to year may be less than the actual amount received of receivable by the landlord from the tenant. We are therefore of the view that in the present case the standard rent of the warehouse determinable under the provisions of the Rent Act must be taken to be the annual value within the meaning of sub-section (1) of section 23 of the Income-tax Act, 1961 and the actual rent received by the assessee from the American Embassy cannot of itself be taken as representing the correct measure of the annual value.

We must therefore address ourselves to the question as to what would be the standard rent of the warehouse determinable under the provisions of the Rent Act for the assessment year 1969-70 and 1970-71 the relevant accounting years being 1st April 1968 to 31st March 1969 and 1st April 1969 to 31st March 1970. Now 'standard rent' is defined in section 2 (k) to mean the standard rent referred to in section 6 or where the standard rent has been increased under section 7, such increased rent. Section 6 lays down different formulae for determination of standard rent according to different situations. Clause (A) of sub-section (1) enacts provisions for determination of standard rent in case of residential premises, but we need not refer to those provisions, since we are concerned in the present case not with residential premises but with a warehouse which constitutes non-residential premises. The provisions applicable for determination of standard rent in the case of non-residential premises are set out in clause (B) of sub-section (1) and there also, we are concerned only with sub-clause (2) because the warehouse was admittedly let out for the first time after 2nd June, 1944. Since the standard rent of the warehouse was not at any time fixed under the Delhi and Ajmer Merwara Rent Control Act, 1947, or the Delhi and Ajmer Rent

Control Act, 1952, the standard rent was liable to be determined under paragraph (b) of sub-clause (2) which provides that "the rent calculated on the basis of seven and one-half per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction" shall be taken to be the standard rent of the premises. There is a proviso to this pragraph which says that" where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "seven and one-half per cent" the words "eight and five-eighth per cent" had been substituted." But all these provisions for determination of standard rent are subject to the overriding provision enacted in sub-section (2) which provides in clause (b), which is the clause applicable in the present case since the warehouse was constructed on or after 19th June, 1955, that in case of such premises.... "the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out.." Now the first floor of the warehouse was first let out at the rent of Rs. 5810/- per month from 19th March 1962 and therefore under clause (b) of sub-section (2) the rent of Rs. 5810/- per month would be the standard rent of the first floor of the warehouse for the period of five years from 19th March 1962 upto 18th March 1967 and thereafter the standard rent would have to be determined under paragraph (b) sub-clause (2) of clause (B) of sub-section (1) and this latter figure would represent the standard rent of the warehouse determinable under the provisions of the Rent Act for the accounting years 1st April 1968 to 31st March 1969 and 1st April 1969 to 31st March 1970. The next portion of the warehouse let out to the American Embassy was the northern portion of the ground floor together with the mezzanine floor for the period of five years from 1st April 1964 upto 31st March 1969 under clause (b) of sub-section (2) and thereafter it would have to be determined under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). Thus for the accounting year 1st April 1968 to 31st March 1969 the standard rent of the northern portion of the ground floor and the mezzanine floor determinable under the provisions of the Rent Act would be Rs. 6907/- per month while for the accounting year 1st April 1969 to 31st March 1970, the standard rent would be that determinable under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). That leaves the southern portion of the ground floor which was first let out to the American Embassy at the rent of Rs. 6640/- per

month from 7th December 1964, and according to clause (b) of sub-section (2), the standard rent of this portion would be Rs. 6640/- per month for the period of five years from 7th December, 1964 up to 6th December, 1969 and thereafter it would be detrminable under paragraph (b) of sub-clause 2 of clause (B) of sub-section (1). Thus for the accounting year 1st April 1968 to 31st March 1969 and 1st April 1969 to 6th December 1969 the standard rent of the southern portion of the ground floor determinable under the provisions of the Rent Act would be Rs. 6640/- per month, while for the remaining portion of the accounting year from 7th December 1969 to 31st March 1970, the standard rent would be determinable under paragraph (b) of sub-clause (2) of clause (B) of sub-section (1). The annual value of the warehouse for the purpose of chargeability to income tax for the assessment years 1969-70 and 1970-71 would have to be determined on the basis of the standard rent of different portions of the warehouse determinable under clause (b) of sub-section (2) and paragraph (b) of sub-clause (2) of clause (B) of sub-section (1) of section 6 of the Rent Act as discussed above.

We accordingly answer question No. 1 in favour of the assessee by holding that the standard rent of different portions of the warehouse determinable under the provisions of the Rent Act as indicated above and not the actual rent received by the assessee from the American Embassy should be taken be the annual value of the warehouse within the meaning of sub-section (1) of section 23 of the Income-tax Act, 1961. On this view taken by us, the the assessee did not press question No. 2 and hence it is not necessary to answer it. We allow the appeals of the assessee to this limited extent and direct that the Revenue will pay the costs of the appeals to the assessee.

N. V. K. *Appeals allowed*