Supreme Court of India
Liquidator Of Mahamudabad ... vs Commissioner Of Income Tax, West ... on 9 April, 1980
Equivalent citations: 1980 AIR 758, 1980 SCR (3) 428
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
LIQUIDATOR OF MAHAMUDABAD PROPERTIES (P) LTD

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, WEST BENGAL II, CALCUTTA

DATE OF JUDGMENT09/04/1980

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
UNTWALIA, N.L.

CITATION:
1980 AIR 758 1980 SCR (3) 428
1980 SCC (3) 482

ACT:
Income Tax Act, 1961, Sections 22 and 23-Computation of Income from house property-Building not in a habitable condition after it was released by Government consequent to derequisitioning-Assesee claiming remission in the computation of income of the entire annual value and also deductions on account of insurance premium and municipal taxes relating to the property- Permissibility of remission and deductions claimed-Competency of the High Court to give a direction to the Appellate Tribunal, enabling the Revenue to tax income from the property when the Revenue failed to ask for a reference against Appellate Tribunal's decision-Nature of High Court's power in a reference case.

HEADNOTE:
The appellant-assessee, in his income tax return for the assessment year 1962-63 (for which the previous year was the calendar year 1961) recited that the annual value of the building derequisitioned by the Govt. on 26-12-1960 was Rs. 1,23,672/-. However on the ground that the building had remained vacant throughout the previous year, the assessee claimed a remission in the computation of the income of the entire annual value. The assessee also claimed a deduction on account of insurance premium and municipal taxes relating

to the property.

The Income Tax Officer took the view that the property was not in a habitable condition and did not admit of letting and therefore no question arose of applying the provisions of the Income Tax Act relating to the computation of income from property. Accordingly, he held that the annual value as well as the vacancy claim had to be ignored. The assessee appealed to the Appellate Assistant Commissioner who held that although the property had remained vacant, it possessed an annual value and should be considered for assessment. On that view, he allowed the deductions claimed by the assessee. In second appeal, the Income Tax Appellate Tribunal favoured the view taken by the Income Tax Officer and accordingly held that the claim to deductions made by the assessee must fail. The Tribunal, in other words, affirmed that the property fell outside the scope of s. 22 of the Act and, consequently, denied the deductions. The Revenue appeared satisfied with the order of Appellate Tribunal. But, at the instance of the assessee a reference was made to the High Court. The High Court was of the opinion that the Appellate Tribunal had misconceived the law in holding that because the property was in a state of disrepair it did not possess an annual value. As regards the assessee's claim to the specified deduction, it held that while the insurance premium paid by it could be allowed, there was no merit in the claim on account of vacancy remission and payments of municipal taxes. Hence the appeal by special leave to this Court.

Dismissing the appeal, the Court,

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HELD : 1. Whether the High Court was right in including a direction to the Appellate Tribunal to take into account the annual value of the property

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will depend on the appreciation of the true scope of the reference taken to the High Court. The question referred to the High Court was rooted in the fundamental submission of the assessee that the property possessed an annual value for the purpose of Section 22 and it was, therefore, entitled to the vacancy remission and other deductions claimed by it. The frame of the question indicates that it has two parts, whether the Appellate Tribunal was right in holding that in computing the income from property the premises 3, Gun Foundry, possessed an annual value and whether the Appellate Tribunal was right in disallowing the vacancy remission and other deductions in respect of that property. [434C-E]

Unless the property fall within the scope of Section 22 there was no occasion for considering the assessee's claim to the deductions. The High Court also, when considering the reference, examined the question in its bifurcated character. But although bifurcated, the thrust of the question was directed to the consideration of the deductions

claimed by the assessee. Whether the property possessed an annual value was necessary to determine solely for the purpose of considering the claim to deductions. Unless the assessee was interested in those deductions it would not have asked for a finding that the property possessed an annual value. The High Court, was, therefore, right in examining both parts of the question and in determining whether the property had an annual value and the deductions claimed were permissible. [434E-G]

The High Court had to consider the first part of the question because that was the very case of the assessee throughout from the earliest stage of the proceeding. The need for the determination whether the property has an annual value arises only if it is found that on the terms of the statute the assessee is otherwise entitled to the deductions claimed by him. If those deductions are not permissible under the relevant section, no question arises of examining whether the property has an annual value. Viewed in that light, the determination of the question whether the property has an annual value falls into its proper place. [434G-H, 435A]

2. It is not open to the Revenue to contend that even though the claim to deduction must otherwise fail, the question whether the property has an annual value must still be considered. If the Revenue intended that the High Court should determine whether the property had an annual value as a question independent of its finding on the admissibility of the deductions, the Revenue should have applied to the Appellate Tribunal for a reference to the High Court accordingly. It did not ask for a reference and, therefore it is not entitled to raise that contention now. [435A-C]

However, the only way of looking at the case, is whether on the assumption that the property has an annual value and falls within the scope of Section 22, the assessee is entitled to the deductions under Sections 23 and 24. If he is entitled to any of those deductions, then in order to establish the foundation in which the deductions can be rooted it will be necessary to determine whether the property possesses an annual value. That is what the High Court did, and the observations made by it must be construed accordingly. It may be that the deduction to which the assessee is found entitled runs to a far smaller figure than the annual value property attributable to the property. In that event the consequence will be a net annual value of some significance. And this will be the consequence notwithstanding that

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the reference is at the assessee's instance and no reference at all has been brought by the Revenue. The result appears anomalous, but after all it is for the assessee to choose whether or not he wishes to take a reference to the High Court, and if he is found entitled to even one of the deductions claimed by him and effect cannot be given to that

claim without the annual value of the property being computed he has only to thank himself. [435C-F]

3. The High Court, on a reference before it, does not act as a court of appeal. The jurisdiction is advisory and no more. The High Court is empowered to decide the question of law referred to it, and to return its answer to the Appellate Tribunal. The Appellate Tribunal then takes up the appeal and disposes it of conformably with the answer returned by the High Court. It is not part of the jurisdiction of the High Court to interfere and modify or set aside the appellate order of the Tribunal. [435F-H]

4. The proviso to Section 23 (1) of the Income Tax Act, 1961 can be availed of only if the property is in the occupation of a tenant. It would seem so on the language of the proviso. The assessee does not rest his claim on any other provision of law. In the circumstances, the High Court is right in denying the claim in respect of municipal taxes. [436G-H]

5. The provisions of the Income-Tax Act relating to the charge on income apply in relation to a specific assessment year and the provisions of the Act providing for the computation of the chargeable income (which includes taking into account permissible deductions in the computation of the income chargeable under different heads) apply, in the absence of anything to the contrary, in relation to the relevant previous year. The total income of the previous year needs to the computed, and the different provisions relating to the computation of income must be read and applied in the context of the facts and circumstances obtaining during that year, unless the context suggests the contrary. Consequently, when reading s.24(2) (ix) of the Income Tax Act, 1961 which speaks of property which is let and which was vacant during a part of the year, the Court must read it to mean property which was let during the previous year and was vacant during a part of the year. It cannot refer to property which was not let at all during the previous year. [437D-E]

In the present case, there is no evidence to show that it was ever given out by the assessee that the property was available for letting. The assessee is not entitled to the deductions claimed by it in respect of municipal taxes and a vacancy remission. [437F]

Maharajadhiraja of Darbhanga v. Commissioner of Income Tax, Bihar and Orissa, A.I.R. 1931 Patna 223; distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2183 of 1972.

Appeal by Special Leave from the Judgment and Order dated 28-7-1970 of the Calcutta High Court in Income Tax Reference No. 45 of 1969.

F. S. Nariman and M. M. Kshatriya for the Appellant. S. T. Desai, K. C. Dua, Miss A. Subhashini for the Respondent.

S. Chaudhary. D. N. Gupta and T. A. Ramachandran for the Respondent Intervener.

The Judgment of the Court was delivered by PATHAK, J.-This appeal by special leave is directed against the judgment of the Calcutta High Court on a question concerning the computation of income from house property under the Income-tax Act, 1961.

The assessee, a private limited company, is the owner of the property described as 3, Gun Foundry Road. Originally it housed a jute baling press. The property was requisitioned by the West Bengal Government in 1951. It was released to the assessee on December 26, 1960, after being used for housing refugees. Evidently, the building had not received the care it deserved, for when the assessee resumed possession he found it in a sorry state.

The assessee filed an income-tax return for the assessment year 1962-63 (for which the previous year was the calendar year 1961), and the return recited that the annual value of the building was Rs. 1,23,672. However, on the ground that the building had remained vacant throughout the previous year, the assessee claimed a remission in the computation of the income of the entire annual value. The assessee also claimed a deduction on account of insurance premium and municipal taxes relating to the property.

The Income-tax Officer took the view that the property was not in a habitable condition and did not admit of letting and therefore no question arose of applying the provisions of the Income Tax Act relating to the computation of income from property. Accordingly, he held that the annual value as well as the vacancy claim had to be ignored. The assessee appealed to the Appellate Assistant Commissioner, who held that although the property had remained vacant, it possessed an annual value and should be considered for assessment. On that view, he allowed the deductions claimed by the assessee. In second appeal, the Income Tax Appellate Tribunal favoured the view taken by the Income Tax Officer and accordingly held that the claim to deductions made by the assessee must fail. The Tribunal, in other words, affirmed that the property fell outside the scope of S. 22 of the Act and, consequently, denied the deductions.

The Revenue appeared satisfied with the order of the Appellate Tribunal. But, at the instance of the assessee, a reference was made to the High Court at Calcutta on the following question:-

> "Whether on the facts and in the circumstances of the case and on the interpretation of sections 22 and 23 of the Income-tax Act, 1961 the Tribunal was right in holding that in computing the income from property the bonafide annual value of the property at 3, Gun Foundry Road, Calcutta has not to be taken and in disallowing the vacancy remission and other deductions in respect of the aforesaid property ?"

The High Court was of opinion that the Appellate Tribunal had misconceived the law in holding that because the property was in a state of disrepair it did not possess an annual value. As regards the assessee's claim to the specified deductions, it held that while the insurance premium paid by it could be allowed, there was no merit in the claim on account of vacancy remission and payment of municipal taxes. Accordingly, the High Court recorded:-

> "On the first part of the question we hold that the Tribunal was wrong in holding that there was no annual value of this property No. 3, Gun Foundary Road and that it was outside the scope of section 22 of the Income-tax Act, 1961. We hold and we are of the opinion that this property has an annual value in the facts and circumstances of the case and it should be taken into account in the light of the principles and observations we have made above. We therefore set aside that part of the order of the Tribunal and answer the question accordingly. The answer to this first part of the question is in the negative. The answer to the second part of the question follows from the answer to the first part of the question and is that the only deduction in the facts and circumstances of the present reference which the assessee can get is the deduction for insurance premium paid. We hold further on this part of the question that the other deductions, namely,
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> (a) vacancy remission and (b) municipal taxes are not permissible and the assessee is not entitled to claim them in the present reference. We answer the second part of the question accordingly.
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> The Tribunal, therefore, will dispose of the case conformably to this judgment and the interpretation of the principles enunciated herein under section 260 of the Income-tax Act, 1961."

At the outset a serious controversy arose before us on the point whether the High Court was right in including a direction in its judgment that the Appellate Tribunal should take into account its finding that the property possessed an annual value. The assessee says that when the Appellate Tribunal had held that the property did not fall within the scope of s. 22, it was for the Revenue, in case it desired to charge the assessee on income from this property, to apply for a reference to the High Court. It is urged that the Revenue having omitted to do so, it was not open to the High Court to make an order enabling the Revenue to tax any income from that property. On behalf of the Revenue, the submission is that inasmuch as the assessee had taken the case in reference to the High Court for an adjudication on the deductions claimed by it the point whether the property possessed an annual value and its income was chargeable was directly raised by the assessee itself, and therefore, the High Court was right in rendering a decision on this point.

"Income from house property" is one of the heads into which different categories of income included in the total income have been classified. For the purpose of computing "income from house property", a code of provisions is incorporated in ss. 22 to 26 of the Act. S. 22 declares that the annual value of property consisting of buildings or lands appurtenant thereto in the ownership of the assessee, excepting such portions of the property occupied for any business or profession carried

on by him of which the profits are chargeable to income tax, shall be chargeable to income tax as "income from house property". The annual value is determined after making a deduction on account of municipal taxes. The income from house property is then subject to the deductions set forth in Sec. 24. The deductions are made for the purpose of computing the net figure of the income from property.

In order to decide whether the High Court was right in including a direction to the Appellate Tribunal to take into account the annual value of the property, it is necessary to appreciate the true scope of the reference taken to the High Court. The Income Tax Officer had found that the property, having regard to its condition, was not capable of being let to tenants and therefore the gross value and the deductions claimed had to be ignored. The assessee was aggrieved by that finding. It must be remembered that in its return the assessee had indicated that the property possessed an annual value of Rs. 1,23,672 unless the property had an annual value, it believed, it could not be entitled to the deductions claimed by it. In appeal before the Appellate Assistant Commissioner, its case was that the property could not be ignored for the purposes of the Income-tax Act. The contention was accepted by Appellate Assistant Commissioner, who held that the annual value of the property could not be ignored and further that the vacancy remission and other deductions claimed by the assessee were admissible. When the Revenue proceeded in appeal to the Appellate Tribunal it urged that the assessee was not entitled to the deduction claimed in respect of the property. The Appellate Tribunal considered the evidence relating to the condition of the building, and was of opinion that the building was not in a habitable condition and it could not be said that the property could be reasonably let out at any particular annual value. In its opinion, the property fell outside the scope of Section 22 and, therefore, the Income Tax Officer was right in ignoring the property altogether and in not computing any profit or loss in respect of it. The Appellate Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of the Income Tax Officer. It was in the context of this train of proceedings that the assessee now took the case in reference to the High Court. The question referred to the High Court was rooted in the fundamental submission of the assessee that the property possessed an annual value for the purpose of Section 22 and it was, therefore, entitled to the vacancy remission and other deductions claimed by it. The frame of the question indicates that it has two parts, whether the Appellate Tribunal was right in holding that in computing the income from property the premises 3, Gun Foundry, possessed an annual value and whether the Appellate Tribunal was right in disallowing the vacancy remission and other deductions in respect of that property. Plainly, unless the property fell within the scope of Section 22 there was no occasion for considering the assessee's claim to the deductions. The High Court also, when considering the reference, examined the question in its bifurcated character. But although, bifurcated, the thrust of the question was directed to the consideration of the deductions claimed by the assessee. Whether the property possessed an annual value was necessary to determine solely for the purpose of considering the claim to deductions. Unless the assessee was interested in those deductions it would not have asked for a finding, that the property possessed an annual value. The High Court was, therefore, right in examining both parts of the question and in determining whether the property had an annual value and the deductions claimed were permissible. The assessee can have no quarrel with the High Court considering the first part of the question, because that was the very case of the assessee throughout from the earliest stage of the proceeding. From what has gone before it is apparent that the determination whether the property has an annual value

arises only if it is found that on the terms of the statute the assessee is otherwise entitled to the deductions claimed by him. If those deductions are not permissible under the relevant section, no question arises of examining whether the property has an annual value. Viewed in that light, the determination of the question whether the property has an annual value falls into its proper place. It cannot be contended that even though the claim to deductions must otherwise fail, the question whether the property has an annual value must still be considered. Such a contention is not open to the Revenue. If the Revenue intended that the High Court should determine whether the property had an annual value as a question independent of its finding on the admissibility of the deductions, the Revenue should have applied to the Appellate Tribunal for a reference to the High Court accordingly. It did not ask for a reference and, therefore it is not entitled to raise that contention now. It seems to us that there is only one way of looking at the case, and that is whether on the assumption that the property has an annual value and falls within the scope of Section 22, the assessee is entitled to the deductions under Sections 23 and 24. If he is entitled to any of those deductions, then in order to establish the foundation in which the deductions can be rooted it will be necessary to determine whether the property possesses an annual value. That is what the High Court did, and the observations made by it must be construed accordingly. It may be that the deduction to which the assessee is found entitled runs to a far smaller figure than the annual value property attributable to the property. In that event the consequence will be a net annual value of some significance. And this will be the consequence notwithstanding that the reference is at the assessee's instance and no reference at all has been brought by the Revenue. The result appears anomalous, but after all it is for the assessee to choose whether or not he wishes to take a reference to the High Court, and if he is found entitled to even one of the deductions claimed by him and effect cannot be given to that claim without the annual value of the property being computed he has only to thank himself.

At the same time, we must point out that the High Court, after holding that the property has an annual value, has erred in stating that it sets aside that part of the order of the Appellate Tribunal. The High Court, on a reference before it, does not act as a court of appeal. The jurisdiction is advisory and no more. The High Court is empowered to decide the question of law referred to it, and to return its answer to the Appellate Tribunal. The Appellate Tribunal then takes up the appeal and disposes it of conformably with the answer returned by the High Court. It is not part of the jurisdiction of the High Court to interfere and modify or set aside the appellate order of the Tribunal.

As has been said earlier, the High Court considered both parts of the question referred to it, whether the property possessed an annual value and whether the deductions claimed by the assessee were admissible. It examined first whether the deductions were admissible. It found that the amount of Rs. 689 paid on account of fire insurance premium in respect of the property was deductible from the annual value under s. 24(1) (ii). Regarding the claim under s. 24(1) (ix) on account of vacancy remission, it disallowed the deduction on the ground that the property was not let during the previous year. The claim to deduction under s. 23 of the municipal taxes paid in respect of the property was also rejected in the view that the municipal taxes could be deducted only if the property was in the occupation of a tenant. The High Court then turned to the fundamental question whether the property possessed an annual value for the purpose of s. 22, and held that merely

because the building was in a state of disrepair it could not be predicated that it had no annual value. In the result, on the question referred by the Appellate Tribunal it returned the opinion that the property possessed an annual value and that the assessee was entitled to a deduction in respect of insurance premium only.

In this appeal, the only question is whether the High Court is right in holding that the assessee is not entitled to any deduction on account of municipal taxes and the vacancy remission claimed by it.

The claim to the deduction of municipal taxes is made under the proviso to s. 23(1). The proviso reads:

> "Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property are under the law authorising such levy, payable wholly by the owner, or partly by the owner and partly by the tenant, a deduction shall be made equal to the part, if any, of the tenant's liability borne by the owner."

It is immediately apparent that the proviso to s. 23(1) can be availed of only if the property is in the occupation of a tenant. It would seem so on the language of the proviso. The assessee does not rest his claim on any other provision of law. In the circumstances, the High Court is right in denying the claim in respect of municipal taxes.

The next deduction claimed requires the consideration of s. 24(1) (ix) of the Act.

S. 24(1)(ix) reads :

> "24 (1) Income chargeable under the head 'Income from house property' shall, subject to the provisions of subsection (2), be computed after making the following deductions, namely:-
>
> xx xx xx xx xx
>
> (ix) Where the property is let and was vacant during a part of the year, that part of the annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied..... "

The question is whether the property, 3 Gun Foundry Road, which admittedly has remained vacant since December 26, 1960 can attract s. 24(2)(ix). It is plain that it cannot. The provisions of the Income-tax Act relating to the charge on income apply in relation to a specific assessment year and the provisions of the Act providing for the computation of the chargeable income (which includes taking into account permissible deductions in the computation of the income chargeable under different heads) apply, in the absence of anything to the contrary in relation to the relevant previous

year. The total income of the previous year needs to be computed, and the different provisions relating to the computation of income must be read and applied in the context of the facts and circumstances obtaining during that year, unless the context suggests the contrary. Consequently, when reading s. 24(2) (ix) which speaks of property which is let and which was vacant during a part of the year, we must read it to mean property which was let during the previous year and was vacant during a part of the year. It cannot refer to property which was not let at all during the previous year. In the present case, there is no evidence to show that it was ever even given out by the assessee that the property was available for letting. We were referred to Maharajadhiraja of Darbhanga v. Commissioner of Income-tax, Bihar and Orissa,(1) where it was observed by the Patna High Court that s. 9 (1) paragraph 7 of the Income Tax Act, 1922 could be invoked in a case where a house not in the occupation of the owner was habitually let to tenants and the vacancies referred to are vacancies between the different tenancies, or a house though not let is dismantled and shut up by the owner. We have carefully read the judgment delivered by that High Court, and it appears that the observation is a mere obiter. The actual point for decision was in fact quite different. It was a case where the assessee, who owned several houses kept them furnished and open for his residence and never let them to any tenant, and he did not occupy some of them during the relevant previous year. He claimed a vacancy remission in respect of them. The High Court, in our opinion, rightly rejected the claim. It may also be pointed out that the statutory provision considered there was materially different from the one before us.

In our judgment, the assessee is not entitled to the deductions claimed by it in respect of municipal taxes and a vacancy remission. The High Court is right in its view in respect of this part of the case.

The appeal is dismissed. There is no order as to costs.

S.R. Appeal dismissed.