

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : I. T. A. Nos. 371 to 377 of 2015

Reserved On : July 28, 2016

Pronounced On : December 23, 2016

Susham Singla Appellant

vs.

The Commissioner of Income Tax, Patiala Respondent

CORAM : HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Pankaj Jain, Senior Advocate
with Mr. Sachin Bhardwaj, Advocate
and Ms. Divya Suri, Advocate
for the appellant(s).

Mr. Rajesh Katoch, Advocate
for the respondent(s).

* * *

DEEPAK SIBAL, J. :

The present is a bunch of seven appeals, being **I. T. A. Nos. 371 to 377 of 2015**, pertaining to the assessment years 2001-02 to 2007-08, respectively, filed at the instance of the appellant-assessee to challenge therein the common order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as – the Tribunal).

At the time of hearing of the appeals, Mr. Pankaj Jain, learned senior counsel appearing on behalf of the appellant-assessee sought to press only the following substantial question of law for our consideration, which,

according to him, was common and arose to all the present appeals :-

“Whether under the facts & circumstances of the case, pursuant to the explanation there is no chargeability of rent which cannot be realized resultingly according to Section 23(1)(c) of the Act, the lessor of the amount expected to be let & as receivable shall be charged whereby not realizable is less resultingly no charge ?”

The appeal is admitted on this question of law.

The appeal raises an interesting and an important question of law invoking the interpretation of Sections 22 and 23 of the Act. The wording of Section 23 does not admit of an easy answer.

The factual matrix of the matter, which is required to be noticed for adjudicating upon the present appeals is that a search was conducted upon Jagdish Jeweller Group and the appellant-assessee being related to that Group, was also subjected to such search, on the basis of which, a notice was issued to him as to why deemed income by determining annual value of properties, of which he was found to be the owner, may not be added to his income. The appellant-assessee filed a reply to the notice, on consideration of which, the Assessing Officer found the appellant-assessee to be the owner of the following properties :-

01. Property No. B-7, Preet Vihar, New Delhi.
02. Property No. G-I, Preet Vihar, New Delhi - ½ share.

03. Property Love Dale Apartments Mumbai - ¼ share.
04. House Property at Patiala.

In the course of the proceedings which ensued, the property at Patiala was treated as self-occupied but since the appellant-assessee was found to own more than one property and in his return, had not shown any deemed income from them, notional rent was determined and after providing the statutory deductions, added to the appellant-assessee's income. Such addition at the hands of the Assessing Officer was challenged by the appellant-assessee by preferring seven appeals (one for each Assessment Year) before the Commissioner of Income Tax (Appeals)-I, Ludhiana (hereinafter referred to as – the Commissioner), which, by a common order, were dismissed giving a cause to the appellant-assessee to appeal to the Tribunal, which appeals also met the same fate as his appeals before the Commissioner. Laying a challenge to the common order of the Tribunal, rejecting the appeals of the appellant-assessee, the present appeals under Section 260-A of the Income Tax Act, 1961 (for short the 'Act') have been filed before this Court.

Before the Tribunal, it was contended on behalf of the appellant-assessee that since the properties, which had been assessed to tax, had not been let out and had remained vacant in the respective previous years, no annual value for them could be determined under Section 23(4) of the Act and it was urged that as per the provisions of Section 23(1)(c) of the Act, the annual value of such properties had to be taken as 'Nil'. It was further submitted that even if the annual value could be determined, the

Assessing Officer had fixed the same on a very high rate without adopting any reasonable criteria known to law.

At the time of hearing of the matter before us, Mr. Jain on instructions, submitted that he does not press before us the issue with regard to the quantum of annual value of the properties in question having been determined by the Assessing Officer, without adopting any reasonable criteria. It was argued that since the afore-referred three properties – one in Mumbai and two at Delhi had not been let out and as a result thereof, had remained vacant in the respective previous years, after applying Section 23 (1)(c) of the Act, their annual value was required to be taken as 'Nil'.

Sections 22 and 23 of the Act, which are relevant, read as under:-

“Income from house property.

22. *The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income- tax, shall be chargeable to income- tax under the head" Income from house property".*

“Annual value how determined.

23. (1) *For the purposes of section 22, the annual value of any property shall be deemed to*

be —

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual 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; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation.— For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this

behalf, the amount of rent which the owner cannot realise .

(2) *Where the property consists of a house or part of a house which —*

(a) *is in the occupation of the owner for the purposes of his own residence; or*

(b) *cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,*

the annual value of such house or part of the house shall be taken to be nil.

(3) *The provisions of sub-section (2) shall not apply if —*

(a) *the house or part of the house is actually let during the whole or any part of the previous year; or*

(b) *any other benefit therefrom is derived by the owner.*

(4) *Where the property referred to in sub-section (2) consists of more than one house —*

(a) *the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;*

(b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.”

A perusal of the afore-quoted sections show that as per Section 23(1)(a), 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. Section 23(1)(b) provides that where any property or any part of such property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum, which the property might reasonably be expected to let from year to year, then the annual value of such property would be the actual amount so received or receivable. Section 23(1)(c) is to the effect that where any property or part of such property is let but remained vacant during the whole or any part of the previous year and owing to such vacancy, the actual rent received or receivable is less than the sum, which such property might reasonably be expected to yield on being let out, then the amount so received or receivable would be the annual value of the property in question.

Section 23(2) is to the effect that where the property consists of a house or part of a house, which is in the occupation of the owner for the purposes of his own residence or could not actually be occupied by him for the reason that on account of his employment, business or profession, he had to reside at other places in a building, which is not owned by him, in

that situation, the annual value of such house or part of the house is required to be taken as 'Nil'.

According to Section 23(4)(a), where the property referred to in Section 23(2) consists of more than one house, then Section 23(2) is to apply only in respect of one of such houses and Section 23(4)(b) provides that the annual value of the house or houses, other than the house in respect of which the assessee had exercised an option under Section 23(4)(a) shall be determined under Section 23(1) as if such house or houses had been let.

A harmonious reading of the above provisions indicates that in case the assessee owns more than one house, then the annual value of one of such houses, which is in his occupation as his own residence or which was not occupied by him for the reason that on account of his employment, business or profession, he had to reside at other places in a building not owned by him, is to be taken as 'Nil'. For the other houses that the assessee may own which are under his occupation or could not be occupied by him for the reason that on account of his employment, business or profession he had to reside at other places in a building not owned by him, their annual value is to be determined under Section 23(4) read with Section 23(1).

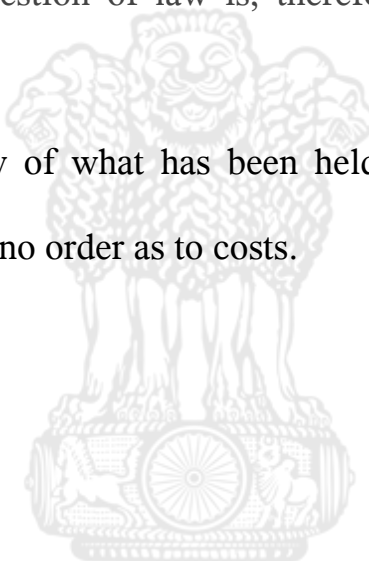
Section 23(1) has three sub sections which have been set out earlier. Section 23(1)(b) and (c) would apply only to those properties which were actually let out and for which rent was actually received or receivable by the assessee. These provisions deal with the concept of real income and not notional income.

Thus, the annual value of the properties like the ones in the

case in hand which are more than one, owned by the assessee and which admittedly remained vacant throughout the previous year would not be assessed under Section 23(1)(c) but under Section 23(1)(a). The annual value would, therefore, be determined notionally as done in the case in hand by the Assessing Officer and concurrently upheld by the Commissioner and the Tribunal.

The question of law is, therefore, answered in favour of the Revenue.

In view of what has been held above, all the appeals are dismissed, but with no order as to costs.



सत्यमेव जयते

(S. J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

December 23, 2016

monika

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes.