

****THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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+ I.T.T.A.No.56 of 2004
-

%Date: 17.12.2014

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A. Venkateswara Rao .. Appellant.

and

\$ The Assistant Commissioner of Income Tax,
Central Circle, Visakhapatnam
.. Respondent.

! Counsel for Appellant: Sri Karthik Ramana

^ Counsel for Respondent : Sri S.R. Ashok

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? Cases referred

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AND

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I.T.T.A.No.56 of 2004
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JUDGMENT: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

The legal representative of an assessee filed this appeal, feeling aggrieved by the order, dated 25.08.2003 passed by the Visakhapatnam Bench of the Income Tax Appellate Tribunal (for short 'the Tribunal') in I.T.A.No.545/Vizag/98.

The facts, in brief, are as under:

Smt. A.V.Narsamma was the owner of an item of immovable property, bearing No.10-1-32A, Waltair Uplands, Visakhapatnam. The building was given on lease to the Telecom Department, and Narsamma was an assessee under the Income Tax Act, 1961 (for short 'the Act'). She was showing the income from house property, in her returns, year after year. She passed away on 16.09.1994. Her legal representative i.e. the appellant herein, filed returns for the period between 01.04.1994 and 16.09.1994 and paid the income tax, on the income from house property.

The owner of the house i.e. Narsamma, executed a registered Will, bequeathing the property in favour of a Trust. The same was acted upon and the Trust received the rents, and paid income tax thereon, by filing returns for the period subsequent to 17.09.1994. In relation to some dispute, as to the quantum of rent, the appellant

herein as well as the Trust filed appeals. Another grievance of the appellant was that the Assessing Officer levied tax on the deceased – late Narsamma for the period subsequent to her death also. The Commissioner of Income Tax (appeals) partly allowed the appeal, on the question of quantum, but did not address the justification for levy of tax on the deceased - assessee for the period subsequent to her death. I.T.A.No.545/Vizag/1998 filed by the appellant before the Tribunal was dismissed. Hence, this further appeal.

Sri Karthik Ramana, learned counsel for the appellant, submits that the rent for the building was paid at Rs.13,500/-, in all, per month, and without there being any basis, the Assessing Officer proposed to fix it at Rs.4.50 p., per Square Foot, that too, in the absence of any specific data as to the exact area. He further submits that the Commissioner mistook the contents of a letter, dated 20.10.1992, addressed by the Telecom Department and proceeded as though the appellant agreed for rent @Rs.2.83 p., per Square Foot, and on the assumption that the rent is being paid on those lines, applied that figure. Learned counsel submits that there was absolutely no basis for the Assessing Officer to levy tax on the income from house property, on the deceased – assessee as well as the Trust for the same period and the Tribunal did not address this vital issue on technical grounds.

Sri S.R.Ashok, learned Senior Counsel for the respondent, on the other hand, submits that the Assessing Officer entertained a serious doubt as to the accuracy of the rent on which the tax is paid, and by following the prescribed procedure, he levied tax on the enhanced amount. He submits that the Commissioner has taken a reasonable and practical view of the matter and the same was upheld by the Tribunal. As regards the alleged double levy, learned counsel submits that the question was not raised before the

Commissioner, and obviously for that reason, the Tribunal refused to deal with it.

Two aspects arise for consideration. The first is about the quantum of rent; and the second is about the period regarding which the appellant is under obligation to pay the tax.

It is the specific case of the appellant that the rent for the premises was being paid at Rs.10,000/-, per month, for the structure, and Rs.3,500/-, per month, for furniture and fittings; and that the same was being taken into account year after year. It is, no doubt, true that the Assessing Officer has every right to verify the accuracy of the facts and figures furnished by the assessee and if he comes to the conclusion that the rent for the period is being shown at a low figure, he can gather information in respect of neighbouring premises and determine the income accordingly. Occasions of that nature would arise, mostly when the premises are leased to private individuals.

Where, however, the premises, are leased to the Government or its organisations, the scope for an assessee to show the rent at a lower figure, does not arise. Further, there does not exist any particular standard, to fix the rent of any premises. Much would depend upon the location and condition of the building, on the one hand, and the demand in the locality, on the other. Where the lessee is a Government, the transaction is regulated by the fixed parameters. Even if the building has potential to fetch a higher rent, the Government departments are not expected to pay such rent. In case the owner of the premises is willing to lease them to the Government or its agencies, for reasons of safety and security or assured payment of rent, the discretion of the Assessing Officer to determine the reasonable rent of his choice, gets virtually restricted. He cannot ignore the actual payments and fix an imaginary figure,

based upon the alleged information or potential of the building.

Things would have been different altogether, had it been a case where the appellant is alleged to have suppressed the correct information, and furnished accurate figures. This is a rare case, in which the proceedings under Section 271C of the Act were initiated, and on close verification of the matter, they were dropped. The figure

Rs.2.83 p., per Square Foot, mentioned in the order of the Commissioner was found to be imaginary. The figure was derived by dividing the rent of Rs.13,500/- with carpet area and not the actual area of the building. The effort of the Telecom Department in addressing the letter was to resist the plea of the appellant for enhancement of the rent. Once the penalty proceedings were dropped, the suggested figure virtually loses its significance. Therefore, we hold that the rent for the premises must be taken at Rs.13,500/-, unless there was any enhancement by the lessee itself, for any subsequent period.

The next question is about the levy of tax on two assessees for the same premises and for the same period. It has already been mentioned that the original assessee died on 16.09.1994 and her legal representative filed returns for the period from 01.04.1994 to 16.09.1994. Tax was also paid on the income derived from house property. For the subsequent period, the Trust, which became the legatee, filed returns and paid the tax. Once that is so, there was absolutely no basis for the Assessing Officer to levy tax for the same period on the testator also. The Commissioner did not address this issue and the Tribunal refused to take that into account, on the ground that it was not raised earlier. Being a last authority on facts, the Tribunal was supposed to deal with every aspect, that arises for consideration, uninhibited by any such restrictions. But for the fact that the Will Deed is not before us, we would have decided the issue

here itself. We feel that it is a matter for remand to the Assessing Officer, on that limited aspect.

We accordingly allow the appeal and set aside the order passed by the Assessing Officer, as modified by the Commissioner and affirmed by the Tribunal. The matter is remanded to the Assessing Officer for the limited purpose of verifying the Will Deed and the factum of the bequest of the property on the Trust. If it emerges that the Trust became the legatee and started enjoying the rights of ownership from 17.09.1994 onwards, there shall not be levy of any tax upon the appellant for that period. Even for the period from 01.04.1994 to 16.09.1994, the rent shall be taken as Rs.13,500/-, per month. There shall be no order as to costs.

The miscellaneous petitions filed in this appeal shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:17.12.2014

L.R. copy to be marked.

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