

COMMISSIONER OF INCOME TAX, CALCUTTA

v.

BIJOY KUMAR ALMAL

APRIL 4, 1995

[B.P. JEEVAN REDDY AND G.T. NANAVATI, JJ.]

*Income-Tax Act, 1961: Sections 23 and 26 Explanation (As inserted by Taxation Laws (Amendment) Act, 1975) Income from House Property—Computation of—Property owned by two or more owners—Deduction provided under Section 23(2)—Hold should be given separately to each co-owners from out of his shares in annual value of the property of house.*

The respondent was the owner of an undivided one-third share in a house which he was occupying for his own residence alongwith his brother and other co-shares. In the respondent's assessment, for the assessment Year 1962-63, the I.T.O. deducted the amount specified in Section 23(2) from out of the annual letting value of the house and then apportioned the balance annual letting value among the co-owners. The respondent claimed that the deduction provided for by Section 23(2) should be given separately to each co-owner. The Tribunal and the High Court decided in his favour. Revenue preferred appeal to this Court.

Dismissing the appeal, this Court

**HELD :** The language of Section 26, even without taking into account the explanation, is clear enough. It provides that where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, they shall not, in respect of such property, be assessed as Association of persons, and that the share of each such person in the income from the property as computed in accordance with Sections 22 to 25 shall be included in his total income. Sections 22 to 25 prescribe the manner in which the income from house property has to be determined. Therefore, the respondent was justified in claiming that the deduction provided for by Section 23(2) be allowed to him separately from out of his share in the annual value of the said house property, inasmuch as he had a definite and ascertainable share therein. Indeed, this very idea is made clear beyond any doubt by the Explanation appended to Section 26 by the

**Taxation Laws Amendment Act, 1975. [172-G, H, 173-A]**

*CIT v. Shyam Sunder*, 122 I.T.R.541; *Tulsi Das v. CIT*, [1983] 63 CTR 324 and *CIT v. Shanti Devi Jalan*, 139 ITR 152 & 106 ITR 743, approved.

**CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 2298 (NT) of 1977.

From the Judgment and Order dated 24.11.75 of the Calcutta High Court in I.T.R. No. 274 of 1968.

K.N. Shukla, B.S. Ahuja and Ms. A. Subhashini for the Appellant.

The Judgment of the Court was delivered by

**B.P. JEEVAN REDDY, J.** This appeal is preferred by the Revenue against the judgment of the Calcutta High Court answering the question referred to it in favour of the assessee and against the revenue. The question referred under Section 256(1) of the Income-Tax Act was "(W)hether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the statutory allowance mentioned in Section 23(2) of the Income- tax Act, 1961 should be allowed every time separately in computing the income from house property falling to the share of each of the co-owners including the assessee?"

The assessment year relevant herein is 1962-63. The respondent was the owner of an undivided one-third share in a house property during the relevant period. He alongwith his brother and other co-sharers was occupying the house for his own residence. In the respondent's assessment, the I.T.O. deducted the amount specified in sub-section (2) of Section 23 from out of the annual letting value of the house and then apportioned the balance A.L.V. among the co-owners. The respondent's case was that the deduction provided for by Section 23(2) should be given separately to each co-owner. It is the said dispute which is reflected in the question referred for the opinion of the High Court.

We may state immediately that such a dispute would not really arise after from the assessment year 1976-77 and onwards because of the insertion of explanation in Section 26. Disputes had arisen before the said explanation was inserted by Taxation Laws (Amendment) Act, 1975.

Section 22 provides that the annual value of property consisting of any buildings and lands appurtenant thereto of which the assessee is the owner, shall be chargeable to income-tax under the head 'Income from house property'. Section 23 prescribes the manner in which the annual value has to be determined. Sub-section (2), which is relevant for our purposes, provided that where the property consists of a house in the occupation of the owner for the purposes of his own residence, the annual value of such house shall first be determined in the same manner as if the property had been let and shall further be reduced by one-half of the amount so determined or one thousand and eight hundred Rupees, whichever is less. Section 26, which is the other section relevant for our purpose, alongwith its explanation inserted with effect from 1.4.1976, reads thus:

"Property owned by co-owners.

26. Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

*Explanation:* For the purposes of this section, in applying the provisions of sub-section (2) of Section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section."

In our opinion, the language of Section 26, even without taking into account the explanation, is clear enough. It provides that where property consisting of buildings (or buildings and lands appurtenant thereto) is owned by two or more persons and their respective shares are definite and ascertainable, they shall not, in respect of such property, be assessed as Association of persons, and that the share of each such person in the income from the property as computed in accordance with Sections 22 to 25 shall be included in his total income. Sections 22 to 25 prescribe the manner in which the income from house property has to be determined. We are, therefore, of the opinion that the respondent was justified in

claiming that the deduction provided for by Section 23(2) be allowed to him separately from out of his share in the annual value of the said house property, inasmuch as he had a definite and ascertainable share therein. Indeed, this very idea is made clear beyond any doubt by the explanation appended to Section 26 by the Amendment Act aforesaid.

It is brought to our notice that apart from the judgment under appeal (reported in 106 ITR 743), Delhi and Bombay High Courts have also taken a similar view in *CIT v. Shyam Sunder*, 122 ITR 541 and *Tulsi Das v. CIT*, (1983) CTR 324. The Calcutta High Court itself appears to have followed the judgment under appeal in *CIT v. Shanti Devi Jalan*, 139 ITR 152.

The appeal accordingly fails and is dismissed. No costs.

Appeal dismissed.