

Sanjay Narang Vs. Dit

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Court : Mumbai

Decided On : Sep-10-2003

Reported in : (2004)89TTJ(Mumbai)19

Appeal No. : ITA Nos. 2687 & 2688/Mum/2003 9th October, 2003 A.Y. 1997-98 & 1998-99

Appellant : Sanjay Narang

Respondent : Dit

Advocate for Pet/Ap. : Prakash Jotwani, *for the Appellant* D.R. Sindhal, *for the Respondent*

Judgement :

ORDER

G.C. Gupta, J.M.:

These two appeals by the assessee for the assessment years 1997-98 and 1998-99 are directed against the order of the Commissioner (Appeals). Since identical issue is involved in these appeals, these are being disposed of with this common order.

2. The ground of appeal No. 1 in both the appeals is not pressed by the learned counsel for the assessee and is accordingly dismissed.

3. The ground of appeal No. 2 in both the appeals is regarding the perquisite value of the rent-free quarter taken at Rs. 10,30,983 as against Rs. 4,670 returned by the assessee for the assessment year 1997-98 and at Rs. 10,17,840 as against Rs. 7,860 returned by the assessee for the assessment year 1998-99. The admitted facts are that the assessee was having income under the head 'salary' and was provided as a perquisite a furnished residential accommodation which is a storied bungalow with a maintained garden in posh locality of Bandra (West), Mumbai. The bungalow is at a stone's throw away from the Bandra sea front. The assessing officer asked the assessee vide letter dt.. 27-7-2001, to explain why not the perquisite of rent-free furnished accommodation provided to the assessee by the company should be calculated as per provision of r. 3(a)(iii) read with Expln. 2 to IT Rules, 1962., The assessing officer in his letter dated 27-7-2001, has mentioned that the bungalow was purchased by the assessee's employer on 30-3-1992, for Rs. 71 lacs and as per section 10(b)(iiia) of The Bombay Rent & Hotel Lodging House Rates Control Act, 1997, standard rent in relation to any premises means 'amount equal to the amount of return of 15 per cent on the investment in the land and building and all the outgoings in respect of such premises.' The assessing officer calculated the annual standard rent at 15 per cent of Rs. 71 lacs, i.e., Rs. 10,65,000 and after adding Rs. 6,943, representing 10 per cent of the furniture costing, proposed to determine the perquisite value of the rent-free furnished residential accommodation. The assessee vide his letter dated 8-1-2001, submitted that the fair ratable value of the furnished residential accommodation as per municipal record is Rs. 9,490 and valuation certificate from Municipal Corporation of Greater Mumbai was also filed. The assessee vide his letter dated 14th Aug., 2001, relied on various judicial decisions including the case of Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee & Anr. : [1980]122ITR700(SC) , case of Shiela Kaushis v. CIT : [1981]131ITR435(SC) and case of M.A.E. Paes v. CIT : [1998]230ITR60(Bom) . The assessing officer rejected the contentions of the assessee and determined the value of perquisite of rent free furnished residential accommodation as proposed by him vide letter dt. 27-7-2001 and made the addition. The appeal to the Commissioner (Appeals) was dismissed by the first appellate authority against which the present appeal is before us.

4. The learned counsel argued that the annual value of the rent-free residential accommodation cannot exceed the 'standard rent'. He argued that the assessing officer is patently wrong in taking the market rent of the property and not the standard rent thereof. He argued that the Bombay Municipal Corporation has fixed the ratable value of the property at Rs. 9,490 per annum and a certificate to this effect issued by BMC was filed before the assessing officer. He relied on the decision in the case of Dewan Daulat Rai Kapoor (supra), case of Shiela Kaushis (supra) and case of M.A.E. Paes (supra). The learned counsel argued that the assessing officer has wrongly applied the provisions of section 10(b)(iiia) of the Bombay Rent & Hotel Lodging House Rates Control Act 1997, which have been held to be 'unreasonable' by the Honble Supreme Court in a recent judgment in a petition filed by Property Owners' Association. The learned counsel argued that the perquisite value of the rent-free residential accommodation, in accordance with the provisions of the Act and the case law relied upon by him, shall be the standard rent which cannot exceed the 'fair rental value' and the 'fair rental value' cannot be compared with 'fair market rent', . He relied on a series of decisions in support of submissions, reported in CIT v. M.K. Modi (1993) 112 CTR (Delhi) 176, CIT v. K.N. Modi (1993) 112 CTR (Delhi) 180, CIT v. Smt. Dayawati Modi : [2003]259ITR375(Delhi) , M.V. Sonavala v. CIT : [1989]177ITR246(Bom) , Dr. Balbir Singh & Ors. v. M. C.D. & Ors. : [1985]152ITR388(SC) and CIT v. Prabhawati Bansali : [1983]141ITR419(Cal) .

5. The learned departmental Representative has opposed the submissions of the learned counsel for the assessee. He argued that the Commissioner (Appeals) has considered all the facts and circumstances of the case and has held the action of the assessing officer as justified. He argued that the retable value of the property in the posh locality of Bandra at Rs. 9,490 per annum as wholly unjustified and submitted that the people cannot get accommodation even in slum area of 'Dharavi' at this value. He relied on the detailed orders of the assessing officer and the Commissioner (Appeals).

6. We have considered the rival submissions carefully. The only issue before us is that while valuing the perquisite value of the rent-free furnished residential

accommodation, whether the 'fair market rent' or 'standard rent' is relevant. The plain reading of r. 3(a)(iii) of the IT Rules, 1962, makes it clear while computing the value of the perquisite of rent-free residential accommodation provided by an employer to its employee, the fair rental value of the accommodation has to be determined with reference to the 'standard rent' payable under the Rent Control Act applicable to the area where the accommodation is situated. Thus, the fair rental value cannot exceed the standard rent' determined as per the provisions of the Rent Control Act for the purpose of calculating the perquisite value in the hands of the assessee. It is now settled that no property can be expected to realize any rent higher than the 'standard rent' as that would be in violation of the provisions of Rent Control Act. The words 'fair rental value' used in r. 3(a)(iii) are entirely different from the 'fair market rent' and the 'fair rental value' cannot exceed the standard rent' of the property. Where no 'standard rent' has been fixed in respect of a particular premises due to any reason and the assessing officer wants to adopt a figure other than municipal valuation, he will have to determine the 'standard rent' himself by applying the principles of the Rent Control Act. Accordingly, the perquisite in respect of rent-free residential accommodation has to be valued by considering the 'standard rent' of the premises and the consociation of 'fair market rent' for valuing the perquisite shall not be relevant. There is no dispute in the case before-us that the fair market rent' of the premises is higher than the 'standard rent' of the property but in accordance with the r. 3(a)(iii) of the IT Rules, the perquisite value of the rent free residential accommodation has to be valued as per the 'standard rent' of the premises. The provisions of section 10(b)(iiia) of the Bombay Rent & Hotel Lodging House Rates Control Act, 1997 has been held 'unreasonable' by the Hon'ble Supreme Court in the case of Malpe Vishwanath Achaiya & Ors. v. State of Maharashtra & Anr. (1998) 2 SCC 87 and accordingly cannot be relied upon by the revenue. The 'standard rent' cannot exceed the 'fair rental value' and the fair rental value' cannot be compared with 'fair market rent'. The issue before us is covered in favour of the assessee by a series of judgments, namely, the case of Dewan Daulat Rai Kapoor (supra), Shiela Kaushis (supra), M.A.E. Paes (supra), CIT v. M.K. Modi (supra), CIT v. K.N. Modi (supra), CIT v. Smt. Dayawati Modi (supra), M. V Sonavala v. CIT (supra), Dr. Balbir Singh & Ors. v. MC.D. & Ors. (supra) and

CIT v. Prabhawati Bansali (supra). We consider it relevant to reproduce the following para of the decision of Honble jurisdictional High Court in the case of MA.E. Paes v. CIT (supra) :

'On a perusal of r. 3(a)(iii) of the IT Rules, 1962, in computing the value of the perquisite of rent-free residential accommodation provided by an employer to his employee the fair rental value of the accommodation has always to be determined with reference to the standard rent payable under the Rent Control Act applicable to the area where the accommodation is situated. The fair rental value for the purpose of the perquisite can in no case exceed the standard rent determinable on the principles laid down under the Rent Control Act. The assessing authority would have to arrive at its own figure of standard rent by applying the principles laid down under the Rent Control Act for determination of the standard rent and determine the fair rental value of the accommodation on the basis of such figure of standard rent. The expression 'rent which a similar accommodation would realize in the same locality' appearing in Expln. 2 to r. 3(a)(iii) of the Rules has to be construed only to mean the 'standard rent', because no property can be expected to realize any rent higher than the standard rents that would be in breach of the provisions of the Rent Control Act. Moreover, the expression used in r. 3(a)(iii) is 'fair rental value'. The use of the word 'fair' is a clear indicator that it is not the prevailing market rent but the 'fair rent' which can never be more than the standard rent. '

If no standard rent has been fixed in respect of the particular premises either because it is in the occupation of the owner or his employees or for any other reason and the assessing officer wants to adopt a figure other than the municipal valuation, he will have to determine the standard rent himself by applying the principles laid down in the Rent Control Act and if that figure is higher than the municipal valuation, it will be within his powers to accept the same and to determine the value of the perquisite under r. 3(a)(iii) of the Rules at such higher rate.

Held, that the Tribunal was not right in holding that the perquisite in respect of the residential accommodation had to be valued by considering its fair rental value at

Rs. 30,000 per annum. It would be open to the Tribunal to accept the fair rental value shown by the assessee which was higher than the municipal valuation or if it was not satisfied about the correctness of the same, to determine the same by applying the principles laid down under the Rent Control Act for fixation of the standard rent.'

7. In this case the ratable value as per the Bombay Municipal Corporation is admittedly Rs. 9,490 only and in view of the legal position discussed above we hold that the perquisite value in respect of rent-free residential accommodation be valued in accordance with the rateable value of the premises at Rs. 9,490 and the ground of appeal of the assessee in both the years are allowed.

8. In the result, the appeals of the assessee are partly allowed.

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