

**John Thomas Vs. Cit**

**John Thomas Vs. Cit**

**SooperKanoon Citation :** [sooperkanoon.com/707589](http://sooperkanoon.com/707589)

**Court :** Delhi

**Decided On :** Dec-04-2000

**Reported in :** [2001]117TAXMAN206(Delhi)

**Appeal No. :** IT Ref. No. 19 of 1999 4 December 2000

**Appellant :** John Thomas

**Respondent :** Cit

**Advocate for Pet/Ap. :** G.L. Sanghi; and Ms. Lily Thomas, for the Applican; Sanjiv Khanna; and Ajay Jha, for the Responden

**Judgement :**

Arijit Pasayat, C.J.

Pursuant to direction given by this court under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in ITC No. 12 of 1998, at the instance of the assessee, the Tribunal, Delhi Bench D, has referred the following question for opinion of this court :

'Looking to the nature of the mortgage as spelt out by, the correspondence between the parties and the fact that the rent was received by the mortgagee, whether the rent income should have been excluded from computing the taxable income of the petitioner ?'

2. Dispute relates to the assessment year 1979-80. Factual position needs to be noted in brief.

The assessed had a house property, namely, Rageena Mansion, in Madras. It was built in 1976 with a loan from Vijaya Bank. The assessed took another loan of Rs. 10 lakhs from Mannonite Brethren Property Association. A further loan of Rs. 7.25 lakhs was taken by him by giving the third floor of the building to the council of Baptist Churches. Vijaya Bank was occupying the ground floor whereas the first floor was being occupied by Mannonite Brethren Property Association. Third floor was occupied by the council of Baptist Churches. In 1978, a loan of Rs. 7.5 lakhs was availed and second floor of the building was let out on the same terms and conditions as was the first and third floors. The mortgages which were raised on the building were discharged in February, 1980 by depositing sale proceeds relating to agricultural property, namely, Terramia Tea Estate. The assessed claimed that there were usufructuary mortgages of the properties. In support of the claim of such mortgages, correspondence between assessed and parties was pressed into service. The assessee's stand was that since both possession and enjoyment of the property was passed on to mortgagees, assessed was not the owner of the building and was not assessable on the rents collected by the mortgagees directly from the tenants. This stand was negated by the Income Tax Officer to hold that the assessed was the owner of the property.

Matter was carried in appeal before the Commissioner (Appeals) who held that the conclusions of the Income Tax Officer were correct. The matter was carried in further appeal before the Tribunal. Stand before authorities below was reiterated. The Tribunal, on consideration of the various correspondences which were placed before it, noticed that Dr. Knoll was a common factor so far as correspondences are concerned. On reading of the letters exchanged between the mortgager and mortgagees, it was held that the assessed had not actually parted with the interest in the property as he would have the Tribunal to believe. From the limited material placed before the Tribunal, it was clear that the arrangement entered into between the parties did not conclusively show that interest in the property was passed on to the societies who were interconnected. In fact, the whole arrangement appeared to have been made with the object of adjustment of interest against income from

the properties. This, according to the Tribunal, was sufficient to support the stand of the revenue. It did not, therefore, find it necessary to go into the other questions as regards transfer of interest in the property. Application for reference was turned down and, as indicated above, on being moved under section 256(2), direction was given to refer the question as set out above.

3. We have heard the learned counsels for the parties.

In support of the assessee, it has been stated that though stand of the assessed all through had been that of usufructuary mortgage, it cannot be maintained in view of the fact that such mortgage can only be created by registration of documents. But alternative stand of the assessed was that by deposit of title deeds, mortgages were created and that is how the assessed parted with ownership and what was retained was the right of ownership redemption. The learned counsel for the revenue, on the other hand, submitted that this is not the case of diversion of income by overriding title as contended, but is one of application of income.

4. In order to appreciate rival submissions, it has to be noted that the Tribunal has, inter alia, held that the assessed had requested Vijaya Bank to hold the documents on behalf of the party and it was construed as notional deposit of documents with it. It was also stated in the letter that the documents were not to be returned to the assessed without prior consent of the party. Similarly, in the letter addressed to the assessed by the Mannonite Brethren Property Association, it was stated that rent would be received by the party in lieu of interest of the mortgage loan created in regard to first floor of the building. Subsequent letter dated 25-3-1976, addressed to Dr. Knoll, indicated that lease agreement was entered into with New India Assurance Company by the assessee. The rent which was agreed to be paid was Rs. 20,000 per month, but to become payable from the date the property is handed over to the party. It was also mentioned in the letter that after handing over of the property and after receipt of the first months rent, insurance company was to put on notice of the mortgage of the property to Dr. Knoll and right to receive rent in respect of the property would be with the society directly from the insurance company. As regards the second floor, letter addressed

to Christian Service Society indicated that loan raised was to carry interest at the rate of 15 per cent per annum till a tenant is secured by the assessee. This is a very significant aspect. It was clearly mentioned that as soon as a tenant is secured by the assessee, party would be entitled to get rent in respect of second floor in lieu of interest. This letter further clarified that the documents were held by Vijaya Bank and right of the party would be subject to the right of Vijaya Bank as first mortgagee. Vijaya Bank was to hold the documents of trust for the party. In the letter dated 18-8-1978, addressed to the Christian Service Society, there was clear a stipulation that rent would be sent from October, 1978 onwards directly. In the light of such documents, the Tribunal recorded a finding of fact that the assessed had not actually parted with the interest in the property and further, the whole arrangement appeared to have been made with the object of adjusting interest against the income from the properties. We are in agreement with the submission made by the learned counsel for revenue that it was a clear case of application of income. In fact, the question as referred pursuant to direction of this court does not really arise out of the order of the Tribunal in that view of the matter, we decline to answer the question referred.

5. The reference is accordingly returned unanswered.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**