

**Cit Vs. Dowager Maharani Residential Accommo and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/760088](http://sooperkanoon.com/760088)

**Court :** Rajasthan

**Decided On :** May-06-2008

**Reported in :** (2008)217CTR(Raj)497

**Judge :** N.P. Gupta and; Kishan Swaroop Chaudhari, JJ.

**Appellant :** Cit

**Respondent :** Dowager Maharani Residential Accommo and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**N.P. Gupta, J.**

1. These 11 appeals arise in almost identical circumstances, rather except Appeal No. 119, all ten appeals arise in exactly identical circumstances.

2. Appeal Nos. 94, 99, 100, 101, 131 of 2005, and Appeal No. 1/2006 arise out of the common order of the learned ITAT dt. 10.8.2004, allowing the appeals of the assessee for the assessment years 1986-87 to 1991- 92, setting aside the impugned orders of the Assessing Officer, and the Commissioner, and directed the Assessing Officer to compute the income from the house property, on the basis of the actual rent receipt, obviously to compute it in the year it was received.

3. Then, Appeal Nos. 26, 84, 85 of 2006 and 45/2007 arise out of the common judgment of the learned ITAT dt. 5.5.2005, for the assessment years 1992-93, 1993-94, 1994-95, and 1996-97 partly allowing the appeals, and holding, that the receipt of arrears of rent, and enhanced rent, are taxable only in the relevant period when it is received, and thus setting aside the order of the learned Commissioner, and directed the Assessing Officer to compute the income from the house property on the basis of actual rent receipt, and thus allowed the respective grounds of appeal. Then, Appeal No. 119 arises out of the order of the learned Tribunal dt. 16.6.2006, relating to assessment year 1998-99, partly allowing the appeal, and so far as the controversy involved in the present appeal is concerned, deciding in para-5, holding, that right to enhancement of the rent came into existence only on 2.7.1998, though it was applicable for five years w.e.f. 28.3.1996, and that, it was only vide letter dt. 2.7.1998, that the assessee acquired the right over the enhanced rent. Thus, prior to this letter, the right to receive the enhanced rent had not crystallized, and since the letter dt. 2.7.1998, pertains to financial year 1998-99, relevant to the assessment year 1999-2000, and therefore, it was held, that the enhancement in rent @ Rs. 1 lakh per month would become the subject matter of taxation in the assessment year 1999-2000, and cannot be added to the assessee's income in this year (1998-99). Thus, the impugned orders of the Commissioner were reversed, and it was held, that the taxable event would arise in the next year i.e. Assessment year 1999-2000, and not in the year 1998-99.

4. We may observe here, that there was one more matter of this very assessee, relating to the assessment year 1995-96, which was decided by the learned Tribunal vide judgment dt. 27.5.2003, and a look at the impugned judgment, in the present two bunch of appeals, does show, that that judgment has substantially been made the basis of passing of the impugned orders, and we are informed, that against that judgment, an appeal was filed by the Revenue, but that appeal was dismissed as time barred; However making it clear, that the dismissal of the appeal will not affect the merits of the question, while the other appeals are being considered. Learned Counsel for the Revenue has ofcourse, made available for our perusal a reliable photo stat copy of the judgment of the learned Tribunal dt. 27.5.2003, relating to assessment year 1995-96, which holds that the receipt of

arrears of rent, and enhanced rent, are taxable, only in the relevant period when it is either received, became receivable, or became due. It was further held, that the case of the assessee is justified, and the receipt is not taxable in the assessment year under consideration (1995-96).

5. The present eleven appeals were admitted vide different, orders passed on different dates. However, the question framed in the ten appeals, being Appeals No. 94, 99, 100, 101, 131 of 2005, and Appeal No. 1, 26, 84, 85 of 2006 and Appeal No. 45/2007 are identical being under:

(1) Whether in the facts and circumstances of the case annual value of the property in question had been assessed to tax as income from house property under Section 22 under Part C of Chapter 4 of the Income Tax Act, 1961 and subsequent increase in the actual rent with retrospective effect could result in re-assessment of the annual value of the property by recourse to Section 147/148 of the Income Tax Act, 1961?

(2) If so, whether recourse to Section 147/148 as on the date noticed were issued for the assessment were within the limitation for initiating proceedings under those provisions.

While Appeal No. 119 was admitted on 16.8.2007, by framing following substantial question of law: Whether on the facts and circumstances of the case as well as in the law, the learned Income Tax Appellate Tribunal was justified in holding that the receipt of arrears of rent and enhanced rent are taxable only in the relevant period when it is either received, became receivable, or became due and further holding that receipt is not taxable in the assessment year under consideration ignoring the AO's findings in this regard that the rent receivable for the year under consideration was @ 60,000/- per month and shall be considered for calculating annual Letting Value of the property under consideration?

6. The necessary facts, in very brief are, that the assessee is a private trust. The assessee submitted return of the income declaring the total income in the relevant year, computing the income from house property, on the basis of the rent actually received in that relevant year. The assessments were finalised. However,

subsequently notices were issued to the assessee under Section 148, in response where to the returns of income were filed. Then again notices were issued under Section 143(2), in response where to the authorised representative appeared, and submitted written reply.

7. The reopening was sought on the basis, that in the assessment year 1995-96, the assessee received a sum of Rs. 26,26,000/-, for arrears of rent for the period 1.11.85 to 31.3.94, as there was upward revision of rent from Rs. 9000/- per month to Rs. 35000/- per month vide order dated 6.7.94. It may be observed that premises were let out by the assessee to the Income Tax Department itself. Likewise, the rent was subsequently further revised from Rs. 35000/- to Rs. 60000/- per month w.e.f. 8.1.1991 to 29.2.96, and then to Rs. 1,60,000/- per month for the subsequent period. Different orders were passed on different dates, respectively revising the rate of rent upwardly. The Department proceeded on the basis, that with revision of rent with retrospective effect, in view of the provisions of Section 23(1)(b), the rent did become receivable in the relevant financial year, with effect from the date from which it was enhanced, and therefore, it was liable to be taxed at the annual letting value of the property, and that having not been so assessed, it amounts to escapement of income, and therefore, notices under Section 148 were issued, for exercising powers under Section 147.

8. The assessee contested the notices, contending them to be without jurisdiction, and inter alia submitted, that the fact that the assessee trust received some arrears of rent for the earlier period, does not change the annual letting value of the property, and it has been correctly computed following the provisions of law. It was contended that the arrears of rent were neither determined nor accrued, nor received by the assessee Trust, during the previous year relevant to the assessment year, and hence was not stated to be taxable in that assessment year, and thus proceedings under Section 147 were prayed to be dropped.

9. Learned Assessing Officer relied upon the provisions of Section 23 as, substituted by amendment, which came into effect since 1.4.1976, and according to that provision, when the actual annual rent 'received' or 'receivable' is in excess of such estimated rent, the actual received or receivable annual rent, shall be

taken as the annual value. Then, it was considered, that in the case in hand, though the actual rent was received, or became receivable during the subsequent period, but then, the annual letting value of the property would be the actual rent received, including arrears of rent if any, and that, it is only a matter of coincidence that the actual rent which was to be received by the assessee for the property could not be determined earlier, but when the same has been determined by the concerned authorities, and has been allowed to the assessee, there is no question of not including that part of annual rent, which has not so far been considered for taxation in the concerned assessment year. It was also found, that the receipt of arrears by the assessee in the subsequent financial year, does not change the character of receipt, and it retains the character of revenue receipt, and it is very well covered within the inclusive definition of 'income'. The assessing officer relied upon the judgment of Calcutta High Court, in. *Hemilton & Co. Pvt. Ltd. v. CIT* : [1992]194ITR391(Cal) and quoted the conclusions arrived at therein, wherein the Calcutta High court had held that arrears of rent of the period prior to the account period cannot be taxed under the head income from other sources in the year of receipt. But the legal position is that such arrears of rent are the annual rent or part of the annual rent for years to which the arrears relate by virtue of the definition of annual rent in explanation (1) below Section 23 and not really the income of the year of receipt under the head income from other sources. Accordingly the assessment orders had been made by taxing the amount of arrear received in the year to which it related. Identical orders, rather stereo type orders were passed by the assessing officer in all ten appeals i.e. excluding Appeal No. 119.

10. The assessee then filed appeals before the learned Commissioner, and the learned Commissioner found, that the assessing officer was justified in initiating proceedings under Section 148 for all the assessment years, because of the appellant's income chargeable to tax had escaped assessment. Then relying upon the judgment of Calcutta High Court in *Hamilton & Co.'s* case, the learned Commissioner did not find any error in the action of the assessing officer, in computing the actual letting value of the property, on the basis of the revised rent. Then, the learned Commissioner also considered the aspect of interest, and directed the assessing officer not to charge interest under Section 217, while in the appeals relating to assessment year 1991-92, 1992-93, 1993-94, 1994-95, and

1996-97 to re-compute the chargeable interest under Section 234B, for the assessment years 1991-92 to 1994-95.

11. Against these orders the assessee filed further appeal, wherein the learned I.T.A.T. had passed the orders, as recapitulated above.

12. The facts relating to Appeal No. 119 are, that it is not a case of reopening, rather the assessee filed return for the assessment year 1998-99 on 16.11.1998. The case was selected for scrutiny, and notice under Section 143(2) was issued on 30.9.1999, then notice along with questionnaire was issued on 14.11.2000, and in response thereto the authorised representative appeared. In this case the property stood let out to the Income Tax Department during the relevant period at a monthly rent of Rs. 60,000/-, and the rent was enhanced vide order dt. 2.7.1998, to Rs. 1,60,000/- w.e.f 28.3.1996, and the assessing officer, relying upon the provisions of Section 23, and treating the enhanced rent to be rent receivable for the purposes of annual letting value, found, that rent would be chargeable to tax in the year to which it relates, and thus made the assessment at the enhanced rate. In appeal of the assessee the learned Commissioner, relying upon the previous judgments, negated the appeal, and in further appeal of the assessee, the learned I.T.A.T. had passed the order, as recapitulated above.

13. Thus, two questions arise in these appeals, as framed in the ten appeals, and the question as framed in the Appeal No. 119, also does arise, which is partly covered by the Question No. 1 framed in other ten appeals, except that in this case recourse was not taken to provisions of Section 147 and 148 of the Income Tax Act.

14. Thus, we are required to decide two aspects of the matter, being, as to whether in the circumstances noticed above, i.e. where the rent is subsequently upwardly revised with retrospective effect, and consequently the assessee receives the arrears, whether such arrears are to be taxed in the relevant assessment year, relating to the previous year to which the amount relates, or as directed by the Tribunal it can be taxed, or rather is required to be taxed, only in the year in which it is received and the second question that is required to be decided is, as to whether on that basis i.e. on the basis of subsequent

retrospective upward revision of rent, and consequently assessee receiving arrears of rent, confers any jurisdiction on the assessing officer, or the authorities, to initiate any action under Section 147, 148, much less with flowing consequences, enumerated in Section 234B, and even Section 271(1)(c), as has been ordered by the learned Assessing Officer.

15. Before proceeding further, we may notice that the provisions of Section 23 have undergone amendments in the year 1976, 1979, 1987, and 1993. However, the relevant provision with, which we are concerned, being Section 23(1) (a)& (b) have not undergone any material change, except substitution of certain figures, and therefore, we may gainfully quote the provisions of Section 23, as they are, which read as under:

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.

16. We have quoted the provisions of Section 23, only because under Section 22 for computing the income chargeable to Income Tax Act, under the head 'Income from house property', the 'annual value of the property' is the deciding factor, and Section 23 only provides as to how the value is to be determined, therefore, we have quoted the provisions of Section 23. We may at this place also gainfully quote the provisions of Section 147 and 148 of the Act which read as under:

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the

provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year): Provided that where an assessment under Sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) where an assessment has been made, but-

- (i) income chargeable to tax has been underassessed; or
- (ii) such income has been assessed at too low a rate; or
- (iii) such income has been made the subject of excessive relief under this Act; or
- (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

148. (1) Before making the assessment, reassessment or re-computation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:

Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Sub-section (2) of Section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in Sub-section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response

to a notice served under this section, and

(b) subsequently a notice has been served under Clause (ii) of Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Clause (ii) of Sub-section (2) of Section 143, but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in Sub-section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.-For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

17. Then, we may also refer to the provisions of Section 234B Explanation 2, which provides, that where in relation to an assessment year, an assessment is made for the first time under Section 147, or Section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section. Likewise, we may only recapitulate, that Section 271(1)(c) provides for levy of penalty, where the assessee has concealed the particulars of his income, or furnished inaccurate particulars of his income.

18. Arguing the appeal it was submitted by the learned Counsel for the Revenue, relying upon the judgment in Hamilton & Co.'s case, and on the judgment of Delhi High Court, in Commissioner of Income Tax v. Ms. Sadhna Chadha reported in : [2004]270ITR534(Delhi) , that in the case of income from house property, in view of the provisions of Section 23, assessability is not in the year of actual receipt, but it is to be assessed in the year to which they relate, and since in the present case, it is not in dispute, even on the side of the assessee, that the arrears received relate to the earlier years, and therefore, the assessing officer had rightly assessed the amount in the relevant assessment year, relating to previous year, to which the arrears of rent relate. It was also submitted, that since the amounts

received by the assessee, were very much 'receivable' by the assessee, they were required to be taxed in the concerned assessment year, and that having not been done, the case clearly fell within Section 147 Explanation 2 (c) (i) i.e. income chargeable to tax has been under- assessed, therefore, the assessing officer rightly issued notice under Section 148, in 10 cases, and did rightly assess the income in the assessment year 1998- 99. Then, learned Counsel for the Revenue also referred to the judgment of Hon'ble the Supreme Court, in A.N. Lakshman Shenoy v. Income Tax Officer, Ernakulam reported in : [1958]34ITR275(SC) but then, we may mention this, only for the purpose of mentioning, that learned Counsel has relied upon this judgment, otherwise by reading this judgment, we do not find it to be having any relevant bearing on the case. It appears to be a case, where Hon'ble the Supreme Court was considering the import of expression 'definite information', for the purpose of enabling the assessing officer, to initiate proceedings for re- assessment, while in the present case, this is not the controversy at all. Then, learned Counsel also relied upon the judgment of Hon'ble the Supreme Court, in Commissioner of Income-Tax v. G.R. Karthikeyan reported in : [1993]201ITR866(SC) and another judgment of Hon'ble Supreme Court, in ESS ESS Kay Engineering Co. P. Ltd. v. Commissioner of Income Tax reported in : [2001]247ITR818(SC) . So far Ess Ess Kay Engineering's case is concerned, there Hon'ble the Supreme Court was considering the question, as to whether the reopening was effected only on the ground of change of opinion of the Assessing Officer, and it was found, that it was reopened on the basis of his findings of fact, arrived at on the basis of fresh material, in the course of assessment of next year, and thus, reopening was upheld. Then Karthikeyan's case is a case, which only examines the definition of the term 'income', as given in Section 2(34) of the Act, and it was held, that it is required to be construed in the widest sense. On the legal principle there is no dispute, and therefore, these two judgments also need not detain us any more.

19. It was contended by the learned Counsel for the Revenue, that thus, even if the rent is revised upwardly, with retrospective effect, and is received subsequently, still it would be taxed in the year, to which it relates, and since in the present case it had not been so done, the Assessing Officer was right in reopening the assessment, with all consequences, and in the matter relating to Appeal No.

119, the assessing officer was right in taxing the income, in the year, to which it related, being assessment year 1998-99, and thus the orders of the learned Tribunal were contended to be liable to be set aside.

20. On the other hand learned Counsel for the assessee supported the impugned judgments, and placed strong reliance on judgment of Hon'ble the Supreme Court, in the case of Commissioner of Income Tax. West Bengal v. Hindustan Housing and Land Development Trust Ltd. reported in : [1986]161ITR524(SC) .

21. In that case certain lands belonging to the assessee, which carried on the business of dealing in the land, and maintained its accounts on the mercantile system, were first requisitioned, and then compulsorily acquired by the State Government. The Land Acquisition Officer awarded a compensation of Rs. 24,97,249/-. Then, on appeal preferred by the assessee the arbitrator made an award on 29.7.1955, determining the compensation at Rs. 30,10,873/-, and directing payment of interest @ 5% from the date of acquisition. The arbitrator also awarded an annual sum for the period of requisition. Thereupon the state Government preferred an appeal to the High Court. Pending the appeal, the State Government deposited in the Court amount of Rs. 7,36,691/-, being the additional amount payable under the award, and the assessee was permitted to withdraw that amount on 9.5.1956, only on furnishing a security bond for refunding the amount, in the event of the appeal being allowed. On receiving the amount the assessee credited it in its suspense account on the same date. In these circumstances the question arose, as to whether a sum of Rs. 7,24,914/- could be taxed as the income of the assessee for the assessment year 1956-57, on the ground, that it became payable pursuant to the arbitrator's award. The Tribunal held, that the amount did not accrue to the assessee as its income during the relevant previous year ending on 31.3.1956, and was therefore, not taxable in the assessment year 1956-57. The High Court on a reference affirmed the decision of the Tribunal. On an appeal, Hon'ble the Supreme Court held, that although the award was made by the arbitrator on 29.7.1955, enhancing the amount of compensation payable to the assessee, but then, the entire amount was in dispute in the appeal filed by the State Government. And the dispute was regarded by the Court as real and substantial, because the assessee was not permitted to

withdraw the amount deposited by the State Government without furnishing a security bond for refunding the amount, in the event of the appeal being allowed. Therefore, it was found, that there was no absolute right to receive the amount at that stage, as if the appeal were allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. The extra amount of compensation of Rs. 7,24,914, was not income arising or accruing to the assessee during the previous year, relevant to the assessment year 1956-57. It was held, that there is a clear distinction between cases such as the present one, where the right to receive payment is in dispute, and it is not a question of merely quantifying the amount to be received, and cases, where the right to receive payment is admitted, and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. On this basis it was contended by the learned Counsel for the assessee, that in the present case the right to receive, and quantification of the amount to be received, were all dependent on the agreement on the part of the tenant to enhance the rent, and when the tenant agreed to enhance the rent by orders of different dates, the right to receive the enhanced rate of rent came into existence and the amounts were quantified, and were received by the assessee, and were accordingly offered to tax in the year of receipt, which on the principles propounded in this Hindustan Housing's case, could not be assessed to tax in any earlier year.

22. Then, reliance was also placed on the judgment of Hon'ble the Supreme Court, in *E.D. Sassoon & Co. Ltd. v. Commissioner of Income Tax* reported in : [1954]26ITR27(SC) to contend, that amount can be taxed in the year, only in which it was accrued. It was a case, where there was service contract between the U Company and the managing agents, which was entire and indivisible. The remuneration or commission became due by the U Company to the managing agents only on completion of a definite period of service, and at stated periods, and it was a condition precedent to the recovery of any wages or salary in respect thereof, that the service or duty should be completely performed. Such remuneration constituted a debt only at the end of each such period of service, and no remuneration or commission was payable to the managing agents for broken periods. In these facts it was found, that right to receive the commission would arise, and the income, profits or gains would accrue to the managing

agents, only at the end of the calendar year, which was the terminus a quo for the making up of the accounts, and ascertaining the net profits earned by the company.

23. Learned Counsel then relied upon another judgment of Hon'ble the Supreme Court, in Commissioner of Income Tax v. Kishanlal and sons (Udyog) Pvt. Ltd. reported in : [2003]260ITR481(Cal) wherein it was held, that in considering the annual value of the property for any assessment year, that assessment year, as far as practicable, should be taken in isolation, as if that assessment year stood by itself. The property which is already tenanted at the beginning of the assessment year, cannot be expected to be let from year to year, at any figure, higher than the rent, which is being produced actually by the property in question. Clause (a) of Section 23(1) applies not only to property which is vacant, and not under any lease deed, but is also applicable to property which is already tenanted, and subject to the continuing fixed rental, but in the latter case the property is to be treated as tenanted property, and Clause (b) of Section 23(1) refers to a situation, where the rent received or 'receivable' by the assessee is higher than the expected market rental value of the property itself, and if the property is actually let out, then the expectations of its letting out become an actual reality, and the proof of the expectation, can be made in the best manner possible by producing evidence of the rental, which is being actually received by the assessee, and in that case, the actual rent at which the property was let out, was taken to be the letting value.

24. Then, learned Counsel relied upon another judgment of Calcutta High Court, in Hope (India) Ltd. v. Commissioner of Income Tax reported in : [1999]238ITR740(Cal) which is a Division Bench judgment of Calcutta High Court. The judgment is rendered by Hon'ble Mr. Justice S.B. Sinha (as His Lordship then was). In that case the assessee was the owner of 2/3rd share in certain property, occupied by tenants, some of which were Government Departments. For the assessment year 1984-85 the assessing officer being of the view, that the fair market value of the property being much higher than the actual rent received, computed the fair rent, and assessed 2/3rd share of the property. Then in appeal, the Commissioner held, that tenants had been occupying the premises for more than 15 years, and the provisions of the West Bengal Premises Tenancy Act being

applicable, any upward revision of rent would not be permissible, except with the mutual agreement between the parties. The efforts were being made by the assessee and the Government Departments, who occupied a portion of the premises, for enhancement of rent. Therefore, the Commissioner directed the assessing officer to re-compute the income from house property. Against this the Revenue preferred an appeal, and the learned Tribunal found, that on various dates in the years 1986 and 1987, the Government Departments in question had agreed to pay an enhanced rent with effect from 1982, and hence directed the Income Tax Officer to re-compute the income from the house property, on the basis of the enhanced rent sanctioned and agreed to be paid by the various tenants, and to re-determine the income in accordance with law. It was on these facts, that a reference was made to the High Court, and the High Court held, that the Government Departments agreed to enhance the rent with retrospective effect from 1982, and thus the parties were not ad idem in their mind, as regards the actual quantum of rent payable to the assessee by its tenants, and thus the actual amount was not ascertainable. Then it was found, that under the West Bengal Premises Tenancy Act, the rent has to be paid on the basis of agreement entered into by the parties, and the claim made by the landlord for enhancement of rent, cannot be said to be an amount 'receivable' within the meaning of Section 23(1) of the Act. A claim, or a demand, by itself, does not come within the purview of the word 'income received or receivable'. An agreement entered into between the parties, in terms whereof, the quantum of rent is determined with retrospective effect, does not come within the purview of any of the provisions of Section 5 of the Income-tax Act, 1961, and thus it was found, that the Tribunal was not justified in directing the Assessing Officer to re-compute the income from the house property, on the basis of enhanced rent, sanctioned and agreed after the close of the previous year, to be paid by the various tenants, and to determine the income under the head 'Income from house property'. On the basis of the principles propounded in this case, it was contended by the learned Counsel for the assessee, that the learned Tribunal has rightly passed the impugned order.

25. Then reliance was placed on the judgment of this Court, in *Mansinghka Brothers Private Limited v. Commissioner of Income-Tax, Rajasthan* reported in to contend, that in interpreting the taxing statute, when two views are possible, the

view beneficial to the assessee is to be taken: In that case, the place of accrual of the income, was considered to be the place, where the right to receive that income arises, with the corresponding liability to make payment of the same there. It was considered that in money lending transactions there may be several factors which may have different territorial connections, and may be as to the place where an agreement, verbal or written, to advance the loan is entered into; the place where the money is actually lent; the place where the money is used; the place where entries thereof are made; and the place where money, including interest, is agreed to be paid, and in order to determine the situs of accrual of interest, these and several other factors may enter into consideration, and in this background it was held, that the view, which is beneficial to the assessee, should be taken.

26. Learned Counsel then referred to and relied upon a judgment of Hon'ble the Supreme Court, in *Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee* reported in : [1980]122ITR700(SC) but then in our view that judgment has no material bearing on the controversy, as in that case the question was about assessment of annual letting value of the building, on the anvil of provisions of Rent Control Legislation, being the provisions of Delhi Municipal Corporation and Punjab Municipal Act, and Delhi Rent Control Act, and it was held, that the annual letting value would be the rent, which is standard rent, determined under the Rent Control Act. This is not the controversy here. Then, to the similar effect is the judgment relied upon, being in *Mrs. Sheila Kaushish v. Commissioner of Income Tax, Delhi* reported in : [1981]131ITR435(SC) so also the judgment in *Amolak Ram Khosla v. Commissioner of Income Tax, Delhi* reported in : [1981]131ITR589(SC) . Both these judgments have been rendered by following the judgment in *Dewan Daulat Rai's* case. Then, to the similar effect is the judgment of Delhi High Court, in *Bal Kishan Kapoor v. Income Tax Officer* reported in : [1996]219ITR141(Delhi) relied upon by the learned Counsel for the assessee. This judgment again follows the judgment in *Sheila Kaushish's* case. Therefore, this judgment also need not detain us.

27. In rejoinder the learned Counsel for the Revenue also referred to a judgment of Bombay High Court, in *Raja Bahadur Motilal P. Ltd. v. K.R. Viswanathan, ITO and Anr.* reported in : [1990]183ITR80(Bom) . This judgment was relied upon for

the purpose of permissibility of invoking the provisions of Section 147(b). In this judgment it was held, that it is evident from a plain reading of Section 147, that the expression 'reason to believe the income chargeable to tax had escaped assessment' is common, both to Clause (a) and (b) of Section 147. The only difference between the two provisions is, that whereas Clause (a) requires that the income chargeable to tax must have escaped assessment by reason of (i) omission or failure to make return or (ii) non disclosure of all material facts necessary for the assessment fully and truly, while Clause (b) requires that the belief that income chargeable to tax has escaped assessment must have arisen, in consequence of information in the possession of the I.T.O. In that case re-assessment proceedings had been initiated under Section 147(b), on the ground that the assessee had made purchases, as well as sales had been made. It was found to be non genuine parties, and were found to have indulged in bogus Hawala transactions, and the High Court held, that there was no indication as to whether, and in what context, the parties were found to be non-genuine parties, and how they were indulged in bogus Hawala transactions, and there was no evidence, that the transactions with the assessee were bogus. Thus, the re-assessment proceedings were quashed. In our view, this judgment is hardly of any assistance to either of the parties. Then, the learned Counsel relied upon another judgment of Bombay High Court, in IPCA Laboratories Ltd. v. Gajanand Meena, Dy. Commissioner of Income Tax reported in : [2001]251ITR420(Bom) . There the Bombay High Court was considering the scope of expression 'reason to believe', and in that case it was held, that it will depend upon the facts of each case. The belief must be of an honest and reasonable person, based on reasonable grounds. The assessing officer is required to act, not on mere suspicion, but on direct and circumstantial evidence, and that, the expression 'reason to believe' does not mean a subjective satisfaction on the part of the assessing officer. In that case, the assessee was manufacturer of bulk drugs and formulations, and for the assessment year 1994-95, the assessee claimed a deduction of Rs. 3.08 crores, under Section 80HHC of the Act. During the scrutiny, at the time of assessment of the assessee, the first respondent Dy. Commissioner of Income Tax raised various queries, including the query, in respect of the claim under Section 80HHC, which queries were answered. However assessment proceedings were completed under

Section 143(3), by disallowing the revised claim of Rs. 3.20 crores, and allowing the original claim, the Commissioner (Appeals) directed the assessing officer to reconsider the revised claim. Thereafter the assessing officer issued notice under Section 148 of the Act, stating that he has reasons to believe, that the petitioner's income chargeable to tax for the assessment year 1994- 95 had escaped assessment. The petitioner filed a revised return for the assessment year 1994-95. Meanwhile a similar claim of the petitioner, for deduction under Section 80HHC, was denied for the subsequent assessment year 1996-97, which was upheld by the Tribunal, and that order was confirmed by the High Court, holding that the assessee was not entitled to ignore the losses in respect of export of trade goods, and that if the net result of computation was a loss, then the assessee was not entitled to claim the relief under Section 80HHC(1). It was found, that the assessing officer had given reasons for reopening, that on aggregation there was loss of 3.55 crores from export of the trading goods, and therefore, the assessee was not entitled to claim relief under Section 80HHC(1). Therefore, the assessing officer was found right in issuing notice under Section 148. Obviously, the facts of this case are entirely different.

28. Thus, from the above narration it is clear, that, on facts, there is no dispute between the parties, about the facts, that for all relevant years the assessee had submitted the returns, disclosing the income from house property, on the basis as received by the assessee in the relevant financial year. It is also not in dispute, that there had been subsequent upward revision of rate of rent with retrospective effect, and consequent there upon the assessee received arrears. It is also not in dispute, that the assessee did offer to tax the amount so received, in the return of the relevant financial year, in which the amount was received, and it is also not in dispute, that the Revenue seeks to tax such arrears of rent, in the relevant financial year, to which the rent relates, and for that purpose, in ten cases notice under Section 148 were issued, and in one case relating to assessment year 1998-99, it is sought to be assessed in that year as such.

29. In this background, to repeat, the contention of the Revenue is based on the language and interpretation of Section 23(1)(b) by laying much stress on 'actual rent received or receivable by the owner in respect thereof' rather more stress is

on the word 'receivable', and it is contended, that may be, that by subsequent upward revision of rent, but then the amount did become 'receivable' by way of rent for the relevant earlier year, and therefore, that is required to be taken into account for determining the annual letting value, for the purpose of being taxed, and in this very sequence the contention is, that since the income was chargeable to tax, being income from house property, taking into account the annual letting value for the relevant year, on the basis 'receivable' amount of rent, it is a clear case, where 'an assessment has been made to (i) income chargeable to tax had been under-assessed' which is an eventuality clearly covered by Section 147 Explanation 2 (c)(i) of the Act, and therefore, notice under Section 148 was rightly given, and thus the impugned orders are sought to be assailed. While on the other hand the contention of the assessee is, that till the orders were passed by the Income Tax Department, the tenant, agreeing for upward revision of rent, the amount did not become 'receivable' by the assessee, even for the relevant year, and consequently, as at the time when the returns were filed, and even as at the time when the assessment was made, the income was rightly disclosed, and was rightly assessed, and simply because, after passage of time, may be long, or short, and in any case after end of the assessment year, if there has been an upward revision of rent by mutual agreement, then the enhanced rate of rent, became payable to, or 'receivable' by, the assessee, is only consequent upon passing of that order, and therefore, even if it related to the earlier years, it could be assessed, only in the relevant financial year, in which it was received. It was also contended, that taking any other interpretation, rather as sought to be taken by the Revenue, would have drastic adverse consequences on the assessee, inasmuch as if such an eventuality is assumed to be attracting the provisions of Section 147/148, then by virtue of Section 234B the re-assessment is deemed to be the regular assessment, and adds liability of interest at a specified rate, and may also attract the penal provisions contained in Section 271(1)(c), rather, not only it may attract the provisions, as is clear from the assessment orders passed by the assessing officer, being revised assessment orders, that a direction has been given for initiating penalty proceedings under Section 271(1)(c), assuming that the assessee has concealed particulars of his income, and furnished inaccurate particulars of such income, which attracts liability of penalty for the

same, in addition to tax, not less than the tax, but it may exceed three times the amount of tax, sought to be evaded or concealed. Meaning thereby, that notwithstanding the fact, that as at the time of filing of the return, and/or even as at the time of assessment, the assessee had correctly submitted the returns, and the assessing officer had correctly assessed the income, the assessee is made liable for interest, and penalty, which may even have the effect of, not only completely denuding the assessee of the enhanced rent received, rather it may even have the effect of making the assessee shell out the amount, even out of the amount of rent originally received, such is not the intention of the provisions of Section 147, and since notwithstanding this, this situation has been brought about; which has rightly been set right by the impugned orders of the learned Tribunal.

30. On the face of these rival contentions, the first thing required to be considered by us is, as to whether in the facts and circumstances of the present case, subsequent upward revision of rent, entitling the assessee to arrears of rent, to the extent of increased amount of rent, will relate to the annual letting value of the relevant year under Section 23(1)(b), as the amount of rent received by the assessee, or it is required to be assessed, only in the relevant year, in which such enhanced rent is received. It is another aspect, that if the first proposition is taken, then as to whether, the recourse to Section 147/148 can be taken, or not, as it might be well- nigh, that even if we were to come to conclusion, that the amount is assessable in the relevant year, to which it relates, still whether it would amount an eventuality, where an assessment is made, where income chargeable is under-assessed, so as to entitle the Revenue to have recourse to Section 147/148 of the Act.

31. The provisions of Section 23(1) have already been quoted above, and the cases cited on the either side, also have already been recapitulated above. To be very specific, the case of the Revenue is based on the interpretation taken by the Calcutta and Delhi High Court, in the case of Hamilton & Co., and Sadhna Chadha's case respectively. On the other hand, the assessee's stand is sought to be supported on the basis of the judgment, in E.D. Sassoon's case, Hindustan Housing's case, Hope (India)'s case, and Kishanlal's case.

32. Out of these cases the judgment in E.D. Sassoon's case, and Hindustan Housing's case, are the judgments of Hon'ble the Supreme Court, while Hope (India)'s case, and Kishanlal's case, are the judgments of Calcutta High Court. The other judgments have already been discussed above. The case of Mansinghka Brothers' will be considered later, at appropriate stage.

33. Reverting to Hamilton & Co.'s case, in that case the assessee was deriving income from house property, known as Hamilton House at Connaught Place, New Delhi, and in the relevant year of assessment year 1982-83, as a sequel to negotiations going on for quite some time, higher rents were agreed to by some tenants, with retrospective effect. Consequently, during the year of accounting, ending October 31, 1981, relevant to the assessment year 1982-83, the assessee received an aggregate amount of Rs. 1,52,094.20, as arrears of rent, relatable to the period from July, 1979 to October, 1980, relevant to the earlier assessment year, and the assessee also received a further sum of Rs. 1,30,430, pertaining to the year of account, relevant to the instant assessment year 1982-83. The I.T.O. included both the amounts as the gross rent for the accounting year 1982-83. The Commissioner found, that the amount of arrears of rent of Rs. 1,52,094.20 was assessable as rent for the accounting year relevant to the assessment year 1982-83, but the sum of Rs. 1,30,430/- though it related to the year of account ending on 31.10.1981, but was received after the close of the relevant previous year, under an agreement dated 15.5.1982, i.e. a date falling after the year ending, namely 31.10.1981, was held not to be brought to charge in the assessment year 1982-83, and held, that right to receive additional rent accrued or arose, after the close of the relevant previous year, the same could not be brought to tax in respect of the previous year, that expired before such accrual of the additional rent. Then, in appeal before the learned Tribunal, it was urged, that Section 22 is limited to the notional value of a house property in a year, therefore, rent not attributable to a particular previous year, cannot be rental income of that year, merely by reason of receipt. It was also contended, that any arrears of rent received on account of past previous years, cannot be brought to tax in the year of receipt, under Section 22 of the Act. The Tribunal accepted the argument, and observed, that the scheme of Section 22 is clear, as to what is chargeable under that section. The Tribunal has found, that the charge is in respect of actual rent 'received' or 'receivable' by the

owner, in respect of property let throughout the previous year, and that, nothing more than the rent attributable to the previous year, under Section 22, is taxable under that section, and thus it was held, that additional rent attributable to the earlier years, cannot be taxed under Section 22, but can be taxed under residuary head 'Income from other sources'. It is on these facts, that the matter was considered by the Calcutta High Court, and certain circulars of CBDT were considered, and then the explanation appended to Section 23(1), by amendment of 1975, was also considered, and posed a question, as to whether the arrears of rent received in respect of tenancy of a house property, lose their character as income from house property, as postulated by the Tribunal's order, and held, that the answer would be in the negative. It was also held, that rent, whether current or in arrears, is the yield of the house property, and the source of the income being the letting of a house property by the owner, the rent shall continue to have its character as 'income from house property', and cannot be taxed as 'income from other sources', and adopting this logic it was held, that if it is not chargeable in the year of receipt, as income from house property, the rent relating to earlier previous years, cannot be taxed under the residuary head, giving a go by to the mandatory computation provisions, relating to income from house property, that is not permissible. The computation provisions do not envisage taxation as income from house property, of more than the annual rent, that is the rent for a period of twelve months, and it was held, that there being no provision to bring to charge, the arrears of rent in the previous year, in which they were received, it must be held, that the additional, or extra rent, from house property, attributable to preceding years of account, cannot be taxed under the head 'Income from other sources'. Though in this judgment it is held, that the arrears of rent in the earlier years cannot be taxed under Section 22 of the Act in the year of receipt, and they cannot be taxed under the head 'Income from other sources', but then, this judgment does not lay down, that it would be so taxable in the earlier years, by taking recourse to the provisions of Section 147/148, and rests at holding, that the amount cannot be taxed under the head 'Income from other sources', in the year it was received.

34. Then, in Sadhna Chadha's case, this case in Hamilton & Co.'s case has been followed. In that case the questions involved before the Delhi High Court as formulated were, firstly, as to whether the Tribunal was correct in law in deleting

the addition of Rs. 4,07,286/-, being the arrears of rent, made by the Assessing Officer, to the income of the assessee?, second being, as to whether the aforesaid amount being arrears of rent, could be taxed under the head 'Income from house property', or under the head 'Income from other sources'?, and third was, as to whether the provisions of Section 25B, introduced by the Finance Act, 2000, are clarificatory in nature, and therefore have retrospective effect? The material facts in that case were, that the assessee was a lessor of a portion of the property, situated at Connaught Place, New Delhi. The property was leased out to State Bank of Saurashtra. Under agreement dated 1.8.1995 the rent was enhanced to Rs. 43758/-, from Rs. 8976/- per month, payable before coming into force of the agreement. Consequently, the assessee received a sum of Rs. 6,26,076/-, which included the arrears of rent for the period from 1.3.1995. The assessee in the statement of income for the previous year ended on 31.3.1996, and relevant to the assessment year 1996-97, computed the arrears of rent for the period from 1.4.1995 to 31.8.1995, i.e. a period of five months falling in the relevant previous year, amounting to Rs. 2,18,790/-, and offered the same as rental income, and claimed, that the balance amount of arrears of rent, relatable to the earlier years, was not to be assessed in the assessment year 1996-97. The assessing officer rejected this claim, and brought the entire amount of arrears of rent, received during the previous year, relevant to the assessment year 1996-97, as the income for the said assessment year. In appeal, relying upon the judgment of Calcutta High Court in Hamilton & Co.'s case, the Commissioner concluded, that the arrears of rent were to be assessed in the year to which they relate, and not in the year of actual receipt. The Tribunal upheld this order, and the Revenue appealed before the High Court, and the High Court framed three questions, as noticed above, but while deciding the case, posed only one question, being, as to whether the arrears of rent relating to the earlier year(s) could be brought to tax as income from house property of the previous year, in which they are actually received, and answered it in the negative, by interpreting provisions of Section 22 and 23. Thus, no fault was found in the orders of the Tribunal. However, the question framed, on the aspect, about the provisions of Section 25B, as introduced by the Finance Act, 2000, being clarificatory in nature, and therefore, have retrospective effect, remained unanswered. Be that as it may. The fact does remain, that this judgment

also takes the view, that the arrears of rent are to be taxed in the year, relevant to the previous year to which they relate, and cannot be taxed in the year in which they were received. But then, this judgment also does not say anything about applicability of the provisions of Section 147 and 148, as to whether the assessment can be reopened on the ground of escapement, for such earlier years.

35. On the other hand, the judgment in E.D. Sassoon's case, though does not relate to 'income from house property', but has a very material bearing, as it deals with the aspect, as to when the income 'accrues', and/or as to when it becomes 'receivable'. The facts of the case have already been noticed above, therefore we need not repeat them, and we may straightway recapitulate the conclusions arrived at, being, that the right to receive the commission would arise, and the income, profits or gains would accrue to the managing agents, only at the end of the calendar year, which was the terminus a quo for the making up of the accounts, and ascertaining the net profits earned by the company. Under the terms of agreement, no part of the consideration paid by the transferees, to the S company could be allocated as a receipt of income, by reason of their contribution towards the earning of the commission, in the shape of services rendered by them as managing agents of the U company for the broken period, rather transferees obtained under the deed of assignment, and transfer was the expectancy of earning a commission in the event of the condition precedent, by way of complete performance of the obligation of the managing agents, under the managing agency agreement being fulfilled, and a debt arising in favour of the managing agents, at the end of the period of service, contingent on the ascertainment of net profits, as a result of the working of the U company, during the calendar year. In that case, thus the relevant consideration is, as to when did the income 'accrue'.

36. Then, the judgment of Hon'ble Supreme Court, in Hindustan Housing's case is yet another significant judgment, wherein again, the aspects of 'accrual' and 'receivability' of the income was considered. This case also arise from Calcutta, and the question framed, was answered in the negative by the Calcutta High Court, being as to whether on the facts and circumstances of the case, the extra amount of compensation, amounting to Rs. 7,24,914, was income arising or accruing to the assessee during the previous year, relevant to the assessment

year 1956- 57? In that case the facts were, that under Rule 75A (1) of the Defense of India Rules read with Section 19 of the Defense of India Act, 1939, certain plots of land measuring about 19.17 acres, belonging to the assessee were requisitioned by the Government, and were subsequently acquired permanently by the State Government under Section 5 of the Requisition of Land (Continuance of Powers) Act, 1951, by a notice of acquisition dt. 27.12.1952, published in the Gazette dated 8.1.1953. The Land Acquisition Officer awarded a sum of Rs. 24,97,249/-, as compensation, and the assessee preferred an appeal before the arbitrator, who made an award on 29.7.1955, whereby he fixed the amount of compensation at Rs. 30,10,873/-, on account of the permanent acquisition of the land, and awarded interest on the enhanced amount of compensation, and also directed, that further recurring compensation at Rs. 6,272-10-4 p.m. should be paid to the assessee, from the date of requisition till the date of the acquisition. Then, appeal was filed before the High Court, and during the pendency of the appeal, on 25.4.1956 a sum of Rs. 7,36,691/- was deposited by the State, which was permitted to be withdrawn on 9.5.1956, on furnishing security, and the assessee credited the amount in the suspense account on the same day. On these facts, during assessment proceedings for the assessment year 1956-57, the assessing officer brought to tax a sum of Rs. 7,24,914/- as the assessee's business income, being the difference between the sum of Rs. 7,37,190, payable to the assessee, in terms of the award dt. 29.7.1955, and a sum of Rs. 12,276/-, which had already been assessed to tax, and treated the sum as liable to income tax during that year, on the basis, that the income accrued to the assessee on the date of the award. This was confirmed by the appellate authority, and the Tribunal held, that the sum of Rs. 7,24,914/- was not taxable in the assessment year 1956-57. Thereupon the matter was got referred to the High Court, and decided as above.

37. In those facts the question arose before Hon'ble the Supreme Court was, as to whether on the facts and circumstances of the case, the Revenue can claim that the sum of Rs. 7,24,914, payable to the assessee as compensation, can be said to have accrued to it, as income during the previous year ended on 31.3.1956, and for deciding this controversy Hon'ble the Supreme Court referred to and relied upon E.D. Sassoon's case, wherein it was explained that the words 'arising or

accruing' describe a right to receive profits, and that, there must be a debt owned by somebody. It was noticed to have been held in E.D. Sassoon's case, that unless and until there is created in favour of the assessee, a debt due by somebody, it cannot be said that he has acquired a right to receive the income, or the income has accrued to him, and relying upon this, it was held, that in the case in hand, although the award was made on 29.7.1957, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State, and the dispute was regarded by the court as real and substantial, because the assessee was not permitted to withdraw the sum of Rs. 7,36,681/- deposited by the State on 25.4.1956, without furnishing a security bond for refunding the amount, in the event of the appeal being allowed. There was no absolute right to receive the amount at that stage, as if the appeal was allowed in its entirety, the right to payment of the enhanced compensation would have fallen altogether. Then, the earlier judgment, in Kedarnath Jute Mfg.Co. Ltd. v. CIT reported in : [1971]82ITR363(SC) , was distinguished, and Punjab High Court judgment, in CIT v. Jai Prakash Om Prakash Co. Ltd. reported in was found to be comparable. Then, certain judgments of Andhra Pradesh, Madras and Gujarat High Courts were also relied upon, and it was held, that there is no doubt about a liability to pay compensation as offered by the Land Acquisition Officer, but that is far from saying, that that liability is a liability to pay additional compensation, or enhanced compensation, as claimed by a party aggrieved. It was found, that if there is an existing liability, the mere fact that the payment is postponed to the future, would not detract that liability from becoming a debt, but the liability to pay unliquidated damages or additional compensation, which are inchoate, or contingent, would not create a debt. Then, a distinction was drawn between the cases such as the present one, where the right to receive payment is in dispute, and it is not a question of merely quantifying the amount to be received, and cases, where the right to receive payment is admitted, and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. Thus, the view taken by the High Court, about the amount being not assessable to tax in assessment year 1956-57 was upheld.

38. Then, Hope (India)'s case is again a case dealing with the question of scope and purport of the words 'income received or receivable', and it has been held

therein, that the Government Departments agreed to enhance the rent with retrospective effect from 1982, and thus, the parties were not ad idem in their mind, as regards the actual quantum of rent payable to the assessee by its tenants and, thus, the actual amount was not ascertainable. Since in view of the Rent Control laws, the rent had to be paid on the basis of the agreement entered into by the parties. The claim made by a landlord for enhancement of rent cannot, thus, be said to be an amount 'receivable' within the meaning of Section 23(1) of the Act, and a claim or a demand by itself does not come within the purview of the word 'income received or receivable', and thus it was found, that the Tribunal was not justified in directing the assessing officer to re- compute the income from the house property on the basis of enhanced rent, sanctioned and agreed after the close of the previous year, to be paid by the various tenants, and to determine the income under the head 'Income from house property'. The Calcutta High Court examined the meaning of the word 'receivable' with the help of various dictionaries, and also relied upon the judgment in E.D. Sassoon's case. The observations in E.D. Sassoon's case were referred, and relied upon, where after considering the terms 'Accrue', 'arises', and 'is received' it was held as under:

The words 'accrue' and 'arise' also are not defined in the Act. The ordinary dictionary meanings of these words have got to be taken as the meanings attaching to them. 'Accruing' is synonymous with 'arising' in the sense of springing as a natural growth or result. The three expressions 'accrues', 'arises', and 'is received' having been used in the section, strictly speaking 'accrues' should not be taken as synonymous with 'arises' but in the distinct sense of growing up by way of addition or increase or as an accession or advantage; while the word 'arises' means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable.

39. Then, it was held that one other matter need be referred to in connection with the section, being, what is sought to be taxed must be income, and it cannot be taxed unless it has arrived at a stage, when it can be called 'income'. Then, observations of Madras and Calcutta High Court, in the case of CIT v. Anamallais Timber Trust Ltd. reported in : [1950]18ITR333(Mad) Rogers Pyatt Shellac and

Co. v. Secretary of State for India reported in 1 ITC-365 and the judgment of Hon'ble the Supreme Court in CIT v. Ahmedbhai Umarbhai and Co. reported in : [1950]18ITR472(SC) were relied upon, for holding, that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him, though it may be received later, on its being ascertained. Thus the basic conception is, that he must have acquired a right to receive the income. There must be a debt owed to him by somebody. There must be as is otherwise expressed 'debitum in praesenti, solvendum in futuro'. Thus, unless and until there is created in favour of the assessee a debt due by somebody, it cannot be said, that he had acquired a right to receive the income, or that income has accrued to him.

40. With laying down this principle it was held that in the case in hand the tenants agreed to increase the rent with retrospective effect from 1982, and thus, the parties were not ad idem in their mind as regards the actual quantum of rent payable to the assessee by its tenants, and thus the actual amount was not ascertainable. It was also observed, that the practical approach in the matter must also be taken, and that, an assessment of income cannot be reopened after a lapse of many years. While determining such question, it must be borne in mind, that a claim may fructify only after a lapse of many years, because of pendency thereof in a court of law, and/or prolonged negotiations between the parties. The tenant is not bound to pay at an enhanced amount only because the landlord claims the same. Thus, the question framed was answered in favour of the assessee, and against the Revenue.

41. In our view, this judgment does clearly lays down the proposition, as to when the income can be said to have accrued, or receivable, and that, the practical approach in the matter must also be taken, and that assessment of income cannot be reopened after lapse of many years, as it must be borne in mind, that a claim may fructify only after a lapse of many years, because of pendency thereof in a court of law, and/or prolonged negotiation between the parties.

42. Thus, after thorough review of the various case, law cited on either side, we are of the opinion, that the judgment in Hindustan Housing's case and Hope

(India)'s case, are the cases, which are required to be followed.

43. In the case in hand, as noticed above, enhancement with retrospective effect was made at a subsequent point of time, in all the 11 matters, and till that order for enhancement was passed by the Commissioner Income Tax, the tenant, the assessee did not have any right to receive the enhanced amount of rent, so as to entitle the Revenue to claim, that the enhanced amount of rent could be said to be the amount 'receivable', in the relevant previous year, so as to be liable to be taxed in that year, much less, so as to entitle the Revenue to find it, to be a case of escapement, and to reopen the assessment.

44. We are also keeping in mind the principle laid down in Hope (India)'s case, that a practical approach in the matter must also be taken. It is required to be grasped, that till the rent was enhanced by the order of Commissioner, the tenant, there was no occasion for the assessee to assume that he would receive the enhanced rent, or that enhanced rent would accrue to him in the relevant assessment year, so as to offer the same for tax, nor was there any occasion for the assessing officer to assume the same, and to assess it to tax, and obvious necessary consequence is, that for the purpose of Section 147, it cannot be said, that in making assessment, the income chargeable to tax has been under assessed.

45. There is yet another aspect of the matter, which is also required to be considered viz. that in the present matters, there has been revision of rent thrice; once it was revised from Rs. 9,000/- to 35,000/- per month, then from Rs. 35,000 to 60,000/-, and then from Rs. 60,000/- to 1,60,000/- per month, commencing from different periods of time. As observed in Hope (India)'s case, ought we know, that the negotiations for enhancement could have prolonged for good number of years, say would have prolonged beyond a period of time, available for the department for taking action under Section 147/148. In the present case looking to the amount, larger period of limitation could be available. While deciding the legal proposition, it is required to be grasped, that there may be cases and cases, where the period of limitation may be available, but unlike the present case time beyond period of limitation may have been taken in prolonged negotiation. The question then arises is, as to whether in that event, it would have been open to the Revenue to reopen

the assessment. The obvious answer has to be in the negative, and then, as sought to be contended, on the line of reasonings in Hamilton & Co.'s case, and Sadhna Chadha's case, the income cannot be assessed in the year in which it was received. With the obvious result, the income could not be subjected to tax in any year whatever, except of course for the period for which it might be within limitation. This is one fact, which is required to be taken into account, for adopting a practical approach of the matter. Likewise the possibilities are not rare, rather it is required to be taken note of, that the landlords do initiate litigation for determination of standard rent, seeking enhancement of rent, and it is a notoriously known fact, that disposal of the litigation takes years, if not decades, and then appeals are multiplied, in carrying the litigation in the hierarchy of Courts. There may be cases, where the claim for enhancement may be negated by all the Courts in succession, and is accepted by the ultimate Appellate Court. Obviously the Court may decree the enhanced rent, by determining standard rent, at least from the date of the suit, and in that event, by the time the decree is passed, much less amount is received by the landlord, a long span of years would have elapsed rendering the claim time barred, for the purpose of entitling the Revenue, for initiating the proceedings for reopening. Again on the logic of Hamilton & Co.'s case, and Sadhna Chadha's case, the income for all these years would go without being subjected to tax, and therefore, this line of logic, would be counter productive, if accepted, and therefore, taking practical approach, from all possible standpoints, we are not able to persuade ourselves, to accept this line of reasonings, as advanced by the Revenue, on the basis of the judgments in Hamilton & Co.'s case, and Sadhna Chadha's case.

46. Yet another aspect of the matter, and the stand point, from which the matter is required to be considered, as submitted by the learned Counsel for the assessee is, that accepting the line of reasonings propounded by the Revenue, is to bring about the drastic consequences, which are never contemplated by the Income Tax Act. We are not on the question, that like the assessee cannot be allowed to evade the tax by resorting to legal contrivances, the Revenue also cannot be conceded a right to inflate its demand, under different heads like, interest, penalty etc. by resorting to legal contrivances. We are examining the question only from the stand point, as to what are the likely logical consequences, in the event of

accepting the logic or reasonings advanced by the Revenue. Firstly, notwithstanding the fact, that the assessee, in all earnest, honestly, and bonafidely submitted the return, disclosing the income as received, and as was receivable at the relevant, time in view of the prevailing circumstances, and the assessing officer, in all earnest, and bonafide, assessed that income accordingly, and it is only by subsequent event, which can be said to be supervening event, whereby a right accrues to the assessee to receive additional amount of rent, by way of enhanced rent, for the earlier years, and accrual of such right, is sought to be described, as 'under assessment of income at the time of making of the assessment', and then attracting the liability of interest, under Section 234B, and initiation of penalty proceedings, under Section 271(1)(c). In our view, for attracting the provisions of Section 147 or 234B, or Section 271, some semblance of fault on the part of the assessee, or may be in the event of such thing, on the part of the assessing officer, would be a sine qua non. May be, that such fault may come into existence, for variety of legally accepted reasons, but then, subsequent upward revision of rent, by mutual consent of the parties, with retrospective effect, can, on no parameters, be said to be constituting one of such fault, to entitle the Revenue to initiate proceedings under Section 147/148.

47. Thus, in our view, it cannot be said, that the learned Tribunal was in error in passing the impugned orders, directing the income to be computed, by including it in the relevant previous year in which it was received, instead of being computed in the income of the relevant previous year, to which it relates.

48. After undertaking all this exercise for the sake of argument even if we were to come to the conclusion, that the reasonings propounded by the Revenue could also be accepted by the learned Tribunal, even in that event, in view of the judgment of this Court, in Mansinghka Brother's case, if two views are possible; the one which favours the assessee, should be taken. Similarly if such two views are possible, and one has been taken by the learned Tribunal, then also no interference is required to be made in our appellate jurisdiction under Section 260A.

49. All this above exercise we have undertaken is one part of the matter, and it appears that in order to get rid of all this conflicting situation, the provisions of Section 25B have been introduced by the Finance Act, 2000, clearly providing, in that regard as under:

25B. Special provision for arrears of rent received.-Where the assessee- (a) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant and (b) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year, the amount so received, after deducting a sum equal to one-fourth of such amount for repairs of, and collection of rent from, the property, shall be deemed to be the income chargeable under the head 'Income from house property' and accordingly charged to income- tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.

50. Of course, this provision has been enacted with effect from 1.4.2001, but then in Sadhna Chandha's case, this question was specifically framed, as noticed above, as to whether the provisions of Section 25B are clarificatory in nature, but then, this question was not at all answered by the Calcutta High Court. In our view, though not basing the judgment on this conclusion, but as purely additional factor, we have no hesitation in finding that the provisions of Section 25B are clarificatory in nature, and should be given retrospective effect. In our view, adopting this course would sort out innumerable difficulties in the ways of the assessee, and the Revenue, as well, and would prevent avoidance of income being subjected to tax, and at the same time, would also avoid avoidable harassment, and penal consequences against the assessee, by adopting the course as adopted by the assessing officer, in the case in hand.

51. The net result of the aforesaid discussion is that all the questions are answered against the Revenue, and in favour of the assessee, and it is held that the amount of arrears of enhanced rent, as received by the assessee, consequent upon retrospective upward revision of rent, would be liable to be included in the income of relevant previous year, in which it was received, and that on that count, the Revenue will not be entitled to initiate proceedings under, or to take recourse

to, provisions of Section 147/148 of the Act, as it does not amount to income being under assessed while making assessment, as contemplated by Explanation 2 of Section 147, and that the provisions of Section 25B are clarificatory in nature, and are required to be given retrospective effect.

52. Consequently all the 11 appeals filed by the Revenue fail, and are dismissed. The parties shall bear their own costs.

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