

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, AMRITSAR,—Applicant.

versus

THE BATALA TRADING CO. (P) LTD., BATALA,—Respondent.

Income Tax Reference No. 136 of 1982

April 6, 1989.

Income Tax Act (XLIII of 1961) Section 256(1)—Company passing resolution to transfer its building to Directors—Sale deed in favour of Directors at a later date—Rent for period prior to executing sale deed received by Directors—Such rent—Whether income of the company.

Held, that for all intents and purposes the directors were owners of the building and thus the rental income received by the Directors could not be included in the income of the company.

(Para 6).

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of Tribunal's order in R.A. No. 110(ASR)/1981 in ITA No. 478 (ASR)/1981 Assessment year 1978-79:—

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in excluding the income of the aforesaid house property for the months of February and March, 1978 from the total income of the appellate company for the assessment year 1978-79?”

L. K. Sood, Advocate, for the Applicant.

S. S. Mahajan, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) Against the assessee company, proceedings for liquidation were started. During the pendency of the proceedings, to discharge debts owned to its directors, the company passed resolution on 27th January, 1978 to give the building of the company to the directors. The resolution was approved by the share holders on 28th January, 1978. On 31st January, 1978 the company recorded in its accounts that with effect from 1st February, 1978 the building would

belong to the directors on the basis of the resolution referred to above and the company would have no right or interest therein. Finally, registered deed was executed in favour of the directors on 2nd January, 1980. The building was already in possession of the tenants and with effect from 1st February, 1978 the directors started receiving rent from the tenant. When proceedings for assessment year 1978-79 were taken up by the Income Tax Officer, he wanted to add the rental income from 1st February, 1978 in the account of the company on the plea that the sale deed was executed on 2nd January, 1980 and from that date the company ceased to be the owner and not from 1st February, 1978. Factually, the company was not receiving the rent and it was the directors who were receiving the rent. The Income Tax Officer decided the matter against the company and so did the Appellate Assistant Commissioner.

(2) When the matter came to the Tribunal, it took notice of a decision reported as *Smt. Kala Rani v. C.I.T. Patiala-I(1)*, of this Court in which converse proposition was being propounded by the Revenue, and decided the matter in favour of the company and observed that from 1st February, 1978 the company ceased to be in possession of the building and income of rent received by the Directors could not be included in the income of the company.

(3) At the instance of the Revenue, the Tribunal has referred the following question for opinion :

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in excluding the income of the aforesaid house property for the months of February and March, 1978 from the total income of the appellant company for the assessment year 1978-79.”

(4) The question has to be decided on the basis of the opinion already furnished by this court in *Smt. Kala Rani's case* (supra). As observed earlier, the facts of that case were converse. There, an assessee had agreed to purchase the building on 17th March, 1964 and got possession but the sale deed was executed on 1st April, 1969. In the returns filed for the assessment years 1968-69 and 1969-70, the assessee did not include the income from the property agreed to be purchased on the ground that he had become owner thereof,—*vide* sale deed dated 11th April, 1969 during the counting

Commissioner of Income Tax, Patiala v. M/s. Ludhiana Steel Rolling Mills, Ludhiana (S. S. Sodhi, J.)

year 1969-70, relevant to the assessment year 1970-71. The assessee failed upto this Court. It was observed as follows :

“that the assessee occupied the property after the execution of the agreement of sale dated March 17, 1964, in his favour and after the completion of the building he was in a position to earn income from the property sold to him. Further, the entire consideration was paid to the vendor earlier at the time of the execution of the agreement to sell dated March 17, 1964, and no payment was made at the time of the execution of the registered sale deed dated April 11, 1969. Therefore, the Tribunal was right in holding that the income from the self-occupied property was includible in the assessee’s income for the assessment years 1968-69 and 1969-70.”

(5) There, the department wanted to tax the income received by a person who was in occupation of the property but did not possess title and here the department wants to tax a person who has given up possession on the basis of agreement after squaring up the debt payable against the value of the building. This cannot be permitted.

(6) Following the aforesaid decision, we hold that for all intents and purposes the directors were owners of the building and thus the rental income received by the directors could not be included in the income of the company. Accordingly, we answer the question in the affirmative, in favour of the assessee with no order as to costs.

R.N.R.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

M/S. LUDHIANA STEEL ROLLING MILLS, LUDHIANA,
—*Respondent.*

Income Tax Reference No. 200 of 1980

April 26, 1989.

*Income Tax Act (XLIII of 1961)—S. 33(1)(B)(i) (b), Schedule V
Item (1)—Development rebate—Articles manufactured from iron*