



IN THE HIGH COURT OF DELHI

ITR No.19/99

Date of Decision: 4th December, 2000

Shri John ThomasPetitioner

through: Mr.G.L.Sanghi, Sr.Advocate
with Ms.Lily Thomas Advocate

Versus

Commissioner of Income-taxRespondent

through: Mr.Sanjiv Khanna
with Mr.Ajay Jha, Advocates

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?

ARIJIT PASAYAT,C.J. (Oral)

Pursuant to direction given by this Court under Section 256 (2) of the Income-tax Act,1961 (in short 'the Act') in ITC No.12/98, at the instance of assessee, Income-tax Appellate Tribunal Delhi Bench-D (in short 'Tribunal') 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 ?"

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

Assessee had a house property namely 'Rageena Mansion' in Madras. It was built in 1976 with a loan from Vijaya Bank. Assessee took another loan of Rs.10 lakhs from M/s.Mannonite Brothren Property Association. A further loan of Rs.7.25 lakhs was taken by him by giving the third floor of the building to Council of Baptist Churches. Vijaya Bank was occupying the ground floor whereas the first floor was being occupied by Mannonite Brothren Property Association. Third floor was occupied by 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. Assessee claimed that there were usufructuary mortgages of the properties. In support of the claim of such mortgages, correspondence between assessee and parties were pressed into service. Assessee's stand was that since both possession and enjoyment of the property was passed on to mortgagees, assessee 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 negatived by the Income-tax Officer to hold that assessee was the owner of the property.

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Matter was carried in appeal before the Commissioner of Income-tax (Appeals) who held that conclusions of the Income-tax Officer were correct. Matter was carried in further appeal before the Tribunal. Stand before authorities below was reiterated. 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 assessee 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 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) of the Act, direction was given to refer the question as set out above.

3. We have heard learned counsel for the parties.
In support of the assessee it has been stated

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that though stand of the assessee 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 document. But alternative stand of the assessee was that by deposit of title deeds, mortgages were created and that is how assessee parted with ownership and what was retained was the right of ownership redemption. 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 Tribunal has inter alia held that assessee 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 assessee without prior consent of the party. Similarly, in the letter addressed to the assessee 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 25th March, 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

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also mentioned in the letter that after handing over of the property and after receipt of the first month's 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 @ 15% 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 in trust for the party. In the letter dated 18th August, 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, Tribunal recorded a finding of fact that assessee 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 learned counsel for Revenue that it was a clear case of application of income. In fact, the

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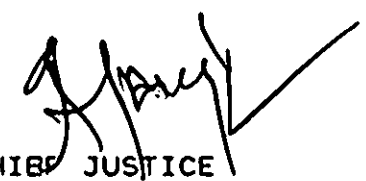


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question as referred pursuant to direction of this Court does not really arise out of the order of Tribunal. In that view of the matter, we decline to answer the question referred.

The reference is accordingly returned unanswered.



CHIEF JUSTICE

4th December, 2000
"v"



D.K. JAIN, J.