IN THE HIGH COURT OF DELHI

ITR No.210/81

Date of Decision:31.07.01

The Commissioner of Income-tax Delhi-II,New Delhi ..... Petitioner

Through: Mr.R.D.Jolly with Mrs. Prem Lata Bansal, Advocates.

VERSUS

Mehta Harnam Singh ..... Respondent

Through:None.

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 directions given by this Court, following question has been referred under Section 256(2) of the Income-tax Act, 1961(in short the 'Act') by the Income-tax Appellate Tribunal, Delhi Bench 'C'(hereinafter referred to as the Tribunal), for opinion of this Court:

> "Whether on the facts and in the circumstances of the case, the amount of Rs.1,000/- per month paid by the tenants to the son can be taken into account for determining the annual value of the property?"

Dispute relates to the Assessment year 1971-72.

2. The controversy lies in a very narrow compass. A sum of Rs.1,000/- was paid to the

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assessee's son for ensuring that the property from which rent was received was kept in good repairs. The assessee claimed the amount of Rs.1,000/- per month paid as an expenditure. The ITO included the amount in the annual let out value, treating it as a part of the rent. The Appellate Assistant Commissioner(in short 'the AAC') confirmed the addition. In further appeal before the Tribunal, considering the rival submissions, it came to hold as follows:

> "We have considered the submissions placed before us. We are inclined to agree with the submissions of the learned counsel for the assessee. The Income-tax Officer has not examined Shri Mehta and has not found out the purpose for which he was employed and the services which he was required to render. As per the letter dated 14.6.1966 he was to act as the caretaker of the property and to look after the day-to-day needs of the tenant. The letter further says that Shri Mehta was to see that the property was kept in good repairs by the assessee. That does not mean that either the tenant was paying additional rent to the assessee by way of remuneration to Shri Mehta or that it was going to bear the cost of repairs so as to attract Section 24(1)(i)(b) of the Act. The payment was made directly to Shri Mehta for the services rendered by him to the tenant. Besides Section 24(1)(i)(b) applies only if the tenant had undertaken to bear the cost of repairs. There is no such understanding in the agreement contained in the letter dated 14.6.1966 that the tenant was to bear the cost of the repairs also. The tenant only employed Shri Mehta as caretaker of the building who might amongst others have been interested to see that the repairs were also carried out to the building by

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> the assessee, being the landlord. We, therefore, hold that neither the remuneration of Rs.1,000/- formed part of the bonafide annual value nor any adjustment is required in the statutory deductions for the repairs u/s 24(1)(i)(b) of the Act. We also notice that in all the past years the Income-tax Officer had not included the remuneration of Shri Mehta in the annual value of the property. Besides the Municipal valuation of the property even during the year under appeal was only Rs.42,000/- which supports our view that the rent of Rs.4,000/- per month, i.e., Rs.48,000/- per annum was the correct annual letting value of the property. We direct that this value should be adopted and the net income from the property should be re-worked out by the Income-tax Officer."

A reference was sought for in terms of Section 256(1) of the Act which was rejected. Further, on being moved, this Court directed the afore-noted question to be referred.

3 We have heard learned counsel for the Revenue. There is no appearance on behalf of assessee in spite of notice. According to learned counsel for the Revenue, the claim was a malafide move adopted by the assessee to get the benefit of the amount in question. Section 24(1)(i)(b) applies only if the tenant has undertaken to meet the repairs. There was no understanding in the agreement entered into by the assessee and his son to the effect that tenant was to bear the cost of repairs also. That being the position, in view of factual conclusions as noted by the Tribunal and more particularly the fact that there was no agreement

between the landlord and the tenant, the conclusions of the Tribunal are in order. The answer to the question referred is in the affirmative, in favour of assessee and against the Revenue.

Chief Justice.

31st July, 2001
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D.K.Jain, J.