





[2]

{ITA 474/03}

According to the Revenue, the impugned order involves the following substantial questions of law:

" (1) Whether the ITAT was correct in law in deleting the addition of Rs.4,07,286-00 being the arrears of rent, made by the Assessing Officer to the income of the assessee ?"

"(2) Whether the amount of Rs.4,07,286-00 being the arrears of rent could be taxed under the head "Income from house property" or under the head "Income from other sources"?"

"(3) Whether the provisions of Section 25B introduced by the Finance Act 2000 is clarificatory in nature and therefore have retrospective effect ?"

2. The material facts, which lie in a narrow compass, are as follows:

The respondent assessee is a lessor of a portion of the property bearing No.C-37, Connaught Place, New Delhi. The property was leased out to State Bank of Saurashtra. Vide agreement dated 1 August 1995, the rent was enhanced to Rs.43,758/- as against the rent of Rs.8,976/- per month payable before coming into force of the agreement. Pursuant to the said agreement, the assessee received a sum of Rs.6,26,076/-, which included the arrears of rent for the period from 1 March 1994. In her statement of total income for the previous year ended on 31 March 1996 and relevant to the assessment year 1996-97,



[3]

(ITA 474/03)

the assessee computed the arrears of rent for the period 1 April 1995 to 31 August 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 for the said assessment year. It was claimed by the assessee that the difference of Rs.4,07,786/-, being the balance amount of arrears of rent relating to the earlier years, was not to be assessed in the assessment year 1996-97.

3. While issuing the intimation under Section 143 (1)(a) of the Act, the Assessing Officer rejected the claim of the assessee 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.

4. Aggrieved, the assessee preferred appeal before the Commissioner of Income-tax (Appeals). The said action of the Assessing Officer was challenged by the assessee on two grounds, namely, (i) the issue being one of law, could not be the subject-matter of prima facie adjustment under Section 143(1)(a) of the Act and (ii) the concept of annual letting value under Sections 22 and 23 of the Act does not permit the Assessing Officer to assess the arrears of rent for more than 12 months as the annual rent. The Commissioner, without going into the



[4]

(ITA 474/03)

question whether the arrears of rent could be brought to tax while issuing intimation under Section 143(1)(a) of the Act, deleted the addition on merits. Relying on the decision of the Calcutta High Court in Hamilton & Co. Ltd. Vs. Commissioner of Income-tax (1992) 194 ITR 391, the Commissioner came to the conclusion that the arrears of rent were to be assessed in the year to which they relate to and not in the year of actual receipt. The Commissioner observed that the proper course for the Assessing Officer was to take remedial action for bringing to tax the arrears of rent in the years to which they pertained.

5. Being aggrieved, the Revenue carried the matter in further appeal to the Tribunal, but without any success. Hence the present appeal.

6. Assailing the order of the Tribunal, Ms. Prem Lata Bansal, learned senior standing counsel for the Revenue, has submitted that since the arrears of rent had accrued to the assessee by virtue of the agreement entered into on 1 August 1995, the date which fell within the relevant previous year, these had to be included in the total income for the assessment year 1996-97. It was also urged that in view of the provisions of Section 5 of the Act, providing for inclusion of all the income derived from whatever source, received or deemed to be received



[5]

(ITA 474/03)

in the relevant year, ~~the~~ the entire amount received by the assessee towards rent had to be included in the total income of the previous year in which it had actually been received.

7. Thus, the short question for consideration is as to whether the arrears of rent relating to the ~~previous~~<sup>earlier</sup> year(s) could be brought to tax as income from house property of the previous year in which these are actually received.

8. In our view, having regard to the clear language of Sections 22 and 23 of the Act, the answer to the question has to be in the negative.

9. "Income from house property" is one of the heads into which different categories of income included in the total income have been classified. As per Section 22 of the Act, the basis of charge of income from house property is its "annual value". The annual value has to be determined in accordance with the provisions of Section 23 of the Act. The relevant part of Section 23, as substituted by the Taxation Laws (Amendment) Act, 1976, with effect from 1 April 1976, reads as follows:

**"S.23. Annual value how determined-** (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





[7]

[ITA 474/03]

a tenant may pay to the owner by way of an extra consideration for some special reason. It only provides that the actual "annual rent", which is received or receivable by the owner, even though it may be in excess of the fair market rent, has to be taken as the annual value of the property. This is so because of what is clearly stipulated in Explanation-I which defines "annual rent". According to clause (a) of the Explanation, rent is actual rent received or receivable in respect of the previous year. Clause (b), which is more explicit, clearly refers to the period of 12 months, which leaves no scope for doubt that the annual rent has to be the rent for 12 months. Therefore, a bare reading of Section 23(1) with Explanation-I appended thereto, makes it clear that any rent not relating to the relevant previous year cannot form part of the "annual rent" for the previous year, for determining the annual value of the property for the purposes of Section 22 of the Act. A similar view has been expressed by the Calcutta High Court in Hamilton's case (supra), with which we are in respectful agreement.

10. Above being the position, no fault can be found with the view taken by the appellate authorities below. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the




[8]

{ITA 474/03}

limited purview of Section 260A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

11. Since the assessee did not file an appeal or cross objection before the Tribunal to support its plea that the subject adjustment could not be made by the Assessing Officer while issuing intimation under Section 143(1)(a) of the Act, the Tribunal has not expressed any view on the issue. Therefore, we also refrain from commenting on the same, though, prima facie, we find a lot of substance in the stand of the assessee.

12. Resultantly, we decline to entertain the appeal.  
Dismissed.

  
D.K. JAIN, J

  
MADAN B. LOKUR, J

DECEMBER 8, 2003

v