

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 821/JP/2017
निर्धारण वर्ष/Assessment Year : 2014-15.

The Asstt. Commissioner of Income-tax, Circle-2, Kota.	बनाम Vs.	M/s. Bhim Singh, Brijraj Bhawan, Civil Lines, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAAHB 7814 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Roshanta Meena (JCIT)
निर्धारिती की ओर से / Assessee by: Shri V.B. Maheshwari (CA)

सुनवाई की तारीख / Date of Hearing : 12.06.2018.
घोषणा की तारीख / Date of Pronouncement : 14/06/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the revenue is directed against the order dated 11.08.2017 of Id. CIT (A), Kota for the assessment year 2014-15. The revenue has raised the following grounds :-

“ On the facts and in the circumstances of the case, the Id. CIT (A) has erred in –

- i) Deciding the appeal of the assessee in its favor following his predecessor's order ignoring the fact that the orders based on which the CIT (A) allowed relief to the assessee have not been accepted by the department and appeal is pending in different appellate fora.

- ii) The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.”

Though the grounds raised by the revenue are general in nature and have not specified the grievance against the impugned order, however, at the time of hearing the Id. A/R of the assessee as well as the Id. D/R have agreed that the revenue has challenged the order of the Id. CIT (A) to the extent of disallowances made by the AO were deleted. Therefore, the grounds as raised before the Id. CIT (A) by the assessee which were allowed by the Id. CIT (A) are to be considered in this appeal of the revenue.

2. The dispute in the appeal of the revenue is regarding the income assessed by the AO from Umed Bhawan Palace, Kota which was undisputedly in the occupation of ex-Ruler HH Maharao Bhim Singhji till he expired in the year 1991. Thereafter the said palace is in the occupation of successor of HH Maharao Bhim Singhji, Kota and the assessment are being framed in the hands of the successor. The dispute was also regarding the status of the assessee claimed as Individual whereas the AO framed the assessment in the hands of HUF. The various disallowances made by the AO in the assessment framed under section 143(3) were deleted by the Id. CIT (A) as under :-

I have gone through assessee's submission and AO's findings.

All the issues raised in the present appeal are similar to the issues already covered in the appeal decided by me in appellant's own case for A.Y 2012-13 vide my order in Appeal no 448/15-16 , order dated 24/01/2017 and/or my predecessor's orders for earlier years.

I am inclined to follow the same line of decision in deciding this appeal as well.

As regards **Ground of appeal no. 1**, it is observed that my predecessor CIT(A), while deciding the appeal in the case of the appellate for A.Y. 2011-12 vide order in appeal no. 579/13-14 dt. 27/06/2014 had held following orders of earlier years & order of ITAT Jaipur dt. 31.07.2007 on this issue that the appellant should be deemed individual owner of all the properties comprised in the Estate and hence allowed the appeal on this ground. I have also taken this view in the appeal order in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide my order in Appeal no 448/15-16, order dated 24/01/2017.

Hence, following the same line of decision as in earlier years, I hold that the appellant should be deemed individual owner of all the properties comprised in the Estate.

The appeal on this ground of appeal is **allowed**.

As regards **Grounds of appeal no. 2 & 3** on exemption of rental income of Ummed Bhawan Palace (including rental income of land & structure requisitioned by defence department) and treating the same as income from house property, it is seen that my predecessor CIT(A) vide order in appeal no. 579/13-14 dt. 27/06/2014 for A.Y. 2011-12

decided this issue in favour of the appellant by mentioning that the appellant was entitled for exemption u/s 10(19A) of the I.T. Act, 1961 against the receipt of rent & compensation for the properties in question.

As regards **Ground No. 4**, it had been held by my predecessor CIT (A), if the said income is finally held to be income from House Property, then assessee will be entitled for statutory deductions on the same.

It may be of note that the Hon'ble Supreme Court vide Civil appeal no. 2812 of 2010 order dated 05.12.2016 in the case of the appellant himself has allowed the appeal & held that:-

The appellant is allowed exemption u/s 10(19A) of the I.T. Act in respect of entire rental income of "Umed Bhawan" Kota (from defence department & others).

I have followed the order of Hon'ble Apex court in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide Appeal no 448/15-16, order dated 24/01/2017.

Since the Apex court has settled this issue, the addition on accrued income for Rs. 50,61,933/- cannot be sustained.

Grounds of appeal no. 2 to 4 are accordingly allowed in favour of the appellant in view of Hon'ble Apex Court decision in this regards on principles involved in these recurring additions.

These Grounds of appeal (No 2, 3 & 4) are **allowed**.

As regards **Grounds of appeal no. 5**, the issue has been decided in favour of the appellant by my predecessor in appeal order for A.Y. 2011-12 following earlier ITA orders on the same line as well.

I have also followed this line of decision in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide Appeal no 448/15-16, order dated 24/01/2017.

Hence, I hold that receipts of Rs. 52,26,356/- from ITC Ltd. constitute business income of the appellant & are taxable u/s 28 of the I.T. Act, 1961 & not as income from other sources.

This Ground of appeal is **allowed**.



As regards **Ground of appeal no. 6**, vide the order of my predecessor CIT(A) in appeal no. 519/13-14 for A.Y. 2011-12, the issue has been decided in favour of the appellant referring to similar orders in earlier years as well.

I have also conformed to this view in the appeal order in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide Appeal no 448/15-16, order dated 24/01/2017.

Hence, following the same line of decision as in earlier years, I am of the opinion that net interest income of Rs. 30,19,112/- from Bank deposits should be assessed as income from business and not income from other sources.

This ground of appeal is **allowed**.

As regards **Ground of appeal no. 7**, as per the order of my predecessor CIT(A) referred in ground no. 6 above, on this issue in the earlier assessment year and my own order in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide Appeal no 448/15-16, order dated 24/01/2017, I hold that the net income from commercial property of Rs. 3,75,477/- is to be assessed as business income & not as income from property.

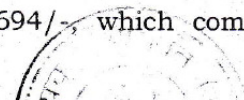
As a corollary, the appellant would not be entitled for deduction @ 30% u/s 24 of the I.T. Act.

This ground of appeal is **partly allowed**.

As regards **Ground of appeal no. 8** related to disallowance of expenses out of the claim of Rs. 53, 22,694/- incurred for business purposes & earning of income, the issue has been examined in earlier years by ITAT Jaipur (order dt. 30.07.2007) and my predecessor CIT(A) vide above referred appeal order (see Ground no. 6).

I have also conformed to this view in the appeal order in appeal no 626/14-15 for A.Y 2012-13 vide my order dated 23/01/2017 and for A.Y 2013-14 vide Appeal no 448/15-16, order dated 24/01/2017.

Hence, following the same line of decision as taken in earlier years, I hold that a more reasonable approach while making the disallowance out of these expenses was required than what treatment has been given by the A.O. Accordingly, I restrict the disallowance to 20% of the total claim of expenses of Rs. 53, 22,694/- which comes to Rs. 10,64,538/-



The balance disallowance of Rs. 37,58,155/- is directed to be deleted in addition to the allowance of Rs. 5,00,000/- already given by the A.O.

This Ground of appeal is **partly allowed**.

As regards **Ground of appeal no. 9** related to rebate for senior citizen, following the decision of my predecessor in appeal no. 579/13-14 for A.Y. 2011-12 vide order dt. 27.06.14 and my own order in appeal no 626/14-15 for A.Y 2012-13 dated 23/01/2017, I hold that the appellant is not entitled to deduction u/s 88B of the I.T. Act, 1961 and the decision of the A.O. is confirmed.

This ground of appeal is **dismissed**.

As regards **Grounds of appeal no. 10**, the A.O. is directed to allow credit for all prepaid taxes paid by the assessee including on TDS deductions. Hence allowed.

Ground No. 11

As regards **Ground of appeal no. 11**, charging of interest is consequential in nature and is accordingly not being adjudicated.

Thus it is clear that the Id. CIT (A) has followed the decision of this Tribunal in assessee's own case for the earlier assessment years.

3. The Id. D/R has submitted that though the Id. CIT (Appeals) has followed the earlier decision, however, the AO has specifically pointed out the fact that after the death of HH Maharao Bhim Singhji, the successor of the estate of ex-Ruler including the Umed Bhawan Palace can be considered as HUF instead of Individual. Further the exemption under section 10(19A) is not available to the successor specifically on the reason that the ex-Ruler is no more in occupation of the Palace during the previous year relevant to the assessment year under consideration. Thus the learned D/R has submitted that as per the proviso to section 10(19A) it is a condition

that the assessment year commencing on 1st day of 1972 the annual value of such Palace in the occupation of such Ruler during the relevant previous year shall be exempt from income-tax. When this condition is not satisfied in the case of the assessee then the exemption under section 10(19A) is not available. The Id. D/R has relied upon the order of the A.O.

3.1. On the other hand, the Id. A/R has submitted that the issues in this appeal of the revenue are covered by the earlier decision of this Tribunal as well as the decision of Hon'ble Supreme Court in assessee's own case reported in 390 ITR 532 (SC). He has also relied upon the decision of this Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14 vide order dated 4th October, 2017 in ITA No. 261 & 262/JP/17 and C.O. No. 20 & 21/JP/2017.

4. Having considered the rival submissions as well as the relevant material on record, at the outset, we note that identical issues were considered by this Tribunal in assessee's own case for the assessment years 2012-13 and 2013-14. The Id.CIT (A) has also decided the appeal of the assessee by following the earlier orders of the Tribunal. The Hon'ble Supreme Court in assessee's own case reported in 390 ITR 532 (SC) has considered the issue in para 25 to 39 as under :-

"25. In order to claim exemption from payment of income-tax on the residential palace of the Ruler under Section 10(19A), it is necessary for the Ruler to satisfy that first, he owns the palace as his ancestral property; second, such palace is in his occupation as his residence; and third, the palace is declared exempt from payment of income-tax under Paragraph 15 (iii) of the Order, 1950 by the Central Government.

26. Now, the question arises that where part of the residential palace is found to be in occupation of the tenant and remaining is in occupation of the Ruler for his residence, whether in such circumstances, the Ruler is entitled to claim

exemption for the whole of his residential palace under Section 10(19A) or such exemption would confine only to that portion of the palace which is in his actual occupation. In other words, whether the exemption would cease to apply to let out portion thereby subjecting the income derived from let out portion to payment of income-tax in the hands of the Ruler.

27. This very question was examined by the M.P. High Court in the case of *Bharatchandra Banjdeo (supra)* in detail. It was held that no reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19A) for the reason that the language employed in Section 5(iii) is not identical with the language of Section 10(19A) of the I.T. Act. Their Lordships distinguished the decision of Delhi High Court rendered in the case of *Mohd. Ali Khan v. CIT* [\[1983\] 140 ITR 948/12 Taxman 330](#), which arose under the Wealth Tax Act. It was held that even if the Ruler had let out the portion of his residential palace, yet he would continue to enjoy the exemption in respect of entire palace because it is not possible to split the exemption in two parts, i.e., the one in his occupation and the other in possession of the tenant.

28. Justice G.L. Oza, the learned Chief Justice (as His Lordship then was), speaking for the Bench held as under:

'8. It is, therefore, clear that under this order the income from all the palaces of a Ruler which are declared to be the official residence were exempt. Under clause (19A) of Section 10, only one palace in occupation has been exempted and it appears that similarly in the W.T. Act instead of using the word "palace" they have used the words "one building in occupation of a Ruler" which has been exempted from tax.

9. It is not in dispute that in this reference the property in question is a palace. It is also not in dispute that a portion of it is in occupation. The only question which has been raised by learned counsel for the Revenue is that if only a portion of the palace is in occupation, the exemption under clause (19A) of Section 10 would be available only for that part and not for the whole. The change brought about by the insertion under the Merged States (Taxation Concessions) Order is clearly illustrated by the two provisions quoted above. By clause (19A), the exemption has been limited only to one palace in occupation. If the Legislature intended a further splitting up, it would have been provided in clause (19A) that such portion of the palace in occupation is only exempted, but it appears that the language used by the Legislature did not contemplate a further splitting up. In *Mohd. Ali Khan's* case: [\[1983\] 140 ITR 948 \(Delhi\)](#) which is a case under the W.T. Act, the only question considered was that if the palace which was declared to be an official residence had a number of buildings, as the exemption under the W.T. Act is available only in respect of one building which is in occupation and, therefore, the assessee's contention, that the other buildings which may not be in occupation but declared to be an official residence should be exempted, was not accepted. In clause (19A) of Section 10, in the place of "building", the

phrase employed is "one palace" and so far as the case in hand is concerned, it is not disputed that this official residence is only one palace and not more than one. Under these circumstances, in our opinion, clause (19A) could not be interpreted to mean that it contemplates further splitting up of portions of a palace. The language of clause (19A) of Section 10 does not justify it. It is settled that in cases of exemption, the language of the statute has to be liberally construed but even if this principle is not considered, there are no words in clause (19A) of Section 10 from which an intention for splitting up of the palace into portions could be gathered. In this view of the matter, therefore, the contention advanced by the learned counsel for the Revenue cannot be accepted.'

29. Relying upon the aforesaid decision, Rajasthan High Court in the case of the appellant herein in *H.H. Maharao Bhim Singhji*, (*supra*) answered the question in favour of the appellant for the assessment years (1973-74 to 1977-78).

30. Justice J.S. Verma, the learned Chief Justice (as His Lordship then was) speaking for the Bench held as under:

"So far as the first question relating to exemption claimed under section 10(19A) is concerned, there is a direct decision in *CIT v. Bharatchandra Banjdeo*, [\[1985\] 154 ITR 236 \(MP\)](#). It was held therein that it is not possible to split up one palace into parts for granting exemption only to that part in self-occupation of the ex-Ruler as his official residence and to deny the benefit of exemption to the other portion of the palace rented out by the Ruler, since the entire palace is declared as his official residence. Accordingly, it was held that even if only a part of the palace is in the self-occupation of the former Ruler and the rest has been let out, the exemption available under section 10(19A) will be available to the entire palace. No decision taking a contrary view has been cited before us. We do not find any good ground to depart from that view, when the view taken in that decision is undoubtedly a plausible view. In the case of a taxing statute, a plausible view in favour of the assessee should be preferred in these circumstances. Following that decision, the first question has to be answered against the Revenue and in favour of the assessee."

31. Following the aforesaid view, the High Court of Rajasthan declined to make reference to the High Court under Section 256(1) of the I.T. Act in later Assessment Years and dismissed the application made by the Revenue under Section 256(2) of the I.T. Act (see- *CIT v. H.H. Maharao Bhim Singh* [\[2002\] 124 Taxman 26 \(Raj.\)](#)) with the following observations.

"5. In coming to this conclusion, this Court has followed another decision of the Madhya Pradesh High Court in *CIT v. Bharatchandra Banjdeo* (1985) 154 ITR 236 (M.P.). The decision of this Court in *CIT v. H.H. Maharao Bhim Singhji* (1988) 173 ITR 79, we are informed by the learned counsel, has not been appealed against.

6. In that view of the matter, we are of the opinion that the application under Section 256(1) has rightly been rejected by the Tribunal and do not deserve further consideration."

32. In our considered opinion, the view taken by the Madhya Pradesh High Court in the case of *Bharatchandra Banjdeo* (*supra*) and the one taken in the case of the appellant in *Maharao Bhim Singhji's* case (*supra*) by rightly placing reliance on *Bharatchandra Banjdeo's* case (*supra*) is the correct view and we find no good ground to take any other view.

33. As rightly held in the case of *Bharatchandra Banjdeo* (*supra*), no reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19A) of the I.T. Act. It is due to marked difference in the language employed in both sections. It is apposite to reproduce Section 5 (iii) of the Wealth Tax Act as under:

"5. Exemptions in respect of certain assets-Wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee-

(i)

(ii)

(iii) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions) Order, 1950;"

34. We find that in Section 10(19A) of the I.T. Act, the Legislature has used the expression "palace" for considering the grant of exemption to the Ruler whereas on the same subject, the Legislature has used different expression namely "any one building" in Section 5 (iii) of the Wealth Tax Act. We cannot ignore this distinction while interpreting Section 10(19A) which, in our view, is significant.

35. In our considered opinion, if the Legislature intended to spilt the Palace in part(s), alike houses for taxing the subject, it would have said so by employing appropriate

language in Section 10(19A) of the I.T. Act. We, however, do not find such language employed in Section 10(19A).

36. As rightly pointed out by the learned senior counsel for the appellant, Section 23(2) and (3), uses the expression "house or part of a house". Such expression does not find place in Section 10(19A) of the I.T. Act. Likewise, we do not find any such expression in Section 23, specifically dealing with the cases relating to "palace". This significant departure of the words in Section 10(19A) of the I.T. Act and Section 23 also suggest that the Legislature did not intend to tax portion of the "palace" by splitting it in parts.

37. It is a settled rule of interpretation that if two Statutes dealing with the same subject use different language then it is not permissible to apply the language of one Statute to other while interpreting such Statutes. Similarly, once the assessee is able to fulfill the conditions specified in section for claiming exemption under the Act then provisions dealing with grant of exemption should be construed liberally because the exemptions are for the benefit of the assessee.

38. In the light of these reasonings, we are of the considered opinion that the view taken by the M.P. High Court in *Bharatchandra Banjdeo's* case (*supra*) and the Rajasthan High Court in *H.H. Maharao Bhim Singhji's* case (*supra*) is a correct view.

39. We also notice that the question involved in this case had also arisen in previous Assessment Years' (1973-74 till 1977-78) and was decided in appellant's favour when Special Leave Petition(c) No. 3764 of 2007 filed by the Revenue was dismissed by this Court on 25.08.2010 by affirming the order of the Rajasthan High Court referred *supra*.”

Thus the issue involved in this appeal has been considered by the Hon'ble Supreme Court and particularly the exemption under section 10(19A) of the IT Act was allowed to the assessee in respect of the value of the Palace in question. Though the objection of the AO as well as the contentions raised by the Id. D/R have substance and merits as the conditions prescribed in the proviso to section 10(19A) such Palace should be in occupation of the ex-Ruler during the relevant previous year for eligible for the exemption from income-tax, however, in view of the decision of the Hon'ble Supreme Court on the point which is a binding principle and law of

the land, we do not find any reason to interfere with the impugned order of the Id. CIT (A). Accordingly the appeal of the revenue deserves dismissal.

5. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 14/06/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur
Dated:- 14/06/2018.
Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ACIT, Circle-2, Kota.
2. The Respondent –M/s. Bhim Singh, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 821/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

