



2025:DHC:326-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment delivered on: 08.01.2025**

+ ITA 573/2023 & CM APPL. 52433/2023 (Stay)

SMT. SHIVANI MADANAppellant

Through: Ms. Hasneeta Matta, Mr.
Prateek Kumar & Ms. Ankita,
Advs.

versus

PR. COMMISSIONER OF INCOME TAX, DELHI-01 &
ANR.Respondents

Through: Mr. Sunil Kumar Agarwal, SSC
with Mr. Shivansh B Pandya,
Mr. Viplav Acharya, Ms. Priya
Sarkar & Mr. Utkarsh Tiwari,
Advs.

9

+ ITA 133/2024 & CM APPL. 11382/2024 (Stay)

SHIVANI MADANAppellant

Through: Ms. Hasneeta Matta, Mr.
Prateek Kumar & Ms. Ankita,
Advs.

versus

PR. COMMISSIONER OF INCOME TAX, DELHI-01 &
ANR.Respondents

Through: Mr. Sunil Kumar Agarwal, SSC
with Mr. Shivansh B Pandya,
Mr. Viplav Acharya, Ms. Priya
Sarkar & Mr. Utkarsh Tiwari,
Advs.

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+ ITA 134/2024 & CM APPL. 11384/2024 (Stay)



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SHIVANI MADAN

.....Appellant

Through: Ms. Hasneeta Matta, Mr.
Prateek Kumar & Ms. Ankita,
Advs.

versus

PR COMMISSIONER OF INCOME TAX DELHI 01 & ANR.

.....Respondents

Through: Mr. Sunil Kumar Agarwal, SSC
with Mr. Shivansh B Pandya,
Mr. Viplav Acharya, Ms. Priya
Sarkar & Mr. Utkarsh Tiwari,
Advs.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****YASHWANT VARMA, J. (Oral)****ITA 573/2023**

1. The assessee in ITA 573/2023 calls in question the order of the **Income Tax Appellate Tribunal**¹ dated 05 January 2023 pertaining to **Assessment Year**² 2015-16 and which has in essence affirmed the view that had been taken by the **Assessing Officer**³ as well as the **Commissioner of Income Tax (Appeals)**⁴.

2. We had admitted this appeal formally in terms of an order dated 20 November 2023 on the following question of law:-

“(i) Whether the Income Tax Appellate Tribunal misdirected itself

¹ Tribunal

² AY

³ AO

⁴ CIT (A)



on facts and in law in assuming that the appellant/assessee is equal owner of the subject property?”

3. On facts, the parties do not appear to be in dispute and as would emerge from the order of the Tribunal, the issue of income arising from residential premises itself arose in the context of a search which was conducted and an assessment under Section 153A of the **Income Tax Act, 1961**⁵ which ensued. The Tribunal has found that the property situate at J-278, Saket, New Delhi, was in the joint ownership of the appellant and her husband and had been acquired on 08 March 2011.

4. In the course of assessment, the appellant before us was placed on notice to answer a query as to why income from the said property be not charged to tax in her hand under the head of ‘income from house property’. The appellant appears to have asserted that the property is essentially owned by the spouse and that her name appears in the instrument solely for and in light of a contribution of INR 20,00,000/-, which was paid by her in A.Y. 2011-12. This explanation was not accepted by the AO, who proceeded to hold that the property would be liable to be viewed as being jointly owned in equal share by the appellant and her spouse and thus taxed in accordance with Section 23(1)(a) of the Act. The AO proceeded further to thus compute the annual letting value and held that the income from house property would be liable to be pegged at INR 19,60,000/- and 50% thereof being assessed in the hands of the appellant. The aforesaid order came to be affirmed by the CIT(A).

5. While dealing with the appeals which came to be instituted by the

⁵ Act



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assessee before the Tribunal, we find that the view expressed by the authorities below has come to be affirmed in the following terms:-

“11. We have given careful thought to the rival submission of the parties and perused the records. The material seized in search conducted on 28.11.2017 revealed that during the year, the assessee had purchased a property at 816, Gaur Heights, Vaishali. This property has been declared as her Self Occupied Property. Material seized in search also revealed that the assessee has purchased property J-278, Saket, Delhi in joint ownership with her husband in AY 2011-12. The issue for consideration before us is the assessment of income from house property, J-278, Saket, Delhi in the hands of the assessee.

12. Co-ownership of property comes into existence, inter alia, by virtue of a joint purchase of the property. Property J-278, Saket, New Delhi was purchased vide sale deed executed on 8.2.2011 by the husband Mr. Ashish Madan and the assessee jointly on payment of Rs. 3,50,00,000/- in the following manner to the transferor, M/s. Dayal Project Pvt. Ltd. :

Pay order/ Bank Draft No. / Cheque No.	Date	Amount Rs.	Drawn on	In Favor of
203301	1/2/2011	5,00,000/-	IDBT Bank Ltd.	M/s Dayal Projects Pvt. Ltd.
203306	5/2/2011	5,00,000/-	IDBI Bank Ltd.	M/s Dayal Projects Pvt. Ltd.
203307	9/2/2011	20,00,000/-	IDBI Bank Ltd.	M/s Dayal Projects Pvt. Ltd.
213915	9/2/2011	20,00,000/-	IDBI Bank Ltd.	M/s Dayal Projects Pvt. Ltd.
474480	7/3/2011	16,50,000/-	Axis Bank Ltd.	M/s Dayal Projects Pvt. Ltd.



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1451395	7/3/2011	3,50,000/-	Citibank N.A.	M/s Dayal Projects Pvt. Ltd.
686337	8/3/2011	2,80,000/-	Axis Bank Ltd.	M/s Dayal Projects Pvt. Ltd.

The copy of sale deed appears at pages 20-31 of the Paper Book.

13. On perusal of the sale deed, the Ld. AO was of the view that the shareholding has not been defined between the co-owners. The Ld. CIT(A) has also recorded the finding in para 4.1.5 of his appellate order that the assessee was joint owner of the property alongwith her husband and that the sale deed did not specify the percentage of ownership. It was for this reason that the Ld. AO held the assessee to be 50% owner of the property. The Ld. DR also highlighted the fact that the ownership in the property is determined as per the mutation record and the sale deed nowhere specified the share of the co-owners. We are inclined to agree with the stand taken by the Ld. AO/CIT(A) and the Revenue that the sale deed only speaks of the joint ownership of the property by the husband and wife without specifying their definite and ascertainable share in the property. Moreover, the total cost of the property J-278, Saket, Delhi stated before the Ld. AO during assessment proceeding in reply submitted by the assessee on 10.12.2019 does not match with the sale consideration paid as per the sale deed executed on 08.03.2011. Therefore, the claim of the assessee that she is joint owner of the property to the extent of 5.4% only is baseless as the facts and circumstances of the case do not support this claim.

16. In the case at hand also there is sale deed and the co-ownership is evidenced therein but there is no specification of shares of the husband and wife in the sale deed. Therefore, following the decision of the Hon'ble Allahabad High Court in Saiyad Abdulla's case (supra), it must be held that husband and wife purchased equal shares and therefore, the Revenue is justified in bringing to tax 50% of the income from house property in the hands of the assessee.

17. The decision of Hon'ble Calcutta High Court in Ajit Kumar Rao's case (supra) relied upon by the Ld. AR also does not help the assessee. In that case, the assessee's wife had purchased a flat in her name but she being the housewife did not have independent source of income and the entire investment was made by the



assessee (husband). It was in such a scenario that the Hon'ble Calcutta High Court held that the income from property should be taxed in the hands of the assessee (husband) and not in the hands of his wife. In the case before us, the property has been purchased by husband and wife in co-ownership jointly. The assessee is not a housewife. Computation of income for AY 2015-16 appearing at page 2 of Paper Book shows that she is salary earner and earned salary of Rs. 24 lacs from Adam Smith Associates Pvt. Ltd. in AY 2015-16. Therefore, on facts the case of the assessee before us differs from the Ajit Kumar Rao's case (supra)."

6. Learned counsel appearing in support of the appeal has submitted that the provisions enshrined in Sections 22 to 27 of the Act constitute a self-contained and comprehensive code for the purposes of examining the question of income arising from house property. According to her, the income is to be taxed in the hands of the owner and is thus an aspect which is clearly distinct and different from the position of parties in the instrument.

7. Our attention in this respect was drawn to the following significant observations which came to be entered by the Supreme Court in **Commissioner of Income Tax, Bombay v. Podar Cement Pvt. Ltd. and Others**⁶:-

"23. From the narration of the facts and the rival submissions it will be seen that the controversy revolves around the meaning to be given to the words "of which the assessee is the owner" occurring in Section 22 of the Act. We may point out that Section 9(1) of the old Act was substantially the same as Section 22 of the new Act. We may also state that the whole of Section 9 of the old Act has been split up and redrafted into several separate sections, namely, Sections 22 to 27 under the new Act.

24. We have noticed the reliance placed by the Bar on the decision of this Court in *Jodha Mal* case which was concerned with the old Section 9(1) of the Act. In that case, this Court had occasion to consider the meaning to be given to the words "of which he is the owner". Of course, on facts the Court was called upon to decide whether the erstwhile admitted owner of the property is liable to

⁶ (1997) 5 SCC 482



pay income tax on the house property under Section 9 even after the said property has been vested in the Custodian of Evacuee Property by virtue of Section 6(1) of the Pakistan (Administration of Evacuee Property) Ordinance, 1949. The contention of the Revenue in that case was that notwithstanding the vesting of the house property in the Custodian, the legal ownership remained with the assessee therein and, therefore, Section 9(1) of the old Act was attracted. This contention was repelled by this Court. Hegde, J., speaking for the Bench observed at page 575: (SCC p. 372, para 9)

“The question is who is the 'owner' referred to in this section? Is it the person in whom the property vests or is it he who is entitled to some beneficial interest in the property? It must be remembered that Section 9 brings to tax the income from property and not the interest of a person in the property. A property cannot be owned by two persons, each one having independent and exclusive right over it. Hence, for the purpose of Section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right”

25. The learned Judge observed that: (SCC p. 373, para 10)

“.... It is true that equitable considerations are irrelevant in interpreting tax laws. But, those laws, like all other laws, have to be interpreted reasonably and in consonance with justice”. Again at p. 577, it was held that "for determining the person liable to pay tax, the test laid down by the Court was to find out the person entitled to that income"

Again at p. 578 it was observed: (SCC pp. 375-76, para 17)

“...No one denies that an evacuee from Pakistan has a residual right in the property that he left in Pakistan. But the real question is, can that right be considered as ownership within the meaning of Section 9 of the Act. As mentioned earlier that section seeks to bring to tax income of the property in the hands of the owner. Hence, the focus of that section is on the receipt of the income The meaning that we give to the word 'owner' in Section 9 must not be such as to make that provision capable of being made an instrument of oppression. It must be in consonance with the principles underlying the Act.”

26. In our opinion, the above observation of this Court clearly fixes the liability on a person who receives - or is entitled to receive the income from the property in his own right. In spite of this, the assessing officers of various circles instead of uniformly following the ratio laid down in this case have taken different diametrically



opposite views depending upon the pronouncements of the High Courts concerned in the circles on the scope of Section 22 of the Act. The High Courts of Allahabad, Punjab and Haryana, Rajasthan, Calcutta and Patna have taken the view by correctly understanding the ratio laid down in *Jodha Mal* case and the High Courts of Bombay, Delhi and Andhra Pradesh have taken a different view wrongly distinguishing on facts in *Jodha Mal* case.

27. In the *Kala Rani* case the Punjab and Haryana High Court after referring to the judgment of this Court in *Jodha Mal* case observed as follows:

“Thus, it cannot be accepted that before a person can be assessed under Section 22 of the Act, he must be the owner by virtue of a sale deed in his favour. As a matter of fact, what is being taxed under Section 22 of the Act is the income from house property or the annual value of the property of which the assessee is the owner”

28. The High Court rejected the contention that the mere possession of the property in pursuance of an agreement to sell was not sufficient to burden the assessee with tax on any income under Section 22 of the Act.

55. We are conscious of the settled position that under the common law owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act etc. But in the context of Section 22 of the Income Tax Act having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, “to tax the income”, we are of the view, owner is a person who is entitled to receive income from the property in his own right.”

8. Although *Podar Cement* was concerned with Section 9 of the erstwhile Act, we find that the language employed in Section 22 proceeds more or less on similar terms. The Supreme Court, upon a review of the judgments rendered by different High Courts had ultimately come to hold that the focus for the purposes of taxation would be to understand, identify and discern as to who was in receipt of income. It was thus pertinently observed that the question of ownership would have to be answered in light of the aforesaid. As was



aptly observed, the Act seeks to tax income derived from house property as distinct from an interest in property. We find that both the Tribunal as well as the authorities below have proceeded merely on the assumption that since the appellant was a signatory to the instrument, the income would be deemed to arise in her hands to the extent of 50%.

9. We note that Section 26 speaks of apportionment and ascertainment of the extent of income that can be held to arise in the hands of an assessee in cases where the respective shares are defined or are ascertainable. Section 27 also and while defining as to what meaning is to be ascribed to the expression “owner of house property” makes the following provisions:-

“Property owned by co-owners.

26. Where property consisting of building or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

[*Explanation.*—For the purposes of this section, in applying the provisions of sub-section (2) of section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section.]

“Owner of house property”, “annual charge”, etc., defined.

27. For the purposes of sections 22 to 26—

- (i) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;
- (ii) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;



- [(iii) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;
- (iiia) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof;
- (iiib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;]
- (iv) [* * *]
- (v) [* * *]
- (vi) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.”

10. As is manifest and evident from a reading of those provisions, the Act fails to raise any presumption in law, of income necessarily arising or being liable to be assessed in the hands of an individual merely because it be a signatory to an instrument of conveyance. In our considered opinion, the question of taxability would necessarily have to be answered bearing in mind the individual who had in fact obtained benefits from the property.

11. In the absence of any finding in tune with the above having been rendered insofar as the appellant is concerned, we find ourselves unable to sustain the order of the Tribunal. We accordingly allow the instant appeal and set aside the order of the Tribunal dated 05 January 2023. The question of law as framed shall stand answered in the affirmative and in favour of the assessee who shall be entitled to



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consequential relief.

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12. ITA 133/2024 and ITA 134/2024 impugn a common order passed by the Tribunal dated 18 August 2023 pertaining to A.Y. 2016-17 and 2017-18 respectively and which has followed the previous order passed by the Tribunal dated 05 January 2023 for A.Y. 2015-16. The facts as they obtain in these appeals are identical to those in ITA 573/2023.

13. Accordingly, and for all the reasons assigned by us in our decision rendered in ITA 573/2023, we allow the instant appeals and set aside the order of the Tribunal dated 18 August 2023 and find in favour of the assessee, who shall similarly be entitled to consequential relief.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 08, 2025/akc