

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).9315/2017

(Arising out of Special Leave Petition(C) No(s). 19387/2015)

MANEKLAL AGARWAL

APPELLANT(s)

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX

RESPONDENT(s)

WITH

CIVIL APPEAL NO(S).9316-9319/2017

(Arising out of Special Leave Petition(C) No(s). 20012-20015/2015)

O R D E R

Leave granted.

We have heard the learned counsel for the parties at length.

The appellant filed his return income for Assessment Year 1998-99, showing a total income of Rs. 67,200/-. The appellant had leased out his property to his own family members, who in turn had sub-leased it to outsiders on much higher rentals. The Deputy Commissioner of Income Tax completed the assessment of the appellant's property on 21.02.2001 under Section 143(3) of Income Tax Act, 1961 (IT ACT) by treating the rent received by the lessees of the appellant as rental income of the appellant at Rs.7,98,000/-. After allowing 1/5th as repairs, the appellant's income was assessed at Rs. 6,38,400/-. The appellant appealed before the Commissioner of Income Tax (Appeals), which vide its order dated 08.01.2002, upheld the assessment order passed by the

Deputy Commissioner of Income Tax on the ground that it was in accordance with Section 23(1) of the IT Act. Aggrieved, the appellant moved an appeal to the Income Tax Appellate Tribunal (ITAT). The ITAT vide its order dated 11.07.2003, partly allowed the appeal and directed the assessing authority to determine the annual letting value of the property to the sub-lessee on the basis of the municipal valuation. The Revenue challenged the order passed by ITAT before the High Court of Andhra Pradesh & Telangana by filing an appeal which was heard and decided along with four other appeals filed by the appellant pertaining to four different assessment years involving similar issues. The High Court vide impugned common judgment and order dated 25.02.2015 allowed the Revenue's appeal and dismissed the appellant's appeals on the ground that the ITAT had recorded the finding of fact that the nature of leases executed by the assessee being bogus and structures being raised by the assessee himself and it would be proper to include the net rental value to the income of the assessee. Hence, the present appeals.

Going by the nature of transaction, a clear finding of fact is arrived at by the authorities below that a devise was made by the appellant herein to show lesser income at his hand and because of this reason only he purportedly entered into a lease agreement with his wife, son and daughter-in-law in respect of the aforesaid property of which he is paying by letting them at a very nominal rates and allowing his family members to sub-let the same at a much higher rents. In these circumstances, these findings of fact cannot be interfered with in the present appeals. It has been held by

this Court in Income Tax Officer vs Ch. Atchaiah (1996) 1 SCC 417, that the Assessing Authority has a right to tax the "right person". Once it is found that the income in fact belongs to the appellant he was the right person for taxing the said income, it was permissible for the Income Tax Authorities to tax the said income at the hands of the assessee.

At the same time, we also find that the Income Tax Authorities have read the same income at the hands of the wife, son and daughter-in-law of the assessee as well who, as per the department itself, "wrong person". There would be double taxation on the same income at the hands of two persons. In these circumstances, it will always be open to the wife, son and daughter-in-law of the assessee to seek redressal of the taxation of income at their hands in appropriate proceedings.

The appeals are, accordingly, disposed of.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
JULY 14, 2017.

ITEM NO.8

COURT NO.7

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19387/2015

(Arising out of impugned final judgment and order dated 25-02-2015 in ITTA No. 121/2004 passed by the High Court Of Judicature At Hyderabad For The State Of Telangana And The State Of Andhra Pradesh)

MANEKLAL AGARWAL

Petitioner(s)

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX

Respondent(s)

WITH

SLP(C) No. 20012-20015/2015 (XII-A)

Date : 14-07-2017 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Dr. Rakesh Gupta, Adv.
Mr. Ambhoj Kumar Sinha, AOR
Ms. Monika Ghai, Adv.
Mr. Ashwani Taneja, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Ms. Niranjana Singh, Adv.
Mr. Shekhar Vyas, Adv.
Ms. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)