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COMMISSIONER OF INCOME-TAX
CALCUTTA

v.

DALHOUSIE PROPERTIES LTD.

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August 23, 1984

[E.S. VENKATARAMIAH AND V. BALKARISHNA ERADI, JJ.]

Income-tax Act, 1961—Proviso to secteon 23 (1) it as stood in the assessment year 1966-67—For determining annual value of property assessee entiiled to claim deduction of total liability of municipal taxes whether actually paid or not.

C

Words and phrases—Expression 'borne'—Scope of.

While determining the annual value of the property which was liable to income-tax for the assessment year 1966-67 under the head "Income from house property" under section 22 of the Income-tax Act, 1961, the respondent-assessee claimed that the total liability for municipal taxes levied by the corporation, whether actually paid or not and whether the extent of liability questioned or not, was deductible under the priviso to section 23 (1) of the Act. The department rejected the claim. The Income-tax Appellate Tribunal allowed the claim. On a refrence being made the High Court held in favour of the assessee. Therefore the department filed this petition for special leave to appeal.

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Dismissing the petition,

HELD: The only point is whether the expression 'borne by the owner' which appeared in the proviso to section 23 (1) as it stood in the year 1966-67 would refer to the amount of tax which the owner was liable to pay or amount of tax which he had actually paid in discharge of the liability. It is true that the expression 'borne' may refer to either the liability which a person is liable to discharge or the actual sum paid by him in discharge of that liability. But we agree with the High Court that in the present context it should be construed as referring to the former namely, the amount of tax which the owner is liable to discharge as stated in the proviso to section 23 (1) of tthe Act and not the latter one. The reason for taking this view flows from the scheme of the Act itself. [616D-F]

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Bhagwan Dass Jain v. *Union of India,* [1981] 2 S.C.R. 808; referred to.

In the instant case it is not, therefore, necessary that the assessee should have actually paid the amount of tax in question before such deduction is claimed. The position is not also different even where the assessee has dis-

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puted the correctness of the levy before the local authorities concerned. A mere expectation of success in the proceedings in which the assessee has disputed such levy does not disentitle him to the statutory deduction on the basis of the levy which is in force. [617B-C]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 3786 of 1982.

From the Judgement and Order dated the 21st April, 1978 of the Calcutta High Court in Income Tax Reference No. 573 of 1971.

K.C. Dua and *Miss A. Subhashini* for the Petitioner.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. This Special Leave Petition is filed under Article 136 of the Constitution by the Commissioner of Income-tax, West Bengal, Calcutta against the decision of the High Court of Calcutta in Income-tax Reference No. 573 of 1971.

The respondent, Dalhousie Properties Limited was an assessee under the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in the assessment year 1966-67, the relevant previous year being the year ending March 31, 1966. It owned extensive properties and its income from rents realised was substantial. In the assessment year in question, the assessee claimed a deduction of Rs. 1,78,784 which represented the tax levied by the Corporation of Calcutta as a deductible item while computing its income from house property. It appears that the assessee had questioned the extent of liability which had just then been enhanced before the Corporation and on that account had not actually paid the whole of it. This led to a difference of opinion between the department and the assessee.

In course of time the dispute regarding the assessment of the liability of the assessee under the Act reached the Income-tax Appellate Tribunal. The Tribunal held that the total liability for municipal taxes which the assessee could claim by way of deduction under the proviso to section 23 (1) of the Act in respect of the buildings during the accounting year was Rs. 1,78,784 and that the said amount was to be allowed as a deduction irrespective of the fact that the assessee had raised a dispute about the extent of the liability before the Corporation and that the assessee had not paid the whole of it to the Corporation of Calcutta. Aggrieved by the

above decision of the Tribunal, the Department got the following question referred to the High Court under section 256 (1) of the Act :— A

> "Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the full taxes levied by the Corporation of Rs. 1,78,784 should be deducted under section 23 (1) of the Income-tax Act, 1961 ?" B

The High Court answered the above question in the affirmative and in favour of the assessee. This petition is filed against the said decision of the High Court. C

The material part of section 23, as it stood in the assessment year 1966-67 read as follows :

> "23. Annual value how determined.—(1) For the purposes of section 22 the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year : D
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> Provided that where the property is in the occupation of a tenant and the taxes levied by any local authority in respect of the property are under the law authorising such levy payable wholly by the owner, or partly by the owner and partly by the tenant, a deduction shall be made equal to the part if any of the tenant's liability borne by the corner....." E

Under section 22 of the Act what is chargeable to income-tax under the head 'Income from house property' is the annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner other than such portions of such property as he may occupy for the purpose of any business or profession carried on by him the profits of which are chargeable to income-tax. As explained by this Court in *Bhagwan Dass Jain* v. *Union of India*[1] income-tax is payble under this provision in respect of the bona fide annual value of the property determined as provided in section 23 of the Act. Section 23 (1) laid down the principle according to which the annual value of any property could be F G

(1) [1981] 2 S.C.R. 808. H

notionally determined during the relevant period. First, the sum for which the property in question might reasonably be expected to let from year to year had to be ascertained. From that as per the proviso to section 23 (1) of the Act where the property was in the occupation of a tenant, if taxes levied by a local authority in respect of it were to be borne by the owner, they had to be deducted to the extent mentioned therein and the balance should be deemed to be the annual value which would be liable to tax subject to the other provisions of the Act. The object of the proviso was that where the tenant of the property had undertaken to bear any part of the taxes levied by the local authority, the owner could not be allowed to claim deduction in respect of it. It may be stated here that the proviso to section 23 (1) as it stood at the relevant time had not been happily worded. It has been since suitably modified.

The only point canvassed before the High Court and before us is whether the expression 'borne by the owner' would refer to the amount of tax which the owner was liable to pay or the amount of tax which he had actually paid in discharge of the said liability. It is true that the expression 'borne' may refer to either the liability which a person is liable to discharge or the actual sum paid by him in discharge of that liability. But we agree with the High Court that in the present context it should be construed as referring to the former namely, the amount of tax which the owner is liable to discharge as stated in the proviso to section 23 (1) of the Act and not the latter one. The reason for taking this view flows from the scheme of the Act itself. As mentioned earlier, the experssion 'annual value' is a national figure and it does not refer to any actual receipt. It is arrived at by deducting the taxes levied by a local authority for paying which the owner has assumed the responsibility from the sum for which the property might reasonably be expected to let from year to year. It is reasonable to treat the annual value of a house property as remaining more or less constant during the entire period covered by any given previous year except perhaps where the tax liability itself is modified by the local authority concerned. It cannot keep on changing as and when some payment towards the tax liability imposed by the local authority is made by the assessee during the year. In order to ensure that there is no unwarranted fluctuation in the annual value during the year in question such actual payment should be eliminated from consideration but only the tax liability imposed by the local

authority which the assessee is liable to pay as contemplated by the proviso to section 23(1) of the Act should be allowed to be deducted under the said proviso. It is not, therefore, necessary that the assessee should have actually paid the amount of tax in question before such deduction is claimed. The position is not also different even where the assessee has disputed the correctness of the levy before the local authorities concerned. A mere expection of success in the proceedings in which the asessee has disputed such levy does not disentitle him to the statutory deduction on the basis of the levy which is in force.

The High Court was, therefore, right in deciding the case in favour of the assessee.

The Special Leave Petition is therefore, dismissed.

H.S.K. *Petition dismissed.*