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KARNANI PROPERTIES LTD.

v.

COMMISSIONER OF INCOME TAX, WEST BENGAL

August 27, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

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Income Tax Act, 1922, ss. 9, 10, 12, 66—Company owning flats and shops and letting them out on rent—Also supplying electricity, water and other services to tenants—Income from latter source whether falls under s. 10, or s. 12 of Act—High Court in reference cannot go behind the facts found by the Tribunal as mentioned in statement of case.

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The assessee company owned houses and flats in Calcutta which it had let out on rent. The company purchased from the Calcutta Electric Supply Corporation high voltage A.C. current in bulk, converted it into low voltage A.C. current in the company's own power house with the premises and supplied the power to the tenants. It also maintained a separate water pump-house and a boiler for the supply of hot and cold water to the tenants. It further provided for the benefit of tenants electric lifts working day and night. For all these purposes a large permanent staff was

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maintained. The monthly payments by the tenants consisted apart from rent, of charges in respect of these services. In proceedings before the Income-tax Officer for the assessment years 1956-57 and 1957-58 the assessee company claimed that the entire receipts from the tenants should be treated as income from business in as much as the company had been formed for carrying on the business of letting out flats and shops. The Income-tax Officer split the receipts into two parts; one part of the receipts he treated as rent received by the assessee and the remaining part he

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treated as income from other sources taxable under s. 12 of the Income-tax Act, 1922. The Appellate Tribunal accepted the contention of the assessee that the income taxed by the Income-tax Officer as income from other sources should be treated as income from business. Thereafter at the instance of the Department the Tribunal referred to the High Court the question whether "on the facts and circumstances of the case" the Tribunal was justified in holding that the services supplied to the tenants

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constituted a business activity of the assessee taxable under s. 10. The High Court opined after a reappraisal of the evidence that some of the facts found by the Tribunal were not correct. It came to the conclusion that the income in question was taxable neither under s. 12 nor under s. 10 but under s. 9 though this was not the contention of the Department at any stage. By certificate appeals were filed in this Court.

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HELD : (1) The jurisdiction of the High Court in dealing with a reference under s. 66 is a very limited one. It must take the facts as stated in the stamement of the case unless the question whether the findings of the Tribunal are vitiated for one or the other of the reasons recognised by the law is before it. The High Court thought that the Income-tax Officer, the Appellate Assistant Commissioner as well as the Tribunal erred in holding that the income of the assessee company came from two different sources but that question was foreign to the proceedings before the High Court. Neither the High Court nor this Court has jurisdiction to go behind

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or to question the facts found by the Tribunal. [461 A-C]

Kshetra Mohan Sannyasi Charan Sudhukhan v. *Commissioner of Excess Profits Tax, West Bengal*, 24. I. T. R. 488, relied on.

(ii) On the facts found by the Tribunal in the present case it was clear that the assessee had two different sources of income and not one source as found by the High Court. [C-D]

[This however, should not be understood to mean that in assessing the profits and gains from the several activities of a business, the profits and gains arising from the several activities of that business can be separately computed or separately brought to tax.] [463 B-C]

The services rendered by the assessee to its tenants were the result of its activities carried on continuously, in an organised manner and with a view to earn profits. Hence, those activities had to be considered as business activities taxable under s. 10 of the Act. [461 D]

Salisbury House Estate Ltd. v. *Fry*, 15 Tax Cases 266, applied.

Commissioner of Income-tax, Bombay City v. *National Storage Private Ltd.*, 66 I.T.R. 596 and *Sultan Brothers Pvt. Ltd.* v. *Commissioner of Income-tax, Bombay City-II*, 51 I.T.R. 353, referred to.

(iii) Generally speaking the rule of *res judicata* does not apply to taxation proceedings. This Court in the present case had not gone into the correctness of the findings of fact reached by the Tribunal. Therefore whether those facts and circumstances were correctly found or not may still be a matter for consideration in any future assessment. [464 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1874 and 1875 of 1968.

Appeals from the judgment and order dated June 16, 1967 of the Calcutta High Court in Income-tax Reference No. 20 of 1963.

M. C. Chagla, A. N. Sinha, P. K. Chatterjee nnd *Rathin Das*, for the appellant (in both the appeals).

S. C. Manchanda, J. Ramamurthi, R. N. Sachthey and *B. D. Sharma*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Hegde, J. These appeals by certificate arise from the decision of the High Court of Calcutta in Income Tax Reference No. 20 of 1963 on its file. That was a Reference under s. 66(1) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as 'the Act'), made by the Income-tax Appellate Tribunal, 'B' Bench, Calcutta. The question referred to the High Court for its opinion reads thus :

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the services rendered to the tenants, by supplying electrical energy, hot and cold water and maintenance of lifts and other amenities, constituted a business activity of the

A assessee and as such the income arising therefrom was assessable under section 10 of the Income-tax Act, 1922."

The High Court came to the conclusion that the income in question is income from property and as such is assessable under
B s. 9 of the Act; that being so, the same cannot be assessed under s. 10. In the result it answered the question in the negative and in favour of the Department.

The assessment years with which we are concerned in these appeals are 1956-57 and 1957-58, the corresponding accounting periods being the calendar years 1955 and 1956.

C The facts as set out in the Statement of the case submitted by the Tribunal are as follows :

The assessee company owned house properties, popularly known as Karnani Mansion in Park Street, Calcutta. The said Karnani Mansion consists of numerous residential flats and over a dozen shop premises. All those were let out to different tenants
D on a monthly rental basis. The tenants in respect of each of the flats and shops let out had to make a monthly payment which included charges for electric current, for use of lifts, for the supply of hot and cold water, for the arrangement for scavanging, for providing watch and ward facilities as well as other amenities. The Tribunal further found that the assessee company purchases
E from the Calcutta Electric Supply Corporation high voltage A.C. current in bulk, converts the same into low voltage A.C. current in the company's own power house within the premises and supplies the power to its tenants. It also maintains a separate water pump-house and a boiler for the supply of hot and cold water to the tenants. The company further provided for the benefit of
F tenants, Electric lifts working day and night. The further finding of the Tribunal was that for all these purposes the assessee company maintains a large number of permanent staff. No question under s. 66(1) or s. 66(2) was sought challenging the correctness of the findings referred to earlier. The question submitted to the High Court proceeded on the basis that the facts found by the Tribunal are correct.

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The total collection from the tenants made by the assessee in accordance with the terms of the agreement between the tenants and the assessee was Rs. 5,53,541/- during the accounting year 1956 and Rs. 5,59,145/- during the accounting year 1957. The assessee company claimed before the Income-tax
H Officer that the entire receipts should be treated as income from business inasmuch as the company had been formed for carrying on the business of letting out flats and shops. The Income-tax Officer while rejecting the assessee's contention, split the receipts

into two parts; one part of the receipt be treated as the rent received by the assessee and the remaining part he treated as income from other sources taxable under s. 12. The total amount of the latter category as allocated by the Income-tax Officer was Rs. 1,32,456/- in the assessment year 1956-57 and Rs. 1,32,568/- in the assessment year 1957-58. It may be noted that even according to the Income-tax Officer the entire receipt was not assessable under s. 9.

In the appeal before the Appellate Assistant Commissioner the only controversy was whether the receipt held by the Income-tax Officer as income from other source should have been held to be income from business. Neither the Revenue nor the assesses contended that the same was assessable under s. 9 nor was there any dispute as regards that part of the receipt which was brought to tax under s. 9. The Appellate Assistant Commissioner rejected the contention of the assessee and affirmed the decision of the Income-tax Officer.

Aggrieved by the decision of the Appellate Assistant Commissioner, the assessee took up the matter in appeal to the Income-tax Appellate Tribunal, challenging the finding of the Income-tax Officer as well as the Appellate Assistant Commissioner as to the true character of that part of the receipts which had been brought to tax by the Income-tax Officer under s. 12. The assessee contended that the said amount should have been assessed under s. 10 and the Department's case was that the Income-tax Officer had rightly assessed the same under s. 12. Neither the assessee nor the Department contended before the Tribunal that the same was assessable under s. 9. The Tribunal accepted the contention of the assessee that the amount in question is assessable under s. 10. Thereafter at the instance of the Department the question set out earlier was referred to the High Court of Calcutta for its opinion.

The High Court of Calcutta did not accept the contention of the Department that the amount in question is assessable under s. 12 of the Act. On the other hand, it came to the conclusion that the same was assessable under s. 9 of the Act. As seen earlier the Department had all along proceeded on the basis that that amount was not assessable under s. 9 of the Act. If the Department had sought to assess that amount under s. 9, it was open to the assessee to claim the allowances to which it was entitled under s. 9. The Department having all along proceeded on the basis that the income of the assessee was income from two different sources, should not have been allowed to change its case. The High Court opined that some of the facts found by the Tribunal are not correct. That finding was arrived at on reappraisal of the evidence on record. As seen earlier the ques-

A tion whether the findings of fact reached by the Tribunal were vitiated for any reason was not before the High Court. The jurisdiction of the High Court in dealing with a Reference under s. 66 is a very limited one. It must take the fact as stated in the Statement of the case unless the question whether the findings of the Tribunal are vitiated for one or the other of the reasons B recognised by law is before it. It may be that the Income-tax Officer, the Appellate Assistant Commissioner as well as the Tribunal erred in holding that the income with which we are concerned in these appeals came from two different sources but then that question was foreign to the proceedings before the High Court. The High Court had to accept the facts as found by the C Tribunal and should have answered the question referred to it on the basis of those facts.

From the facts found by the Tribunal it follows that the services rendered by the assessee to its tenants were the result of its activities carried on continuously, in an organized manner, with a set purpose and with a view to earn profits. Hence D those activities have to be considered as business activities. In this connection Mr. M. C. Chagla, the learned Counsel for the assessee invited our attention to the decision of the House of Lords in *Salisbury House Estate, Ltd.* v. *Fry.*(1) The facts of that case are as follows :

E The Appellant Company was the rated occupier of a large block of buildings let to tenants by rooms and by suites of rooms as unfurnished offices. The Company had no other business except the letting out and management of the one property. In addition to the rents for the offices the Company derived profits from its tenants in connection with the provision of lighting, cleaning, caretaking and other services, and admitted that liabi- F lity to income-tax under Schedule D, with regard to such profits. The Crown contended that the Company was in respect of all its activities carrying on a trade and that accordingly in computing its profits for the purposes of assessment under Schedule D, it was necessary to take into account all its receipts, including receipts from rents, an allowance being made for the amount of G the assessments under Schedule A (Schedule dealt with rents of properties). Assessments under Schedule D (which includes 'business' were made upon the Company upon this basis. The facts found were that the Appellate Company was a Company, the main objects of which were the acquisition, development, management, leasing and letting of land and property. Its pro- H perties were for the most part shops and blocks of offices and of flats in London, let unfurnished to tenants. The larger blocks of offices, etc. contained lifts, the liftman being provided by

(1) 15, Tax Cases 266.

the Company. The Company also provided cleaning, heating, lighting and caretaking services in respect of which additional changes were made. The Company admitted its liability to income-tax under Sch. D, in respect of profits arising from such additional charges levied for the services rendered. The Crown contended that the Company was carrying on a trade namely the letting of accommodation and provision of various services and that in addition to the profits assessed under Schedule A in respect of the property in the premises the Company made a further profit by the user of the premises as a commercial enterprise and hence the Company was assessable to income-tax under Sch. D. The House of Lords held that the Company's liability in respect of the rents was covered by the Sch. A assessments, and the rents could not be brought into the computation of any liability under Sch. D. In the course of the judgment, Lord Macmillan (at p. 329 of the Report) observed :

> "It is necessary, however, to make it quite clear that the income from property which is taxable under, and only under, Schedule A is income derived from the exercise of property rights properly so called.
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> Property is regarded as yielding income from the exercise by the proprietor of the right either of himself enjoying the possession or of parting with the possession by letting his property to tenants. The owner of property may make profit out of it in other ways and by doing so he may render himself liable to taxation under Schedule D. The case of *Governors of the Rotunda Hospital, Dublin* v. *Coman,* (1921) 1 A.C. 1, is an excellent example. There as Lord Chancellor Lord Birkenhead pointed out at page 8(1) the arrangements between the owners of the premises and the persons who paid for their use for the purpose of entertainments were not such as to constitute the relation of landlord and tenants, and the owners remained in possession and occupation of their property.
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> The receipts derived from hiring out their premises along with various movable fittings, and affording services in the way of heating, lighting and attendance, were receipts of an enterprise quite distinct from the ordinary receipts which a landlord derives from letting his property.
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> Consequently the owners of the premises were rightly held to be engaged in the carrying on of a trade or business in their premises, the trade or business", in Lord Shaw's language at p. 37(2) "of providing, or

(1) 7, Tax Cases at p. 576.

(2) *Ibid.* at p. 593.

A providing for, public entertainments". There is nothing to prevent a landlord who has been assessed under Schedule A in respect of his income as a property owner being also assessed under Schedule D in respect of a trade, business or other enterprise carried on by him on his premises."

B We are referring to these observations only to show that the activities of the assessee with which we are concerned in these appeals are business activities. We should not be understood as having laid down that in assessing the profits and gains of a business, the profits and gains arising from the several activities of that business can be separately computed or separate-
C ly brought to tax. If the facts are as found by the Tribunal—we must assume for the purpose of this case that the facts were correctly found by the Tribunal as there was no challenge to the correctness of those findings in the question referred to the High Court—then it is quite clear that the assessee had two sources of income and not one source as found by the High Court.

D Mr. Manchanda, learned Counsel for the Department contended with some emphasis that there was no justification for the Income-tax Officer, the Appellate Assistant Commissioner as well as the Tribunal for coming to the conclusion that the services rendered by the assessee was an activity independent of letting
E out the premises to the tenants. According to him the primary activity of the assessee was to let out the premises and the services rendered were merely incidental. In support of his contention he relied on the ratio of the decision of this Court in *Commissioner of Income-tax, Bombay City* v. *National Storage Private Ltd.*(1) He alternatively contended that the income said to have been realised as a result of rendering the services by the assessee
F should have been brought to tax under s. 12(4). For that contention he relied on the decision of this Court in *Sultan Brothers Private Ltd.* v. *Commissioner of Income-tax, Bombay City-II*(2). The High Court after reassessing the evidence on record has also taken the view that there was only one source of income and that source was of letting out the premises to the tenants.
G Mr. Manchanda contended, and the High Court has accepted that contention that the authorities under the Act have not properly construed the lease deeds nor have they properly appreciated the evidence on record. It may well be so. We say nothing about it as it is not within our province to reappreciate the evidence on record. The question as to the correctness of the facts found by the Tribunal was not before the High Court nor is it
H before us. When the question referred to the High Court speaks of "on the facts and in the circumstances of the case", it means

(1) 66 I.T.R. 596. (2) 51. I.T.R. 353.

on the facts and circumstances found by the Tribunal and not about the facts and circumstances that may be found by the High Court. We have earlier referred to the facts found and the circumstances relied on by the Tribunal, the final fact finding authority. It is for the Tribunal to find facts and it is for the High Court and this Court to lay down the law applicable to the facts found. Neither the High Court nor this Court has jurisdiction to go behind or to question the statements of facts made by the Tribunal. The statement of the case is binding on the parties and they are not entitled to go behind the facts found by the Tribunal in the Statement—see, *Kshetra Mohan Sannvasi Charan Sadhukhan* v. *Commissioner of Excess Profits Tax, West Bengal*(1).

Mr. Manchanda was apprehensive that our decision in this case may have far reaching effect inasmuch as that the same may be considered as having laid down the rule that whenever a premises is let out with fixtures and furnitures for a consolidated rent or when the landlord in addition to providing fixtures and furnitures also renders services incidental to the letting out of the premises and charges a consolidated rent, it may be considered that the rent realised would have to be split up and assessed separately partly under s. 9 and partly under some other provision. There is no basis for this apprehension. Herein we are not considering any abstract proposition of law. We are only laying down the law applicable to the facts found.

It was next urged by Mr. Manchanda that our decision in this case may preclude the Department from reconsidering the correctness of the findings reached by the Income-tax Officer, Appellate Assistant Commissioner and the Tribunal in the assessee's case in the subsequent years. This apprehension may again be not well founded. Generally speaking the rule of *res judicata* does not apply to taxation proceedings. We have not gone into the correctness of the findings of fact reached by the Tribunal. Therefore whether those facts and circumstances were correctly found or not may still be a matter for consideration in any future assessment. We do not wish to say anything more on this aspect as we do not want to pronounce on questions which are not before us.

In the result these appeals succeed, the answer given by the High Court is discharged and in its place we answer the question in the affirmative and in favour of the assessee. The assessee is entitled to its costs of these appeals—one hearing fee.

G. C. *Appeal allowed.*

(1) 24 I.T.R. 488.