

interest income. This action of the AO was upheld by Ld. CIT(A). Aggrieved, the assessee is in appeal before us on the following ground no.1:

“1. Ld. CIT(A) confirmed disallowance of interest paid of Rs.30,11,441/- unlawfully, deduction of which was taken against interest received of Rs.46,96,874/-. Ld. CIT(A) did not consider the plea of assessee where it was claimed that loan funds received were utilized for giving of loans.”

2.2. The Ld. AR at the time of hearing argued that the loans borrowed were indeed utilized for giving interest bearing loans to several parties and assessee had rightly claimed the payment of interest as an expenditure incurred for the purpose of earning interest income u/s. 57 of the Act. She also furnished the details of Balance Sheet of the assessee HUF as on 31.03.2008 and 31.03.2009 and also gave the break-up of loans received and loans paid as below:

| | <u>Loans received</u> | <u>Loans paid</u> |
|---|-----------------------|---------------------|
| Opening Balance | Rs. 1.01 cr. | Rs. 2.03 cr. |
| Add: Fresh transactions during the year | <u>Rs. 2.23 cr.</u> | <u>Rs. 3.18 cr.</u> |
| Total : | Rs. 3.24 cr. | Rs. 5.48 cr. |
| Less: Refunded during year | <u>Rs. 0.00 cr.</u> | <u>Rs. 4.30 cr.</u> |
| Closing balance as on 31.03.2009 | Rs. 3.24 cr. | Rs. 1.19 cr. |

2.3. The Ld. AR pleaded that from the aforesaid details it could be very well seen that the amounts borrowed had been directly utilized for giving loans thereby proving the nexus of borrowed funds being utilized for advancing of loans which fetched interest income.

2.4. In response to this, the Ld. DR has vehemently relied on the orders of the lower authorities and urged before the bench to confirm the order of Ld. CIT(A).

2.5. We have heard rival submissions and gone through facts and circumstances of the case. We find from the details filed by the Ld. AR before us that these details were not filed before the lower authorities and hence, become additional evidence which deserves to be admitted in the facts and circumstances of the case and in the interest of justice. Admittedly, the Id AO did not have an occasion to examine these figures in the light of arguments advanced by the Ld. AR. Hence, we deem it fit and proper to set aside this issue and restore the matter back to the file of Id AO with a direction to the assessee to explain before the Id AO as to from which funds the loans were given by the assessee to various parties which ultimately fetched interest income. In the instant case it is not in dispute that the entire transaction of interest income earned by the assessee would have to be taxed

under the head "Income from Other sources" as admittedly assessee is not engaged in any business activity. The aforesaid details to be filed by the assessee as directed hereinabove would enable the allowability of claim of deduction u/s. 57 of the Act with regard to interest paid by the assessee. Accordingly, the ground no. 1 of assessee's appeal is allowed for statistical purposes.

3. The next ground to be decided in this appeal of assessee is as to whether the Ld. CIT(A) is justified in upholding the determination of annual rent @ Rs.30,000/- per month as against rental income declared by the assessee in the facts and circumstances of the case.

4. Brief facts of this issue are that the assessee had taken a property on lease from one Shri Manishes Mallick vide an irrevocable deed. In fact, this property is in possession of the assessee for more than 30 years. The earlier tenancy was with the original landlord and Shri Manishes Mallick being the legal heir of the property confirmed the old tenancy of the assessee. The salient features of the said agreement are reproduced hereunder which are relevant for the disposal of the issue before us:

- (i) The lease is a perpetual lease. There is no clause regarding vacating the premises by the assessee.
- (ii) The repairs and maintenance will be carried out by the tenant at his or her own cost.
- (iii) The tenant has the right to make alteration in the building including removing the walls of the rooms and verandas.
- (iv) The landlady has been exonerated from any liability on account of repairs and maintenance charges in the building.
- (v) The cost of charges for alteration will be borne by the tenant i.e. the assessee.
- (vi) The tenant is free to sub-let or assign the tenancy to any third party without the approval or consent of the landlady.

4.1 The above facts prove that the assessee is deemed owner of the property situated at No. 7/2, Queens Park, Kolkata-700 019. Accordingly, the assessee had sublet the subject mentioned property at Rs.7,200/- per month and declared the same as "Income from House Property" after reducing municipal taxes paid by the assessee and after claiming deduction towards 30% of repairs. It is not in dispute that the rental income from subject mentioned property is to be assessed under the head 'Income from House Property'. The ld AO

observed that the property is situated in one of the most posh locality in the city of Kolkata and accordingly show caused the assessee to substitute the fair market rent of the subject mentioned property and called for the details of the same from the assessee. The assessee did not produce any details regarding the same. The Id AO deputed his Inspector to the subject mentioned property and based on the Inspector's report determined the fair market rent at Rs.30,000/- per month and accordingly, proceeded to determine the gross annual value at Rs.7,20,000/- and granted deduction at 30% for repairs on an average basis without giving deduction for municipal taxes paid by the assessee. This action of the AO was upheld by the Ld. CIT(A). Aggrieved, the assessee is in appeal before us on the following ground No. 2:

“2. Ld. CIT(A) confirmed enhancement of income from House Property from Rs.4752/- to Rs.5,04,000/- unjustifiably, without understanding facts & figures. Ld. AO had given explanation in page No. 4 & 5 of the order u/s. 143(3), that Assessee has shown Rental income under ‘Income from Other sources’. Factually, in return, it was offered under ‘Income from House Property’ which shows Ld. AO did not think it necessary to go through Return or Computation of income. Before making order u/s. 143(3).

Ld. CIT(A) was unjustified and unfair in considering the Fair Market Rent at Rs.30,000/- per month each from two tenants. Notional interpretation of Fair Market Rent is totally unfair on part of Ld. CIT(A). Ld. CIT(A) did not consider the plea of assessee where it was claimed that Rs.6412/- paid on account of Municipal Tax should have been allowed for deduction.”

4.2. At the time of hearing before us, Ld. AR argued that the assessee had never received this exorbitant rent determined by the AO and it would result in an absurd situation of asking the assessee to pay tax which would be several times more than the actual rent received. In support of her argument she placed reliance on the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Kishanlal & Sons (Udyog) (P) Ltd. (2003) 260 ITR 481 (Cal). She also argued that the Inspector of Income Tax Department is not technically qualified to determine the fair market rent of the property. Hence, she urged before the bench to set aside the orders of the lower authorities.

4.3. In response to this, the Id. DR argued that the fact of determination of quantum of fair market rent by the AO was never disputed by the assessee before the lower authorities and what the Id AO has done in the instant case is only in accordance with the provisions of section 23 of the Act which is supreme and which has to be followed as against the decision relied on by the Hon'ble Calcutta High Court. He also argued that the assessee on its part had not bothered to submit the fair market rent or even municipal value to prove that the fair

market rent determined by the AO is exorbitant compared to the facts of the case. He urged before the bench to confirm the action of the Ld. CIT(A).

4.4. We have heard rival submissions and gone through facts and circumstances of the case. We find that in the instant case it is not in dispute that the subject mentioned property which derived rental income is to be taxed under the head “Income from House Property”. We have also gone through the income tax return of the assessee wherein the assessee has duly shown the same only under the head “Income from House Property”. Hence, the provisions of section 23 of the Act would come into play for determination of actual value of the subject mentioned property. The provisions of section 23 read as under:

“[Annual value how determined.

23. (1) For the purposes of [section 22](#), the annual value of any property shall be deemed to be—

- (a) the sum for which the property might reasonably be expected to let from year to year; or*
- (b) where the property or any part of the property is let and the actual rent received or receivable²⁰ by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or*
- (c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :”*

4.5. We also find that the assessee had not produced any evidence with regard to fair market rent or municipal value determined the municipal authorities on the basis of which the municipal taxes were levied by them. However, we find that the actual rent received by the assessee is far less than the fair market rent determined by the Id AO based on Inspector’s report. We also find that the Id AO while determining the income from house property has not granted deduction towards municipal taxes paid by the assessee which is squarely allowable as per the provisions of the Act. The Ld. AO is directed to allow the same after verification of the proof of payment of municipal taxes. However, in order to meet the ends of justice, we deem it fit and proper to set aside this issue to the file of the Id AO with a corresponding direction to the assessee to submit the municipal valuation of the subject mentioned property. The Id AO also is hereby directed to ascertain the going rate per sq. ft. at the relevant point of time from the jurisdictional sub-registrar’s office. The Id AO is directed to determine the annual value of the property based on any of the methods as directed above or the average of the two and also in the light of the decision relied on by the Ld. AR as stated supra, as admittedly the said decision has not been controverted by the Ld.

CIT(A) in his appellate order. Accordingly, the ground no. 2 raised by the assessee is allowed for statistical purposes as indicated above.

5. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 07.10.2016

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 7th October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Vinodkumar Harshavardhan, HUF, 7/2, Queens Park, Kolkata-700 019
2. Respondent –ACIT, Circle-30, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.