

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**BEFORE SHRI SHAILENDRA KUMAR YADAV AND**

**SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**आयकर अपील सं/ I.TA No.7268/Mum/2012**

**(निर्धारण वर्ष / Assessment Year: 2009-10**

Tip Top Typography, C/o Reliance Capital Ltd., 570, Rectified House, 1 <sup>st</sup> Floor, Naigaum Cross, Next to Royal Ind. Estate, Wadala (W), Mumbai-400 031	<b>बनाम/</b> Vs.	The ITO, Ward 12(3)(4), Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFT 2182Q		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी ओर से/ <b>Appellant by:</b>		Shri R. Muralidhar
प्रत्यर्थी की ओर से/ <b>Respondent by:</b>		Shri C.W. Angolkar

सुनवाई की तारीख / **Date of Hearing** :30.10.2015

घोषणा की तारीख /**Date of Pronouncement** : 06.11.2015

**आदेश / O R D E R**

**PER N.K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the Ld. CIT(A)-23, Mumbai dated 30.7.2012 pertaining to Assessment year 2009-10.

2. The grievances of the assessee read as under:

1. *The learned Commissioner of Income Tax (Appeals) - 23, Mumbai [CIT(A)] erred in upholding the action of*

*the Assessing Officer in computing the Annual Letting Value of the property based on the fair rent of the other properties.*

*Your appellant submits that the Annual Letting Value of the property ought to have been computed based on the Municipal Rateable Value and not based on the so called fair rent of the other properties.*

*2. The learned CIT(A) erred in holding that for determining the Annual Letting Value of the property known as "Sheth Chamber" u/s.23(1)(a), the Municipal Rateable Value cannot be adopted.*

*Your appellant submits that the Annual Letting Value of the property ought to have been computed based on Municipal Rateable Value.*

*-3. The learned CIT(A) erred in arriving at the Annual Letting Value based on the so called comparable instances of letting out of properties.*

*Your appellant submits that the Municipal Rateable Value of the property ought to be taken as Annual Letting Value for the purpose of section 23(1)(a).*

*4. Without prejudice to the above, the appellant submits that the Annual Letting Value adopted by the Assessing Officer is excessive and unreasonable and ought to be reduced substantially."*

3. At the very outset, the Ld. Counsel for the assessee stated that the issues involved in this appeal are no more *res integra* as they have been decided by the Hon'ble High Court of Bombay in favour of the assessee in assessee's own case for assessment year 2005-06. The Ld. Counsel continued stating that the decision of the Hon'ble High Court has been followed by the Tribunal in ITA No. 7044/M/2013 order dated 8.5.2015 pertaining to A.Y. 2010-11.

4. The Ld. Departmental Representative could not bring any distinguishing decision in favour of the Revenue and fairly conceded to the submissions made by the Ld. Counsel.

5. We have given a thoughtful consideration to the orders of the authorities below. Facts of the case are that during the year under consideration, the assessee has not carry on any business. While scrutinizing the return of income, the AO found that the assessee has shown Long Term Capital Gain at Rs. 1,59,361/- against which loss from house property at Rs. 6,536/- is set off. The AO further noticed that under the head 'Income from House Property' the assessee has shown rent of Rs. 5,14,722/- and after deducting Municipal Taxes net loss was computed at Rs. 6,536/-.

6. On further probe, the AO found that the ALV of the property in earlier years was substantially higher. When the assessee was confronted with this situation, the assessee replied that the annual let out value has been taken as per the Municipal Rateable value and accordingly contended that the ALV should be on the basis of Municipal valuation. The contention of the assessee did not find any favour with the AO. The AO proceeded by comparing the prevalent rent in the area and drawing support from the prevalent rent qua comparable cases, the annual value was determined at Rs. 91,88,904/- and after allowing deduction for municipal taxes and statutory deduction @ 30% income from house property was computed at Rs. 60,67,422/-.

7. Aggrieved, assessee carried the matter before the Ld. CIT(A) but without any success.

8. As mentioned elsewhere, the facts stated hereinabove have been considered by the Hon'ble High Court of Bombay in assessee's own case in A.Y. 2005-06 in Income Tax Appeal No. 1213 of 2011 order dated 14<sup>th</sup> August, 2014 wherein the Hon'ble High Court at para-48 & 49 of its order has observed as under:

*“ We are not in agreement with Shri Chhotray that the municipal rateable value cannot be accepted as a bonafide rental value of the property and it must be discarded straightway in all cases. There cannot be a blanket rejection of the same. If that is taken to be a safe guide, then, to discard it there must be cogent and reliable material.*

*We are of the opinion that market rate in the locality is an approved method for determining the fair rental value but it is only when the AO is convinced that the case before him is suspicious, determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. We are of the view that municipal rateable value may not be binding on the Assessing Officer but that is only in cases of afore-referred nature. It is definitely a safe guide.”*

9. The Co-ordinate Bench in ITA No. 7044/M/2013 following the order of the Hon'ble High Court has held as under:

*“After considering the relevant finding of the AO and CIT(A) and also the contention of the parties, we find that the issue involved is identical to the findings given in the earlier years. The assessee has computed the ALV of the property on the basis of municipal rateable value while AO has adopted the ALV after considering the prevalent rent in the area based on the rate*

*determined by the AO in the earlier year. We find that the Hon'ble High Court in the case of the assessee were concerned with similar issue, wherein the Hon'ble Court decided on the following substantial question of law:*

*(i) Whether on the facts and circumstances of the case and in law, Tribunal was right in holding that the fair rental value specified in section 23(1)(a) is the municipal value or actual rent received whichever is higher and not the annual letting value on the basis of comparable instances as adopted by the Assessing Officer, though the property under consideration was not covered by the Rent Control Act?*

*(ii) Whether on the facts and circumstances of the case and in law, Tribunal was right in remitting the matter back to the file of the Assessing Officer with direction to verify the rateable value fixed by the Municipal Authorities and if the same is less than the actual rent received, then the actual rent received should be taxed”.*

*7. The Hon'ble High Court after discussing the various provisions, judicial decisions and arguments of the parties, concluded that municipal rateable value though not binding on AO, however is an approved method for determining fair rental value and it is only when AO is convinced that the case before him suspicious and determination is doubtful, he can resort to enquire about the prevailing rate in the locality and reject the municipal rateable value. Merely because the rent has not been fixed under Tip Top Typography ITA No. 7044/Mum/2013 4 Rent Control Act, does not mean that any other determination and contrary thereto can be made by the AO. Since the matter has been concluded by the Hon'ble High Court, the same principle should be followed. Accordingly, we direct the AO to arrive at ALV in terms of the direction and principle laid down by the Hon'ble High Court.”*

Respectfully following the decision of the Hon'ble Jurisdictional High Court and the Co-ordinate Bench, in our considered opinion, this issue has to be decided in the light of the ratio laid down by the Hon'ble High Court of Bombay. We, therefore, restore this issue to

the file of the AO. The AO is directed to decide the issue afresh in the light of the ratio laid down by the Hon'ble High Court of Bombay and the Co-ordinate Bench in earlier years.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 6<sup>th</sup> November, 2015.

Sd/- Sd/-  
**(SHAIENDRA KUMAR YADAV)** **(N.K. BILLAIYA)**  
 न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER  
 मुंबई Mumbai; दिनांक Dated : 6<sup>th</sup> November, 2015  
 व.नि.स./ Rj , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार**

(Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**