

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAM LAL NEGI, JM

आयकर अपील सं./ITA Nos.8413 to 8415/Mum/2011

(निर्धारण वर्ष / Assessment Years :2003-04, 2004-05 & 2008-09)

Smt. Mala Ranjit Bhavnani, 3, Buckley Court, 5, Wodhouse Road, Mumbai-400001	Vs.	ITO-12(2)(2), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFPB 1108 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.3698/Mum/2012

(निर्धारण वर्ष / Assessment Year :2007-008)

Ranjit H. Bhavnani, 3, Buckley Court, 5, Wodhouse Road, Mumbai-400001	Vs.	DCIT-3(3) Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACP B 8459 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nitesh Joshi
राजस्व की ओर से /Revenue by : Shri Peeyush Sonkar

सुनवाई की तारीख / Date of Hearing : **09/12/2015**

घोषणा की तारीख/Date of Pronouncement **31/03/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by the assessee against the order of CIT(A), Mumbai, for the assessment years 2003-04, 2004-05, 2007-08 & 2008-09, in the matter of order passed u/s.143(3) of the I.T.Act.

2. Common grounds have been taken by the assessee in all the years under consideration, therefore, all the appeals were heard and are now

decided by this consolidated order. As the similar grounds have been taken in all the appeals, therefore, for the sake of convenience, grounds taken in ITA No.8413/Mum/2011, are reproduced hereunder :-

1. *The Learned C.IT. (A) has erred in upholding the A.O.'s action of issuing notice u/s. 148 and thereafter completing the assessment u/s. 143 (3) r.w.s. 147 of the Income Tax Act, 1961 without satisfaction of the jurisdictional condition.*

Your appellant respectfully submits that on facts and in law the issue of notice u/s. 148 and subsequent assessment u/s. 143 (3) r.w.s. 147 are bad in law and the assessment order so passed should therefore be annulled.

The Learned C.IT. (A) ought to have cancelled the assessment as the Assessing Officer had not disposed off the assessee's objection to the reopening of the assessment.

2. *Without prejudice to the above ground, the Learned C.IT.(A) has further erred in confirming the action of the A.O. of adopting ALV of Rs. 63,78,777 i.e. @ 8.5% of investment in immovable property being residential flat situated at Colaba.*

Your appellant respectfully submits that on facts and in law the AL V of Rs. 84,926 should be adopted as declared by the assessee in the Return of Income filed by her in response to notice u/s. 148.”

3. Rival contentions have been heard and record perused. The Assessing Officer has noted that the assessee filed return of income for A. Y. 2003-04 on 09/09/2003 declaring total income of Rs.3,54,470/-. The return was processed u/s 143(1) of Income-tax Act on 12/2/2004. After that the Assessing Officer's office has received an intimation wherein it is stated that the assessee is co-owner of flat on 15/16 of 5th, and 6th floor and the, car parking spaces in basement No.1, being car parking Nos. 16 & 17 of Buckely Court, Colaba, Mumbai. The above property was purchased jointly by the assessee with three co-owners for total consideration of Rs. 9,71,79,850/- as per agreement dated 22/3/2002.

The share of assessee in this property is shown at 77.22% and thus the assessee had paid Rs.7,50,44,440/- as her share towards purchase cost of the said property. Rental income has not been shown by the assessee from the said property in consideration of investment made by the assessee. Therefore, after recording of reasons the case was reopened u/s.148 of I.T.Act vide notice dated 24-3-2010 which was served on assessee on 25-3-2010. Thereafter the AO computed the ALV by taking 8.5% of the value of investment in the said property.

4. By the impugned order the CIT(A) upheld the action of AO after having following observations :-

The Assessing Officer stated that as per the provisions of Sec.23 of the Act, the annual value is the reasonable amount which is expected when let out from year to year irrespective of the method of accounting followed by the owner. Generally, the annual value cannot exceed the standard rent which is based on the cost of the property from time to time. The ALV has to be determined on the basis of -

(i) Standard rent determined in accordance with the Rent Control Act.

(ii) Annual municipal value, if available

(iii) The actual rent if the actual rent received or receivable is more than the standard rent or annual municipal value. In the present case the standard rent in Bombay was; to be fixed at 8.5% on the total investment as per the Bombay Rent Control Act.

In this regard, the decision of , IT AT, Mumbai 'B' Bench (2002) 83 ITO 427 (Mum) in the case of ITO vs. Chem Mech (P) Ltd. was relied upon.

The identical issue arose before the Tribunal and the Tribunal has upheld the action of the Assessing Officer in treating 8.5% of the value of investment as the ALV of the property. The standard rent as per Bombay Rent Control Act in this case is the: highest and therefore, the same is to be taken as the ALV of the property. The total investment made by the assessee in the above said immovable property is Rs.7,50,40,440/-. Therefore considering the above fact, the ALV of the assessee's share in the above property was worked out at Rs.63,78,777/- (8.5% of Rs.7,50,40,440/-)

3.2. *In appeal proceedings it was stated for the appellant that the.*

Assessing Officer has wrongly interpreted section 23(1)(a) of the IT Act. The words "the sum for which the property reasonably be expected to let. out from year to year" clearly indicate that ALV has to be computed according to the annual rent that is or that could be received in respect of the property. The said phrase would be interpreted to mean the municipal ratable value as determined by the BMC or the actual rent whichever is higher. The Assessing Officer was incorrect in computing ALV on the basis of 8.5% of the investment made by the assessee. Reliance was placed on CIT vs. Moni Kumar Subba Delhi HC), Midland International Ltd. vs. OCIT (ITAIT Delhi), ITO Vs. Shri Kishin D. Lakhani (Through legal heir), CIT vs. Asian Hotels Ltd., O(IT vs. Shripal S.Morakhia (2006) 7 SOT 609 (Mum) and Shri Rajesh Daga vs. ITO.

3.3 *The assessment order, submissions made for the appellant and materials on record have been considered. In terms of section 23 of the he Assessing Officer is required to take the higher of the value of (a) the sum for which the property might reasonably be expected to be receivable. The full bench of the Delhi High Court I in Moni Kumar Subba (supra) relied upon by the appellant, though in the context of estimation of rent by way of notional interest on interest free deposits taken by the lessor, has itself held that ALV would be the sum for which the property may be reasonably be let out uninfluenced by any extraneous considerations or circumstances, and ALV cannot exceed the standard rent as per the Rent Control Legislation, that if the standard rent has not been fixed by the Rent Controller, then it is the duty 'of the Assessing Officer to 'determine the standard rent as per the provision of the rent control enactment. In terms of the ITAT Mumbai Decision: in Tivoli Investment & Trading Co(P) Ltd. v ACIT(2011) 58 DTR (Mumbai): 84, notional interest on interest free security deposits cannot be taken as a determinative factor to arrive at fair rent. The decision has taken note of the Full Bench decision of Delhi High Court to state that for determination of the fair rent, the Assessing Officer has to take into account various factors including standard rent. If the standard rent is not fixed then the procedure provided under the Rent Control Act for fixation of standard rent has to be considered. The decisions cited by the appellant as also the decision in Tivoli Investment and Trading Co (P) Ltd., are on the issue of determination of ALV when interest free deposit has been taken, which is not the method of determination of ALV adopted by: the Assessing Officer. The Assessing Officer has computed notional rent in accordance with the ITAT, Mumbai decision in Chem Mech (P) Ltd., which has held that Standard Rent under -the Bombay Rent Control Act has to be calculated by taking 8.5 % of the total investment in the property, ;which if higher than the notional rent receivable .and the municipal valuation, is required to*

be adopted. This decision has not been overruled by the decisions cited by the appellant.

In fact, ITAT, Mumbai in the case: of Shri Kishin D Lakhani (deceased) in, order dated 29/10/2010, in ITA Nos. 7503 & 7504/Mum/2007 AYs, 2002-03 & 2003-04, have noted that the Jurisdictional High Court (Bombay) in the case of J.K. Investors 248 ITR 723 have inter alia held that generally fair rent is fixed even under the Rent Act by taking into account various principles of valuation, viz., the contractors method, the rent method. The ITAT in the said case restored the matter back to the Assessing Officer for verification as to whether the Annual rent received by the assessee was more than the Municipal rateable value as well, as standard rent, and if so to follow the decision in J.K. Investors and CIT v Asian Hotels (Del HC).

The appellant has further contended that the words lithe sum for which the property reasonably be expected to let out from year to year should be interpreted to mean the municipal ratable value as determined by the BMC or the actual rent whichever is higher. The Allahabad High Court in Smt. Radha Devi Dalmiya V CIT 125 ITR 134(All) has held that ALV determined by the municipal authorities was not to be taken holding that it is well known that no one would invest such an amount to expect such a low return". The High Court has upheld the determination of ALV on the basis of 7% of the investment as a just and a fair method of determining the ALV for the year.

It is also noted that as was the position in the case of Chem Mech (supra), relied upon by the Assessing Officer) the property was given on rent to an interested' party and the actual rent was lower than the municipal rateable value, which is also the case in the present appeal. The lessee R. B. Chemicals & Agro Industries Pvt. Ltd. is a purchaser (co purchaser), alongwith the appellant, Shri Ranjit H. Bhavnani and Ranjit H. Bhavnani, HUF, and Shri Ranjit: H. Bhavnani is a director in R.B. Chemicals & Agro Industries as is apparent from the copy of agreement for Sale filed. The property has been given on lease and licence to an interested party. The property give~ on leave and license comprising of Duplex No. 3, flat No 15/16 on the 9th and 6th floors and two car parking spaces in the basement at Buckley Court, Colaba, Mumbai, has been given on a license fee of a paltry sum of Rs.5,000/- per month as evidenced by the Leave and Licence Agreement. As per record, the appellant has declared license fees received at: Rs.84,926/- for the year in her computation of income. This works out to 0.11 % of the investment of Rs. 7,50,40,440/- made by the appellant in the property. The appellant in written submissions filed before the Assessing Officer (copy filed in appeal proceedings) has worked out Gross Annual Municipal 'Rateable Value at Rs.2,35,109/., if this value is adopted the return on investment would work .out to 0.31%. The Allahabad High Court in Radha Devi Dalhliya (supra) has held

even a return of 3% return on investment in property as too low stating that no one would invest such an amount to expect such a 'low return. In the present case the return is substantially lower than even 3%, and even going by the municipal ratable value worked out by the appellant, the return on investment works out to an abysmal 0.3 %. As is manifest, no one would invest a sum as large as Rs.7,50,40,440/- to obtain such a poor return on investment. Thus, the Assessing Officer's action, in the present case, in computing ALV at 8.5% of the investment in terms of the Bombay Rent Control Act, is considered just and proper.

The decisions cited by the appellant are on the issue that, notional interest on interest free security: deposits cannot be taken as a determinative factor to arrive at fair rent, and are thus not applicable. The only decision which speaks of adopting the annual rateable value as per Bombay Municipal Corporation Act is the case of Shripal S Morarka, which has not considered the ITAT decision in Chem Mech (supra).

In view of the foregoing, the Assessing Officer's action in computing income from house property by adopting the Standard Rent as per Bombay Rent Control act is confirmed."

5. Against the above order of CIT(A) assessee is in further appeal before us.
6. Ld. AR relied on the decision of Hon'ble Supreme Court in the case of Mrs. Sheila Kaushish, 131 ITR 435, decision of Hon'ble Kolkata High Court in the case of Smt Prabhabati Bansali, 141 ITR 419, decision of Hon'ble Bombay High Court in the case of M.V.Sonavala, 117 ITR 246 and Smt. Smitaben N. Ambani, 323 ITR 104. Reliance was also placed on the decision of Hon'ble Bombay High Court in the case of Shapoorji & Co.(Rajkot) Pvt. Ltd., order dated 3-7-2006 and decision of Hon'ble Kolkata High Court in the case of Podar Bros (P) Ltd. 240 ITR 925. In view of the above judicial pronouncements it was contended by Id. AR that the AO should have taken the actual rent received by the assessee or the municipal ratable value for determining ALV of housing. Strong

reliance was also placed on the decision of Hon'ble Bombay High Court in the case of Tip Top Typography, 368 ITR 30 to contend that general principles were laid down by the Hon'ble High Court for determining the annual letting value which had not been adhered to by the lower authorities.

7. On the other hand, Id. DR placed reliance in the case of Hercules Hoists Ltd., 22 ITR(T) 527.

8. We have considered rival contentions and carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by Id. AR and DR during the course of hearing before us as well as cited by lower authorities in their respective orders. From the record we found that assessee has given her house property to firm wherein the assessee was also a partner. The AO found that investment in the house property was of Rs.7.50 crores. By taking assessee's share in the said property AO worked out ALV at Rs.63,78,777/- i.e. 8.5% of Rs.7.50 crores. The Municipal valuation of the earlier years appears to be low. We found that jurisdictional High Court have considered the issue of ALV in detail in the case of Tip Top Typography (supra) wherein it was held that the AO is to determine fair rent. It was also observed by the Hon'ble High Court that even if the stand and rent as per the provisions of Rent Control Enactment is higher than the fair rent, the AO is to take the fair rent even if it is less than the standard rent. Thus, the annual letting value of the property is to be determined on the basis of fair rent and not the standard rent. In the

instant case it appears that the AO has computed standard rent and did not arrive at the fair rent. However, the AO is required to make full enquiry for ascertaining the fair rent and he should have cogent and satisfactory material in his possession to indicate that parties have concealed the real position.

9. In view of the above judicial pronouncements as discussed above, we set aside the orders of lower authorities and restore the matter back to the file of AO for determining fair rent by considering various standard laid down by Hon'ble High Court in the case of Tip Top Typography(supra). Accordingly, the matter is restored back to the file of AO and appeals are allowed for statistical purposes in case of both the assessee for the assessment year 2003-04, 2004-05, 2007-08 & 2008-09.

10. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 31/03/2016.

**Sd/-
(RAM LAL NEGI)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 31/03/2016

प्र.कु.मि/pkm, नि.स/ 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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY
ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai