

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

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 455/MUM/2015
Assessment Year: 2011-12**

ITO-1(2)(2)
Room No. 527, 5th floor,
Aayakar Bhavan, M.K. Road
Mumbai-400020

Sudhir Omprakash
Vs. Bahl, 41-B, Jolly
Maker Apartment-I,
Parade,
Mumbai-400005

**PAN No. AAMPB8549F
Respondent**

Appellant

Revenue by : Mr. V. Justin, DR
Assessee by : Mr. M. Subramaniam, AR

Date of Hearing : 13/11/2017
Date of pronouncement : 29/12/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground raised by the revenue in this appeal is against the order of the Ld. CIT(A) holding that the fair rent determined by the Assessing Officer (AO) was not in accordance with section 23(1)(a) of the Act.

3. Before us, the Ld. DR submits that the Ld. CIT(A) was not right in applying the judgment of Hon'ble Delhi High Court in the case of *Moni Kumar Subha* 333 ITR 38 (Del), even though the facts brought out on record suggests extraneous reasons for deflated rent which is in conformity with observation of the Hon'ble Supreme Court in the case of *Corporation of Calcutta v. Smt. Padma Debi* AIR 1962 SC 151. The Ld. DR relies on the order of the AO.

4. *Per contra* the Ld. counsel of the assessee relies on the order of the Ld. CIT(A). Also reliance is placed by him on the order of the ITAT 'E' Bench Mumbai in assessee's own case for the AY 2009-10 (ITA No. 1839/Mum/2013) and the judgment of the Hon'ble Bombay High Court in *CIT v. Shri Sudhir Behl* decided on 22.08.2014.

5. We have heard the rival submissions and perused the relevant materials on record. We find that the grounds of appeal raised by the Revenue in the impugned assessment year were same as the grounds raised before the Tribunal for assessment year 2009-10 in ITA No. 1839/Mum/2013. The Tribunal held as under:

"4. We have considered rival contentions and carefully gone through the order of the authorities below and found that similar issue has been decided by the Tribunal in assessee's own case for the assessment year 1999-2000 to 2002-03 and the assessment year 2005-06 vide order dated 18.11.2011. As the facts and circumstances of the case are same, the CIT(A) had taken the monthly rent of Rs.28,000/- as taken by the Tribunal in the AY 2005-06 and thereafter increased it by 20% and thus computed ALV at Rs.33,6000/- per month. Respectfully following the order of the Tribunal, we do not find any infirmity in the order of CIT(A).

5. In the result, appeal of the Revenue is dismissed."

5.1 On similar facts, the Hon'ble Bombay High Court in the case of *Shri Sudhir Behl* (supra) in ITA No. 515, 517, 518, 519, 520, 1080 and 1107 of 2012 has dismissed the appeal filed by the Revenue.

6. Respectfully following the above decisions, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 29/12/2017.

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/12/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai