

आयकर अपीलीय अधिकरण, मुंबई “सी” खंडपीठ मे
Income-tax Appellate Tribunal -“C”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./3071/Mum/2016,**निर्धारण वर्ष /Assessment Year: 2012-13**

ACIT-7(2)(1) R.No.573, 5th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020.	Vs.	Mahalaxmi Engineering Company Pvt. Ltd. L.J. Cross Road, Mahim Mumbai-400 016. PAN:AAACM 3986 C
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by: Shri Rajat Mittal-CIT-DR**

अपीलार्थी की ओर से /**Assessee by: Ms. Rutuja Pawar-AR**

सुनवाई की तारीख / **Date of Hearing: 07/02/2018**

घोषणा की तारीख / **Date of Pronouncement: 2/5/2018**

लेखा सदस्य, राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Challenging the order,dated 26/02/2016,of the CIT (A)13,Mumbai the Assessing Officer(AO)has filed the present appeal.Assessee-company filed its return of income on 14/09/2012,declaring income at Rs.47.10 lakhs.The AO completed the assessment u/s.143 (3) of the Act,on 18/02/ 2015,determining its income at Rs.4.64crores.

2.First ground of appeal is about deleting the addition made by the AO under the head rent received from leave and licence fees and maintenance charges. During assessment proceedings, the AO observed that the assessee had let out a building, that it had charged licence fees of Rs. 43.27 lakhs and maintenance charges of Rs. 1.10 crore from seven of its tenants,that four of the tenants were closely held group companies,that the group companies entered had sublet its properties at much higher rents to certain third parties, that the rental income received by the sister concerns was Rs. 7.18 crore. He directed the assessee to explain as to why rent received/receivable by the group companies should not be considered its income from house property and charged to tax accordingly for the year under consideration. After considering the submission of the assessee, the AO took notice of the income returned by the group concerns and held that low incomes were declared against the backdrop of higher rental incomes by the group companies, that substantial expenditure had been debited under various heads by those entities, that using a colourable device the assessee had avoided payment of higher taxes, that none of the four companies had declared the lease income under the head income from house property,that they had shown the income under the head business income. He referred to the case of TIP Top Typography (368 ITR 330) of the

Hon'ble Bombay High Court and assessed the annual value of the property rights including rent received by all the four tenants apart from the three protected tenants.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and made elaborate submissions it also relied upon certain case laws. After considering the available material, the FAA held that the only reason for making the addition was that as per the AO the tenant-companies had returned considerable smaller income in their hands, that the assessee and the four tenant-companies were completely separate and distinct legal entities, that they all were filing returns of income for last several assessment years, that certain shareholders of the assessee company also owned certain shares in the four tenant-companies, that there was no parity whatsoever in the shareholding pattern, that the income from house property both in the hands of the assessee as well as the tenant-companies had been split into rental income and maintenance charges, that expenditure against rental income could only be allowed after standard deduction as per the provisions of section 24 of the Act, that maintenance expenses had to be debited against the maintenance income of the assessee as well as the tenant-companies, that the AO had clubbed the maintenance charges and the rental income /sublease income is rental income in the hands of the assessee without granting any maintenance expenses, that the AO had lost sight of the fact that tenant-companies were not the owner of the subleased properties, that they had shown the rental income under the head business income. He further observed that the assessee had filed an extensive compilation, including charts showing particulars of assessment proceedings in the case of the assessee as well as the tenant-companies along with the acknowledgements of the returns of income, that computations of income, the balance sheets and the profit and loss account for the year under consideration for the assessee and the four of the entities. He held that there had been transparency and no selective furnishing of information by the appellant for the four tenant-companies, that AO was not justified in holding that there had been selective return of income by the group companies. Referring to the case of TIP Top Typography (supra), he held that the reliance placed by the AO on the judgment was misplaced, that the ratio of the decision was that annual letting value of the property could not exceed the standard rent. Finally he held that there was no evidence/material brought on record by the AO which could lead the justification for clubbing of all subleased incomes in the hands of the assessee. Accordingly, he deleted the addition made by the AO.

4. Before us, the Departmental Representative (DR) supported the order of the AO. The Authorised Representative (AR) relied upon the order of the FAA and contended that group companies were paying taxes regularly and no question about their existence was ever raised.

5. We have heard the rival submissions and perused the material before us. We find that the assessee had rented out its property to seven tenants including four of its group concerns, that the AO was of the opinion that by using a colourable device the assessee group had returned lesser income, that the AO clubbed the incomes received by the tenant-companies with the income of the assessee and made an addition to the income of the assessee, that he relied upon the case of TIP Top Typography (supra) of the honorable division High Court, that the FAA took notice of the returns of income filed by the group concerns, that he held that the case relied upon by the AO actually supported the contention raised by the assessee. It is a fact assessee was showing house property income received from seven tenants, including four tenant companies, for last for many years and the assessments were made under section 143 (3) of the Act for some years, that the AO has accepted the income returned by the assessee in the earlier years, that the AO had not made any addition on account of the rental income received by the group companies. We are aware that principles of res judicata do not apply to the income tax proceedings. But, the AO.s are required to explain as to why they were compelled to deviate from the path followed by their predecessor, if they want to take a new course of action for assessing the same income. Without bringing the distinguishing features that justifies taxing a particular item/head of the income or changing the heads of income in the subsequent years, as compared with the earlier year, the AO.s cannot question the income shown by the assessee. Consistency is also one of the recognised rule of tax proceedings like the principle of res judicata. Secondly, the AO while assessing the income of the group concerns in the hands of the assessee had not given discount for maintenance charges. The FAA has rightly pointed out the maintenance charges have to be considered as per the established principles of accountancy. The AO.s of the group entities have not doubted about their existence or genuineness of the income shown by them in their returns of income. Considering these facts cumulatively, we hold that the order of the FAA does not suffer from any legal or factual infirmity.

Now we would like to refer to the case of TIP Top Typography (supra). In that matter the Hon'ble High Court has held as under:

“Income from house property has to be “computed” by computing the annual value of the property. The annual value firstly to be the sum for which the property might reasonably be expected to be let from year to year. In the event, the property which consists of any buildings or lands appurtenant thereto, if the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), it is that amount so received or receivable which shall be deemed to be the annual value for the purposes of computing the tax under the head “Income from house property”. The principles applicable in determining the annual letting value are : (i) the annual letting value would be the sum at which the property may be reasonably let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances ; (ii) an inflated or deflated rent based on extraneous considerations may take it out of the bounds of reasonableness ; (iii) the actual rent received, in normal circumstances, would be a reliable evidence unless the rent is inflated or deflated by reason of extraneous considerations ; (iv) such annual letting value, however, cannot exceed the standard rent as per the rent control legislation applicable to the property ; (v) 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 provisions of rent control enactment ; (vi) the standard rent is the upper limit, and if the fair rent is less than the standard rent, then it is the fair rent which shall be taken as the annual letting value and not the standard rent. It is a well-recognised principle in rating that both gross value and net annual value are estimated by reference to the rent at which the property might reasonably be expected to be let from year to year. Various methods of valuation are applied in order to arrive at such hypothetical rent, for instance, by reference to the actual rent paid for the property or for other comparable to it or where there are no rents by reference to the assessments of comparable properties or to the profits carried from the property or to the cost of construction. Considering the difficulties faced in either retrieving immovable properties in metro cities and towns, and the time spent in litigation, it is expedient to execute leave and licence agreements. These are usually for fixed periods and renewable. In such cases as well, the conceded position is that the annual letting value will have to be determined on the same basis as noted above. In the event a security deposit collected and refundable interest-free and the monthly compensation shows a total mismatch or does not reflect the prevailing rate or the attempt is to deflate or inflate the rent by such methods, the Assessing Officer is not prevented from carrying out necessary investigation and enquiry. He must have cogent and satisfactory material in his possession which will indicate that the parties have concealed the real position. He must not make a guess work or act on conjectures and surmises. There must be definite and positive material to indicate that the parties have suppressed the prevailing rate. Then the enquiries that the Assessing Officer can make, would be for ascertaining the going rate. He can make a comparative study and an analysis. In that regard, transactions of identical or similar nature can be ascertained by obtaining the requisite details. However, there also the Assessing Officer must safeguard against adopting the rates stated therein straightaway. He must find out whether the property which has been let out or given on leave and licence basis is of a similar nature, namely, commercial or residential. He should also satisfy himself whether the rate obtained by him from the deals and transactions and documents in relation thereto can be applied or whether a departure therefrom can be made. Before the Assessing Officer determines the rate by the above exercise or similar permissible process he is bound to disclose the material in his possession to the parties. He must not proceed to rely upon the material in his possession and disbelieve the parties. The satisfaction of the Assessing Officer that the bargain reveals an inflated or deflated rate based on fraud, emergency, relationship and other considerations makes it unreasonable must precede the undertaking of the above exercise.”

Even a cursory glance at the judgment proves that the stand taken by the AO by referring to the judgment was not correct and the FAA had rightly analysed the principles enumerated by

the Hon'ble Court. So, confirming his order we decide the effective ground of appeal against the AO.

As a result, Appeal filed by the AO stands dismissed.
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 2nd May, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 2 मई, 2018 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक/Dated : 02.05.2018.

Jv. Sr. PS.

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

1. Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "C" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया. मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.