

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 5164/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

Rohan G. Bulchandani A/21, Darshan Apartments, Mount Pleasant Road, Mumbai-400006.	बनाम/ Vs.	DCIT-1(3)(1) Mumbai Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AADPB0862E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. VarshaNanwani, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri M. C. Omi Ningshen, DR

सुनवाईकीतारीख/ Date of Hearing	:	09/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	26/04/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assesseeis against the order of Commissioner of Income Tax (Appeals)-3, Mumbai, dated 19.05.16 for AY 2012-13 on the grounds mentioned herein below:-

1. *The Learned CIT (Appeals) has erred in law, facts and in circumstances of the case by not accepting the Municipal Valuation as the Annual lettable value of the "Tytan Property" ignoring the fact that the said property is subjected to rent control as provided under the Maharashtra Rent Control Act, 1999.*

2. *The learned CIT (Appeals) has erred in law, facts and circumstances by not accepting the Municipal Valuation as the annual Lettable value ignoring the decision of learned CIT(appeals) in appellant's own case for A.Y. 2006-07 & 2007-08.*

3. *The learned CIT (Appeals) has erred in law, facts and circumstances of the case by not the accepting the Municipal Valuation as the annual Lettable value ignoring the judicial pronouncement of the H'ble Bombay High court in CIT (12) v/s Tip Top Typography [2014] 48 Taxmann.com 191 Born,*

4. *The learned CIT (Appeals) has erred in law, facts and circumstances of the case by confirming the without prejudice submission & computation which was not accepted by the appellant and further erred in the said computation by taking 50% of the Interest on Housing loan at Rs. 13,30,656/- instead of Rs. 26,61,3121-,*

5. Your Appellant craves leave to add to, alter, amend, delete and/or modify the above grounds of appeal on or before the final date of hearing.

6. Prayer:

The Appellant prays your honour for allowing the appeal.

2. Ld. AR appearing on behalf of the assessee drawn our attention to letter dated 24th Jan, 2018 which relates to condonation of delay in filing appeal before Hon'ble ITAT. Ld. AR submitted that the present appeal could not be filed within time because the assessee was outside India and therefore there was delay in receiving the order and filing an appeal and as soon as the order was received, the assessee filed an appeal before the Hon'ble Tribunal and due to which, there was a delay of 18 days in filing the present appeal.

3. On the other hand, Ld. DR requested for dismissal of the said application.

4. We have heard the counsels for both the parties on this application for seeking condonation of delay and while taking into consideration the contents of application filed by the

assessee and following the principles laid down by Hon'ble Supreme Court in case of "**Land Acquisition Collector Vrs. MstKitzi, AIR 1987 S.C. 1353/(1987) 167 ITR 471 (SC)**", we condone the delay of 18 days in filing the appeal. Resultantly, this application is **allowed** and appeal is admitted to be *heard on merits*.

5. As per the facts of the present case, the assessee is a director in M/s Avdel (India) Pvt. Ltd. The return of income for the year under consideration was filed on 07.06.13 declaring total income at Rs. 58,41,240/-. Subsequently, the case was selected for scrutiny and after serving statutory notice and seeking reply, order of assessment u/s 143(3) was passed by AO thereby making addition by calculating the income from house property at Rs. 56,60,494/- and thus in this way, the total income worked out at Rs. 1,15,01,730/-.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of

both the parties partly allowed the appeal of the assessee by restricting the addition at Rs. 15,19,917/-.

Now before us, the assessee has preferred the appeal by raising the above grounds.

Ground No. 1 to 4

6. All the grounds raised by the assessee are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in not accepting the Municipal Valuation for the purpose of computation as the annual lettable value of the 'Tytan Property' ignoring the fact that the said property is subjected to rent control as provided under the Maharashtra Rent Control Act, 1999, therefore we thought it fit to deal with all the issues by passing the present consolidated order.

7. At the very outset, Ld. AR appearing on behalf of the assessee reiterated before us the same arguments which were raised before Ld. CIT(A) and submitted that that assessee had filed a return of income on 07.06.13 declaring total income at Rs. 58,41,240/- and in the said return of income, assessee has

claimed loss amounting to Rs. 22,42,568 on deemed to be let out property under the head 'Income from house property' located at Nepeansea Road, Malabar Hill, Mumbai. It was further submitted by Ld. AR that the assessee has adopted Municipal Valuation as the property is covered under Maharashtra Rent Control Act 1999. Ld. AR further submitted that in assessee's own case for AY 2006-07 and 2007-08, the AO adopted Rs. 500 per Sq. ft. per month as rent. However, on appeal, Ld. CIT(A) in its detailed order held that the Municipal Valuation is to be accepted and against that order, no appeal has been filed by the department.

8. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

9. We have heard the counsels for both the parties and we have also gone through the orders passed by the revenue authorities as well as material placed on record. We find that as per the facts of the present case, the assessee had claimed a loss of Rs. 22,42,568/- from house property by showing annual lettable value of Rs. 1,62,283/-. Whereas on the contrary, the AO

adopted a fair market value of this property as per the prevalent rates in the market is much higher than the value that was declared by the assessee. In this respect, the assessee had relied upon the order of Ld. CIT(A) for AY 2006-07 and 2007-08 in assessee own case and also the judgment of Hon'ble Mumbai High Court in the case of **CIT Vrs. Tip Top Typography (2014) 48 taxmann.com 191 (Bom)**, in order to support his contentions.

We have gone through the judgment of Hon'ble Mumbai High Court in the case of **CIT Vrs. Tip Top Typography (2014) 48 taxmann.com 191 (Bom)**, wherein it was held that *'where a premises is covered by Rent Control Act, AO must undertake exercise to fix rent himself in terms of said Act or have it determined by Court or Tribunal and until then he is not justified in applying any other formula or method and determine 'fair rent' by abiding with same.*

Apart from above, Ld. CIT(A) in assessee's own case for AY 2006-07 and 2007-08 had adopted the same criteria. Therefore, keeping in view the above facts, circumstances of the present case as well as considering the judgment of Hon'ble

Jurisdictional High Court in the case of **CIT Vrs. Tip Top Typography'** and orders of previous year in assessee's own case, we **allow** these grounds with these observations and AO is directed to do the needful, while giving effect to this order.

Ground No. 5 & 6

10. These grounds are general in nature, thus requires no specific adjudication.

11. In the net result, the appeal filed by the assessee stands **allowed.**

Order pronounced in the open court on 26th April, 2018.

Sd/-

Sd/-

(R.C. Sharma)

(Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.04.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai