

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No.4775/Mum/2015
(निर्धारण वर्ष / Assessment Years:2010-11)

Mr. Balaji Singh Teeka, Floor, Sai Commercial Annexe BKS Devshi Marg, Govandi (E) Mumbai- 400088	बनाम/ Vs.	Income Tax Officer (International Taxation)-2(1), Gr. Floor, Scindia House, Ballard Pier, N.M. Road, Mumbai-400038
स्थायी लेखा सं./जीआइआर सं./PAN No.		AHNPB3075G
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Nikhil Pathur, A.R
प्रत्यर्थी की ओर से / Respondent by	:	Shri Suman Kumar, D.R

सुनवाई की तारीख / Date of Hearing	:	27.02.2018
घोषणा की तारीख / Date of Pronouncement	:	25.05.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-55, Mumbai, dated 30.03.2015, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), 28.03.2013 for A.Y 2010-11. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

“The following grounds are taken without prejudice to each other-

On facts and in law,

- 1] *The ld. CIT(A) erred in estimating the rent of the following properties at Rs.48/- per sq. ft as against following amounts offered by the assessee.*

S/n.	Property Address	Sq. ft	Rate Offered by assessee
1.	Unit no. 14,15,16 in Sai Commercial Building, Govandi Station Road, Govandi (E), 400088	1,817	21.76/-
2.	Unit no. 307 to 311 in Sai Commercial Building, Govandi Station Road, Govandi (E)-400088	1,770	21.76/-
3.	Unit no. 507 to 524 in Sai Commercial Building, Govandi Station Road, Govandi (E)-400088	7,904	21.76/-
4.	1 st Floor, 2 nd Floor and 6 th Floor in Sai Commercial Annex, Govandi Station Road, Govandi (E), 400088	12,517	25.78/-
5.	2 nd Floor in Sai Commercial Annex, Govandi Station Road, Govandi (E)-400088	100	30/-
6.	6 th Floor in Sai Commercial Annex, Govandi Station Road, Govandi (E)- 400088	1300	30/-

- 2] *The learned CIT(A) failed to appreciate that the assessee had offered rent in respect of the above properties which was much higher rent than the municipal reteable value and accordingly, no addition was warranted over and above the rental income offered by the assessee in his return.*
- 3] *The learned CIT(A) erred in not appreciating that the assessee had not actually received rent of Rs. 48/- per sq. ft. and therefore, the addition made is not justified at all.*
- 4] *Without prejudice to the above grounds, the assessee submits that the estimation of the rent at Rs. 48/- per sq. ft. in respect of the above properties is very high and the same may kindly be reduced substantially.*
- 5] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2. Briefly stated, the facts of the case are that the assessee who is a non-resident individual had filed his return of income for A.Y 2010-11 on 30.07.2010, declaring total income of Rs.1,76,34,853/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act on 11.10.2010. Thereafter, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. The issue involved in the present appeal lies in a narrow compass. The assessee being a non-resident had acquired certain immovable and movable properties out of funds transferred from abroad. During the course of the assessment proceedings, it was observed by the A.O that the assessee as in the preceding years had worked out his income from house property on the basis of Fair Rent as determined by him. It was observed by the A.O that his predecessor while framing the assessment in the case of the assessee for A.Y 2006-07 had computed the annual value of the properties which were possessed in that year, and the same value was also adopted for the other properties which were possessed in the succeeding years, viz. A.Y 2007-08, AY. 2008-09 and A.Y 2009-10. The A.O held a conviction that the observation of his predecessor as regards the determining the annual value of the properties, viz. Rs.75 per sq ft for commercial property and Rs.25 per sq ft for residential property, would also hold good for the year under consideration, viz. A.Y 2010-11. The A.O further observed that the Hon'ble High Court of Bombay in the case of CIT Vs. J.K. Investors (2001) (248 ITR 723)(Bom) had held that the A.O was vested with the power of determining the annual value of the property owned by an assessee. The A.O in the backdrop of his aforesaid observations determined the annual value of the properties owned by the assessee, as under:

Property Particulars	Sq. ft as per assessee's submission	Rate per sq. ft.	No. of months	Gross Annual value
1 st , 2 nd & 6 th Floor in SAI Comm. Annex. BKS Devshi Marg, Govandi, Mumbai 400088	12517	75	12	11,265,300
Portion in 6 th floor of "Sai Commercial Bldg." Annex, BKS Devshi Marg, Govandi Station Rd., Govandi Mumbai 400 088.	100	75	12	90,000
Portion in 2 nd & 6 th floor of "Sai Commercial Bldg." Annex, BKS Devshi Marg, Govandi Station Rd., Govandi, Mumbai 400 088.	1300	75	12	1,170,000
Rent Received from M/s Executiveship Management Pte Ltd., at Unit 604, 6 th floor, Jasmine Tower, 31 Shakespeare Sarani, Kolkata 700017	903	75	12	812,700
Rent received from premises at 502 A, Rectangle-1, D-4, District Centre, Saket, Delhi 110017	2228	75	12	2,005,200

Unit Nos. 507-524 in 5 th floor & Unit 14-16 in ground floor & Unit 307-314 in 3 rd floor of "Sai Commercial Bldg." BKS Devshi Marg, Govandi Station Rd., Govandi Mumbai 400088.	11491	75	12	10,341,900
Flat Nos. 2001 A&B, 2002-A&B, 2003 A&B, 2004 A&B in "Runwal Centre", BKS Devshi Marg, Govandi Station Rd, Govandi, Mumbai 400088	2730	25	12	819,000
Rent received from M/s Samundra Institute of Maritime Studies Trust for occupation by its faculty of premises at Nandi Hills, Tungarli, Lonavala	12 units	4500	12	648,000
Hostel Accommodation	As per assessee's computation			2,520,000
Academic block	As per assessee's computation			2,907,960
Admin block	As per assessee's computation			1,959,480
Auditorium	As per assessee's computation			900,000
Catering area	As per assessee's computation			1,086,030
Rectangle workshop	As per assessee's computation			1,603,860
Maritime Science Centre	As per assessee's computation			2,341,680
General facilities	As per assessee's computation			1,200,000
Residential flat at 601, 6 th floor, Kritika Solitaire, Sion-Trombay Road, Chembur-400072	As per assessee's computation			600,000
Total				4,22,71,110

Thus, on the basis of his aforesaid deliberations the income of the assessee was assessed by the A.O at Rs.2,93,31,120/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) during the course of the appellate proceedings observed that the A.O had adopted the annual value of the properties, on the basis of the values as were determined by his predecessor while framing the assessment in the case of the assessee for A.Y 2006-07. The CIT(A) noticed that the determination of the annual value of the properties owned by the assessee was also assailed by the assessee before his predecessor in AY's 2006-07 to 2009-10. It was noticed by the CIT(A) that in all of the aforementioned years, the appeals were partly allowed. The CIT(A) being of the view that as the facts involved in the case of the assessee for the year under consideration remained the same, thus finding no reason to deviate from the decision taken by his predecessor, directed the A.O to recompute the house property income of the assessee for the year under consideration, viz. A.Y 2010-11 also in terms of the adjudication by the CIT(A) in the assessee's own case for

A.Y's 2006-07 to 2009-10. The CIT(A) further directed the A.O to make necessary inquiries and investigations as were suggested by the CIT(A) while disposing off the aforementioned appeals of the assessee, for determining the house property income in terms of such directions and also as per the various provisions of Income Tax Act. On the basis of his aforesaid deliberations the CIT(A) partly allowed the appeal of the assessee.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') at the very outset of the hearing of the appeal submitted that the issue as regards determining the annual value of the properties under consideration was squarely covered by the consolidate order of the Tribunal in the assessee's own case for A.Y 2003-04 to 2009-10, viz. Mr. Balaji Singh Teeka Vs. ITO, Mumbai (ITA No. 5477 to 5483/Mum/2013; dated 31.07.2015). It was submitted by the ld. A.R that the Tribunal after deliberating at length on the issue under consideration, was persuaded to subscribe to the claim of the assessee that the actual rent charged by him and offered for tax in the return of income was substantially higher than the Municipal Rateable Value (MRV) of the properties under consideration. It was submitted by the ld. A.R that the Tribunal while disposing off the aforesaid appeals had taken support of an order of a coordinate bench of the Tribunal, viz. Karia Can Company Ltd. ITA No. 2733/Mum/2008, dated 30.01.2015, wherein it was observed that unless the A.O brings on record any cogent material to suggest deflation of rental income by the assessee, the MRV can be taken as a guide for the purpose of computing ALV for determining the income under the head "Income from house property". It was observed by the Tribunal that the revenue had failed to place on record any cogent evidence and material which would suggest that the rental income offered by the assessee was deflated on account of any extraneous consideration. The ld. A.R further averred that the Tribunal after deliberating on the facts involved in the aforesaid appeals, had observed that there was no material brought on record by the revenue to establish any deflation of rent, and even the MRV was less than the rental income of Rs.20

per sq ft per month which was offered by the assessee. The ld. A.R submitted that the Tribunal finding no reason for enhancing the rental income declared by the assessee, as well as taking cognizance of the comparable cases, had held the income declared by the assessee to be reasonable. The ld. A.R submitted that in the backdrop of the aforesaid facts, the Tribunal while disposing off the aforesaid appeals of the assessee, had concluded that in the absence of any material which would suggest that the rental income declared by the assessee in his return of income was not as per the market rate, which would justify any further addition, had allowed the appeal of the assessee. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We may herein observe, that the only issue involved in the appeal before us pertains to the sustainability of the annual lettable value of the property adopted by the A.O while framing the assessment. We find that as observed by us hereinabove, the facts involved in the present case before us, remains the same as were there in the case of the assessee for AY 2003-04 to AY. 2009-10. So much so, a perusal of the order passed by the A.O under Sec. 143(3) reveals that he had dislodged the annual lettable value shown by the assessee, by adopting the annual value as was determined by his predecessor while framing the assessment in the case of the assessee for A.Y 2006-07, which thereafter was followed in A.Y's 2007-08 to 2009-10. We have perused the consolidate order passed by the Tribunal in the case of the assessee for AY's 2003-04 to 2009-10, viz. Mr. Balaji Singh Teeka Vs. ITO, Mumbai, ITA No. 5477 to 5483/Mum/2013; dated 31.07.2015. We find that the Tribunal while disposing off the aforementioned appeals of the assessee by way of a consolidate order, had accepted the annual lettable value shown by the assessee in his return of income and had set aside the enhancement of the same so done by the A.O, by observing as under:

"6. We have carefully considered the rival submission. In the present case the primary submission of the assessee is that the rental income offered by him in the return of income is quite justified. One of

the points raised by the assessee was that the Municipal Ratable Value (MRV) of the properties are much lower than the actual rent charged by the assessee or the rental income declared in the return of income. In this context, the appellant has furnished copies of MRV in the Paper Book at, pages 75 to 85. A perusal of the said MRV certificates shows that they correspond to the period ranging from the assessment year 2006-07 to assessment 2009-10. It is also emerging from the said document that the ratable value for the different, units is ranging from Rs.4 to Rs.6 per sq. ft. per month. It is undeniable that the assessee has rental income which is quite higher than the MRV. It is on this basis the assessee has canvassed that the rental income offered by him is justified. It is a settled proposition that the actual rent received by the assessee constitutes a reliable evidence to ascertain the property's capacity to earn rent in the open market. The declaration of rent declared by the assessee is normally to be accepted by the A.O unless contrary evidence is brought on record to suggest any deflation of rental income for extraneous consideration. In the present case, the factual position clearly establishes that the rental declared by the assessee for the various year under consideration as substantially higher than MRV. At the same time it, is also quite evident that the comparable instance relied upon by the assessee before CIT(A) also suggests that the rental income declared by the assessee is in close proximity.

6.1 In somewhat similar situation, the Mumbai Bench of the Tribunal in the case of Karia Can Company Ltd., in ITA No. 2733/Mum/2008, etc., order dated 30/01/2015 observed that unless the A.O brings out a cogent evidence to suggest the deflation of rental income by the assessee the MRV can be taken as a guide for the purposes of computing ALV for determining the income under the income from house property. In the present case we do not find any cogent evidence and material which has been brought out by the Revenue which would suggest that the rental incomes as offered by the assessee are deflated on account of any extraneous consideration. In fact in the present ease, the assessee has pointed that except for A.Y 2003-04 it has offered the rental income at Rs.20 per sq. ft. per month for the years wherein it had charged actual rent of Rs. 1 per sq. ft. per month for AN 2006-07 onwards in respect of Sai Commercial Building and from assessment year 2008-09 onwards, in respect of the Sai Commercial Annexe assessee has started charging rent which is more than Rs.20 per sq. ft. per month. Factually speaking, there is no material brought on record by the Revenue to establish any deflation of rent and even MRV is much lesser than Rs.20 per sq. ft. per month. In this view of the matter, we find no reasons for enhancing the rental income declared by the assessee and even based on the comparable case cited by the assessee, the income declared by the assessee appears to be reasonable.

6.2 In view of the aforesaid discussion, in our view the CIT(A) erred in estimating the rental income @ Rs.40 per sq. ft. per month as against the rental income declared, which was reasonable by considering the corresponding MRV as well as the comparable evidence brought out by the assessee. Notably in so far as the rental declared by the assessee is concerned, there is no material to say that such rental income declared in the return of income was not the market rate so as to justify any further addition. Thus, in so far as AY 2006-07 is concerned the appeal is allowed as above.”

We are of the considered view that as the facts involved in the case before us remain the same, therefore, finding no reason to take a different view, respectfully follow the aforesaid order of the Tribunal. The order passed by the CIT(A) is set aside, in terms of our aforesaid observations.

7. The appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.05.2018

Sd/-

Sd/-

(G.S. Pannu)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 25.05.2018
Ps. Rohit

(Ravish Sood)
JUDICIAL MEMBER

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.

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आयकर अपीलीय अधिकरण, मुंबई / ITAT,
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