



ITA.No.3513/Mum/2017
Hrithik Roshan
Assessment Year-2012-13

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
श्री रविश सूद, न्यायिक सदस्य
के समक्ष।

BEFORE SHRI MANOJ KUMAR AGGARWAL, AM
AND
SHRI RAVISH SOOD, JM

आयकरअपीलसं./I.T.A. No.3513/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

Hrithik Roshan B/27, Commerce Centre Off New Link Road Andheri (West) Mumbai-400 053	बनाम/ Vs.	Joint Commissioner of Income Tax, Range-16(1) Aaykar Bhavan, M.K. Road New Marine Lines Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABPN-2790-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	K.Gopal & Neha Paranjpe, Ld. ARs
Revenue by	:	Manoj Kumar Singh, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	11/09/2018
घोषणा की तारीख / Date of Pronouncement	:	19/09/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4 [CIT(A)], Mumbai, *Appeal No.CIT(A)-4/IT-61/JCIT-16(1)/2014-15 dated 02/02/2017* by raising the following grounds of appeal:-



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1. The Hon'ble CIT (A) – 4, Mumbai. seriously erred in law and on the facts and in the circumstances of the case, in confirming the action of the Hon'ble JCIT, Rg.16(1), Mumbai in subjecting to tax Alleged '**DEEMED ANNUAL LETTING VALUE ON A ESTIMATED BASIS**', in respect of:

- a) "4th Floor Property at Lotus Business Park' Annual Value estimated at 7% of investment in property of Rs. 13,84,42,050/- which works out to Rs.96,90,944/- and after allowance of 30% u/s 24(b) net Alleged Addition is made at Rs 62,52,497/-.
- b) 5th Floor Property at Lotus Business Park' Annual Value estimated at 7% of investment in property of Rs 9,58,32,680/- which works out to its 67,08,288/- and after allowance of 30% u/s 24(b) net Alleged Addition is made at Rs 41,64,637/-

(both aggregating to Rs.1,04,71,134/-)

without any cogent and acceptable basis and notwithstanding the exhaustive legal submissions and factual evidences filed, claiming "NIL" ANNUAL VALUE BEING TO LET OUT PROPERTY AND VACANT FOR WHOLE YEAR". The entire Alleged Addition be deleted and ' Nil," ANNUAL VALUE BE ADOPTED.

WITHOUT PREJUDICE TO THE ABOVE MAIN CONTENTION:

(a) The Hon'ble CIT(A)-4,Mumbai,seriously erred in holding that, the said Property is not at all covered under Maharashtra Rent Control Act, 1999 "and therefore, has not applied the Principles of" Standard Rent "/ "Municipal Rateable Value", which are applicable. The Alleged Income —Deemed A.L.V., be adopted applying the Principles of "Standard Rent' / "Municipal Rateable Value" and substituted AT NIL, BEING A NEGATIVE FIGURE in place of Alleged Income' Assessed.

b) The Hon'ble CIT(A)-4, Mumbai, seriously erred in not appreciating the Provisions of S. 23(1)(c) to the extent that, the Property WAS SINCE INCEPTION HELD AS "TO LET" and was actually let in earlier period and vacant for whole of relevant year and Assessee holding property for purpose of letting out then. Annual value of property ought to be taken at 'Nil'.

The assessment for impugned AY was framed by Ld.Joint Commissioner of Income Tax Range -16(1), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 19/03/2015 wherein the income of the assessee has been determined at Rs.38.76 crores after certain disallowances / adjustments as against returned income of Rs.36.38 crores filed by the assessee on 27/09/2012. The assessee being *resident individual* is a *film artist* by profession. As evident from the grounds of appeal, the sole issue involved under the appeal is the quantum of notional rental value against



certain properties owned by the assessee at 4th & 5th Floor of a building known as *Lotus Business Park*.

2. During Assessment Proceedings, it was noted that the assessee owned two immovable properties at 4th & 5th Floor of *Lotus Business Park*. In immediately preceding year, the properties were shown as lettable and vacant for the whole year whereas the same, during impugned AY, is stated to be used by the assessee for his own professional use in the shape of *Dance, Dialogue, Fight, Stunt, Music, Story Sitting, narration rehearsals and meeting place*. However, the assessee was unable to produce sufficient evidences to support the same and in the alternative, pleaded for determination of *Annual Letting Value [ALV]* of the same as 'Nil' in view the fact that the property remained vacant throughout the year. However, Ld. AO, relying on certain judicial pronouncements, opined that in terms of provisions of Section 23(1)(a), notional rental value was to be calculated as a value for which the property might reasonably be expected to be let out during the year and municipal rateable value was not binding on AO. Finally, the Ld. AO estimated the *ALV* by applying a rate of 7% to the investments made by the assessee in those properties which resulted into determination of *ALV* of the 4th & 5th Floor as Rs.96.90 Lacs & Rs.67.08 Lacs. Against the same, the assessee was allowed deduction of municipal taxes being paid by him against those properties and also statutory deduction of 30% in terms of Section 24(a). Finally, the net addition so made worked out to Rs.104.17 Lacs in the hands of the assessee.



3. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 02/02/2017 wherein the assessee reiterated the aforesaid contentions. However, not convinced, Ld. CIT(A) confirmed the stand of Ld. AO by observing as under:-

*3.2 I have circumspected the entire spectrum of fact & circumstances of the case have carefully considered the findings of the Assessing Officer as well as rival submission of the Appellant carefully. I have also gone through the various case laws referred to by the Ld. A.R. I find that this property of **Lotus Business Park** is not at all covered under Maharashtra Rent Control Act, 1999 because the Company of the appellant namely Film Kraft Productions (I) Pvt. Ltd. itself, has shown actual rent of property on 15th floor of the same Building at Rs. 1,23,75,000/- When the property situated at 15th floor of **Lotus Business Park** is rented on higher side, then, it cannot be pleaded that ALV of property situated at 4th floor and 5th floor should be adopted as per the Municipal Rateable Value. The various arguments advanced by the Ld. A.R. are not applicable. When property was in working condition, it was to be let out. If it was not let out, then Annual Letting Value was to be estimated. When property under reference is not covered under Rent Control Act, fair rent of property has to be taken as annual value which is to be determined on the basis of facts or material on record, vide: Woodland Associates (P) Ltd. vs. ITO-5(3)(4) (2013) 29 taxman.com 216 (Mum.) (Trib.). In the case of CIT-Delhi Central-3 vs. Monikumar Subba (2011) 10 taxmann.com 195 ITAT(Delhi)(Full Bench), it is held that if rateable value under municipal law does not represent correct fair rent then Assessing Officer can determine Annual Letting Value on the basis of material or evidences on record. The commercial property is capable of renting out. The 15th floor has been rented out @Rs.1,23,75,000/- hence, such estimation of ALV @Rs.1,04,17,134/- is not at all on higher side or unreasonable. Such finding of Assessing Officer get support from decision of Hon'ble ITAT in case of EMTICI Engineering Ltd. Vs. ACIT (1991) 58 TTJ 27(Ahmedabad), ITO vs. Chem Mech Pvt.Ltd(2002) 83 ITD 427 (Mum). (ITAT) and Shri Bipinibhai Vadilal Family Trust No.1 vs. CIT (1994) 208 ITR 1005(Guj). As regards argument that these properties at 4th floor and 5th floor were being used for Dance, Dialogue, Fight, Stunt Music, Story sitting, rehearsals and meeting purposes, it is pertinent to mention that no evidence has been produced of such claim either before Assessing Officer or in appellate proceedings. Therefore, such claim lost its credence. The annual estimated value of investment is not excessive because the company related to the appellant namely Film Kraft Productions India Pvt. Ltd. has shown rental income of 15th floor of same building at Rs.1,23,75,000/- hence while determining the annual Letting Value of such property, this fact known to the appellant cannot be ignored. The contention of Ld. Authorized Representative that Ld. Predecessor CIT(A) in order dated 24/12/2014 in A.Y. 2011-12 has given direction to the Assessing Officer to determine Annual Letting Value as per standard rent is of no avail because there is evidence that 15th floor of same commercial Building that is "Lotus Business Park" has been rented out for Rs.1,23,75,000/-. Further Ld. Predecessor CIT(A) has rejected the various claim of the appellant vide para 5.2.3 to 5.2.9. Thus, the*



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estimation of Annual Letting Value of commercial property at Rs.1,04,17,134/- is sustained.

It is discernible from the above observations that the claim of the assessee has been rejected primarily in view of the fact that the property was not covered under *Rent Control Act* and secondly, the related concern of the assessee namely *Filmkraft Productions (I) Private Limited* reflected actual rent of 123.75 Lacs against letting out of 15th Floor of the same building. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representatives for Assessee [ARs] *Shri K.Gopal & Ms. Neha Paranjpe* agitated the additions as confirmed by Ld. first appellate authority. Our attention has been drawn to the municipal rateable values of the properties as determined by *Brihan Mumbai Mahanagarpalika* and also to the order of this Tribunal in assessee's own case for immediately preceding AY 2011-12. Per *Contra*, Ld. DR, *Shri Manoj Kumar Singh* supported the stand of lower authorities and submitted that the fair rental value of the properties was to be assessed in the hands of the assessee as per market price and the stand of lower authorities was justified.

5. We have carefully heard the rival contentions and perused relevant material on record. So far as the fact that the building was being used for the professional work of the assessee has remained unsubstantiated and in the absence of any evidence to support the aforesaid fact, the said plea could not be accepted and therefore, the same has rightly been rejected by the lower authorities.

6. Now the only question that survives for our consideration is the quantum of notional rental value against the said properties since it is



also an undisputed fact that the assessee has not earned any rental income against the same. The Ld. AO has estimated the same @7% of the value of investments made by the assessee in those properties and Ld. CIT(A) has confirmed the same by noticing that the 15th floor of the same building fetched a rent of Rs.123.75 Lacs and therefore, the estimates were justified. We note that identical issue has arose in assessee's own case for AY 2011-12 which reached up-to the level of this Tribunal by way of cross appeals [ITA No. 1250/Mum/2015 & 1512/Mum/2015 dated 18/11/2016], the copy of which has been placed on record. Upon perusal of the same, we find that similar estimation of 7% was made by Ld. AO in that year. However, Ld. first appellate authority, while rejecting the same and following the decision of Hon'ble Bombay High Court rendered in *CIT Vs. Tip Top Typography* [48 *Taxmann.com* 191] directed the Ld. AO to fix the standard rent in terms of *Maharashtra Rent Control Act, 1999*, if the same was applicable or leave it to the parties to get it determined by the Court or Tribunal under the *Maharashtra Rent Control Act, 1999*. The stand of Ld. CIT(A) has since been confirmed by this Tribunal in the cross appeal by observing as under:-

7. Having considered the submissions of the parties and perused the materials on record, we do not find any infirmity in the order of the learned Commissioner (Appeals). Undisputedly, the Assessing Officer has estimated the ALV @ 7% of the value of the property shown by the assessee in the Balance Sheet. In our view, the aforesaid action of the Assessing Officer is not at all justified, since there is no basis for determining the ALV of the house properties applying such a method. As noted by us, the Hon'ble Jurisdictional High Court in Tip Top Typography(supra) has rejected Department's claim that municipal ratable value cannot be accepted as bonafide rental value of the property. The Hon'ble Jurisdictional High Court also opined that market rate can be an approved method for determining the fair rental value only when the Assessing Officer suspects the arm's length price shown by the assessee and only after conducting necessary enquiry about the prevailing rate in the locality. Finally, the Hon'ble Jurisdictional High Court following the view taken by the Full Bench of the Hon'ble Delhi High Court observed as under:—



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"We have also noted the submissions of Shri Ahuja. We are of the opinion that even in the case and matters brought by him to our notice, it is evident that the Assessing Officer cannot brush aside the rent control legislation, in the event it is applicable to the premises in question. Then, the Assessing Officer has to undertake the exercise contemplated by the rent control legislation for fixation of standard rent. The attempt by the Assessing Officer to override the rent control legislation and when it balances the rights between the parties has rightly been interfered with in the given case by the Appellate Authority. The Assessing Officer either must undertake the exercise to fix the standard rent himself and in terms of the Maharashtra Rent Control Act, 1999 if the same is applicable for leave the parties to have it determined by the Court or Tribunal under that Act. Until, then, he may not be justified in applying any other formula or method and determine method and determine the "fair rent" by abiding with the same. If he desires to undertake the determination himself, he will have to go by the Maharashtra Rent Control Act, 1999. Merely because the rent has not been fixed under that Act does not mean that any other determination and contrary thereto can be made by the Assessing Officer. Once again having respectfully concurred with the judgment of the Full Bench of the Delhi High Court, we need not say anything more on this issue."

8. Since the direction of the learned Commissioner (Appeals) is in consonance with the decision of the Hon'ble Jurisdictional High Court as referred to above, we uphold the order of the learned Commissioner (Appeals) on this issue. Ground No. 1, raised by the assessee is allowed for statistical purpose.

We find that identical facts exist in the impugned AY. Therefore, since a particular view has already been upheld by the co-ordinate bench of this Tribunal, respectfully following the same we set aside the matter to the file of Ld. AO with similar directions as given by Ld. first appellate authority in immediately preceding AY 2011-12 and confirmed by this Tribunal.

7. Resultantly, the assessee's appeal stand allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 19th September, 2018.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated 19.09.2018
Sr.PS:-Thirumalesh



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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**