

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 4417/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

IVP Ltd. S.N. Redij Marg, Ghorupdeo, Mumbai-400 053	Vs.	The Income Tax Officer, Ward 6(1)(2), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACI0992A		

अपीलार्थी की ओर से / Appellant by : Shri Divyesh Shah, AR

प्रत्यर्थी की ओर से / Respondent by : Shri B.S. Bist, DR

सुनवाई की तारीख / Date of hearing:	01.11.2018
घोषणा की तारीख / Date of pronouncement :	01.11.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Mumbai [in short CIT(A)], in appeal No. CIT(A)-12/ITO-6(3)(2)/186/14-15 vide dated 27.04.2016. The Assessment was framed by the Income Tax Officer, Ward 6(1)-2 Mumbai (in short 'ITO/ AO') for the A.Y. 2011-12 vide dated 18.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in taking Annual Letting Value



(ALV) of flat no. 14 at Carmel Apartment at ₹ 7,08,588/- instead of declared ALV of ₹ 1.20 lacs and for flat No. 13 at Orion at ₹ 8,10,152 instead of declared ALV of ₹ 1.20 lacs. For this assessee has raised the following two grounds: -

“1.1 On the facts and in circumstances of the case and in law, the Commissioner of Income Tax Officer 6(1)(2), Mumbai (“the Ld. AO) in taking Annual Letting Value of flat no.14 at Carmel Apartment (ALV) at 7,08,588/- instead of annual actual rent of ₹ 1,20,000/- received by the Appellant.

1.2 the CIT(A) erred in not appreciating the fact that the municipal rateable value could be binding on the AO to determine the annual value of the said flat.

1.3 the CIT(A) also erred in not appreciating the fact that the actual rent had exceeded the municipal Rataeble value and as such could not be treated as Annual Letting Value of the said flat.

1.4 the CIT(A) further erred in adopting the fair rent based on the trend shown in the website “Magicbricks.com”.

1.5 The appellant prays that it be held that the actual rent of ₹ 1,20,000/- be taken as ALV for the said Flat.

Ground II



2.1 On the facts and in circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in taking Annual Letting Value (ALV) of Flat No.13 at Orion at ₹ 8,10,152/- instead of annual actual rent of ₹ 1,20,000/- received by the Appellant.

2.2 The CIT(A) erred in not appreciating the fact that the municipal rateable value could be binding on the AO to determine the annual value of the said flat.

2.3 The CIT(A) also erred in not appreciating the fact that the annual rent had exceeded the municipal Rataeble value and as such could not be treated as Annual Letting Value of the said flat.

2.4 The CIT(A) further erred in adopting the fair rent based on the trend shown in the website of "Magicbricks.com."

2.5 The appellant prays that it be held that the actual rent of ₹ 1,20,000/- be taken as ALV for the said Flat."

3. Brief facts of the case are that the AO during the course of assessment proceedings noticed that the assessee is the owner of three house properties and offered ALV from the same as under: -

Description of Property	ALV Offered
#12, Carmel Apartment, napeansea Road	1,20,000
#13, Orion, Bhulabhai Desai Road,	1,20,000
#43, Surya Kiran CHS, August Kranti Marg	6,219



4. According to AO, the ALV declared by the assessee of flat No. 12, Carmel Apartment, Nepeansea Road and 13, Orion, Bhulabhai Desai Road at ₹ 1.20 lacs for each. According to AO, in view of the rates available on one To Let site i.e. Magicbricks.com Trend, the rent of residential flat no.12 , Carmal Apartments is ₹ 86,605 per month and total comes to ₹ 10,39,262/-. Similarly for flat no. 13, Orion Bhulabhai Desai Road the rent as per Magicbricks.com Trend is ₹ 99,018 per month and total comes to ₹ 11,88,223/-. Accordingly the AO assessed the ALV of these properties as under:-

<i>Particulars</i>	<i>ALV</i>	<i>HPI</i>
<i>1. Flat No.12, Carmel</i>	<i>708588</i>	
<i>Less: Deduction @ 30%</i>	<i>212,576</i>	<i>496,012</i>

Aggrieved, assessee preferred the appeal before CIT(A).

5. The CIT(A) confirmed the action of the AO by observing as under: -

“....

Further, it is seen that in the case of judicial rulings referred by the appellant it is categorically decided on the facts that the merely notional interest on security deposit should not be considered for arriving at annual value of the property. The decision of Hon'ble Supreme Court in the case of Amolaka Ram Khosla stood applicable prior to 1.4.1976.

Also, in view of conflicting decision of Tribunals and Courts on the issue of taxability of notional interest on security deposit a Larger bench was set up by Hon'ble Delhi High Court in the case of CIT vs. Moni Kumar Subba (333 ITR 38 (Delhi) (2011) which was reproduced in earlier



para. Hence, the judicial decisions referred by the appellant are not applicable.

6.4 The AO, during the assessment proceedings, has made proper enquiry to find out the correct fair rent of the property. And as the rent received is appearing to be lesser than the fair rent, the AO has correctly taken the fair rent as annual letting value of the property.

Hence, I find no infirmity in the assessment order and so the grounds no 1 & 2 of the appellant are dismissed.”

Aggrieved, now assessee is in appeal before Tribunal.

6. I have heard the rival contentions and gone through the facts and circumstance of the case. I have gone through the assessment order and noticed that the AO has simply adopted the value disclosed in one internet site of Magicbricks.com Trend. The AO has not carried out any other inquiry and when this was put to the learned Sr. DR Shri. BS Bist, he could not support the assessment order with any evidence which is relied on by the AO. I find that this issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT vs. Tip Top Typography (2014) 368 ITR 330(Bom), wherein the decision of Hon'ble Delhi High Court in the case of CIT vs. Moni Kumar Subba (2011) 333 ITR 38 (Del) was considered and find that Hon'ble Bombay High Court in Tip Top Typography (supra) held as under:-

“48. We are not in agreement with Shri Chhotaray that the municipal rateable value cannot be accepted as a bona fide rental value of the property and it must be discarded straightway in all cases. There cannot be a blanket rejection of the same. If



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that is taken to be a safe guide, then, to discard it there must be cogent and reliable material.

49. We are of the opinion that market rate in the locality is an approved method for determining the fair rental value but it is only when the Assessing Officer is convinced that the case before him is suspicious, determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. We are of the view that municipal rateable value may not be binding on the Assessing Officer but that is only in cases of afore-referred nature. It is definitely a safe guide..”

7. In view of the above, we direct the AO to compute the deemed rent as per Municipal rateable value and assess the income accordingly. This issue of assessee's appeal is set aside to the file of the Assessing Officer.

8. In the result, the appeal of assessee is allowed for statistical purposes with the above directions.

Order pronounced in the open court on 01-11-2018.

आदेश की घोषणा खुले मे दिनांक 01-11-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 01-11-2018

Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

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

BY ORDER,

Assistant Registrar
ITAT, MUMBAI