



M/s Nahalchand Laloochand Private Limited

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA Nos. 6041 to 6049/Mum/2018
 (निर्धारण वर्ष / Assessment Years: 1990-91 to 1992-93, 1994-95, 1998-99,
 2000-01 to 2003-04)

M/s Nahalchand Laloochand P.Ltd. Kantilal House, 14 Mama Parmanand Road Mumbai-400 004.	बनाम/ Vs.	DCIT-(5)(2)(1) 571, 5 th Floor Aaykar Bhavan, M.K. Road New Marine Lines Mumbai-400 020.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AAACN-4472-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Devendra Jain - Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	25/11/2019
घोषणा की तारीख / Date of Pronouncement	:	02/01/2020

आदेश / ORDER

Per Bench

1. The grievance of the assessee in all the aforesaid appeals for several Assessment Years is common. It is accepted position that adjudication in any one year would equally apply to all the other years since impugned order is common order for all the years which has been passed by Ld. Commissioner of Income-Tax (Appeals)-10, Mumbai [CIT(A)] on 06/07/2018. This is third round of appeal before Tribunal.



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2. The matter in the first round travelled up-to the level of Hon'ble Supreme Court wherein the Hon'ble Court remanded the matter to Tribunal to render definite finding of fact about the pre-requisites of Section 269UA(f)(i) read with explanation thereto. In the context of said section, it was also observed by Hon'ble Court that for computing the period of twelve years, it was not necessary that initial terms of lease must be of twelve years, but if the lease provides for extension of lease and such lease has been extended by a further term or terms and the aggregate of such terms is not less than twelve years, it is deemed to be a transfer of immoveable property and such transferee is deemed to be owner of such immoveable property u/s 27(iiiib). Therefore, the matter was remanded back to Tribunal which was adjudicated in the second round vide order dated 28/10/2016. Vide said order, the matter was remitted back to the file of Ld.AO with certain directions. However, in set-aside proceedings, the assessee's claim was not accepted by revenue authorities and hence the present appeal before us. The grounds raised by the assessee reads as under: -

Being aggrieved by the order dated 06.07.2018 passed by the learned Commissioner of Income Tax (Appeals)-10, Mumbai. ["Ld. CIT(A)"] u/s 250 of the Income-tax Act,1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in rejecting the appellant's contention that the rental income of Rs.6,29,047/- received by the appellant from sub-letting of the "Kantilal House" premises to Bank of Baroda, is not taxable either u/s.22 or u/s.56 of the Act.

2. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in holding that the appellant is a deemed owner of the aforesaid premises u/s.27(iiiib) read with Section 269UA(f)(i) of the Act, and is not a 'monthly tenant' as claimed by the appellant; and consequently, the Ld. CIT(A) erred in holding that the aforesaid rental income is taxable u/s.22 of the Act as 'income from house property'. In view of above, the appellant respectfully prays that the Ld. AO be directed not to assess the aforesaid rental income, the same being not chargeable to tax.



3. At the outset, the facts as well as controversy, as crystallized by the Tribunal in second round, vide order dated 28/10/2016 could be extracted in the following manner: -

These bunch of appeals filed by the assessee and one by the Department arise out of separate orders of the learned Commissioner (Appeals), Mumbai, pertaining to assessment years 1990-91, 1991-92, 1992-93, 1994-95, 1998-99, 2000-01, 2001-02, 2002-03 and 2003-04.

2. The core common issue arising for consideration in the aforesaid appeals is, whether the lease rental received by the assessee from a house property named as "*Kantilal House*" at Opera House Road, Mumbai, is to be assessed under the head "*Income From Business*" as claimed by the assessee or under the head "*Income From House Property*" as claimed by the Revenue. Since the facts involved in all these appeals are more or less common, for the sake of convenience, we will discuss the facts as involved in appeal being ITA no.6550/Mum. /1995, for assessment year 1991-92, which is taken as a lead appeal.

3. Brief facts are, the assessee a company is regularly filing its return of income and is assessed to tax. In the course of assessment proceedings for the assessment year 1991-92, the Assessing Officer while examining the Profit & Loss account of the assessee noticed that the assessee has declared a loss of Rs. 11,52,199, under the head "*lease rentals*". On verifying the details submitted by the assessee, the Assessing Officer found that in the relevant previous year, the assessee had received lease rentals as under:-

<i>Description of property</i>	<i>To whom let out</i>	<i>Rent / Compensation</i>	<i>When the property purchased</i>
<i>Gr. Floor (Pt.) Kantilal House, 1st Floor</i>	<i>Bank of Baroda</i>	<i>Rs. 6,29,047</i>	<i>Assessee company is a tenant of the premises</i>
<i>Shanker Gully, Kandivali (W), Bombay 67</i>	<i>State Bank of India</i>	<i>Rs. 4,83,552</i>	<i>Assessee is the owner of the premises</i>
<i>Bagwada Gate, Station Road, Patan</i>	<i>Various parties</i>	<i>Rs. 39,600</i>	<i>- do -</i>

4. The Assessing Officer called upon the assessee to explain why the lease rentals received from leasing out the properties owned by the assessee should not be treated as "*Income From House Property*". In response, it was submitted by the assessee that in assessment year



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1985-86, the learned Commissioner (Appeals) has accepted assessee's claim of business income in respect of Kantilal House property let out to Bank of Baroda. It was further submitted, the same reasoning of the learned Commissioner (Appeals) would equally apply to the other properties from which the assessee derived rental income. As far as lease rental received from Kantilal House property is concerned, the Assessing Officer while completing the assessment did not disturb the assessee's claim. However, in respect of other two properties viz. at Shanker Gali, Kandivali (West) and Bangwada Gate, Station Road, Patan, the Assessing Officer treated the lease rental income received by the assessee as "*Income From House Property*". Being aggrieved of the aforesaid decision of the Assessing Officer, assessee preferred appeal before the first appellate authority.

5. The learned Commissioner (Appeals), after considering the submissions of the assessee and in the context of facts and material on record, agreed with the Assessing Officer's decision in assessing the rental income from Shankar Gali property and Bhagwada Road property as income under the head "*House Property*". As far as rental income received from Kantilal House property, the learned Commissioner (Appeals) differing with the view expressed by his predecessor-in-office in assessee's own case for assessment year 1985-86, held that the rental income derived from letting out to Bank of Baroda also has to be assessed under the head "*Income From House Property*". While coming to such conclusion, the learned Commissioner (Appeals) observed that the assessee had been the tenant of the said property for a long period exceeding 12 years, therefore, the assessee has to be treated as deemed owner of the property under section 27(iib). He observed, leasing / letting out of properties is not the business of assessee. Therefore, the income derived from lease rentals has to be treated as "*Income From House Property*". He observed, the contention of the assessee that letting out of the property to the bank is for the purpose of assessee's business is not a valid argument. Relying upon certain judicial precedents, the learned Commissioner (Appeals) finally concluded that lease rentals received by the assessee including the lease rentals received from Kantilal House is to be treated as "*Income From House Property*". Being aggrieved of the aforesaid decision of the first appellate authority, assessee filed appeal before the Tribunal.

6. The Tribunal in a common order passed for the assessment year 1990-91, 1991-92, 1992-93 and 1993-94, vide order dated 3rd November 2003, in ITA no.6549/Bom./1995 and others, disposed off the appeals filed by the assessee. While dealing with the issue pertaining to the treatment of lease rental income from Kantilal House, whether income from business or income from house property, which is the issue in dispute in the present appeals, the Tribunal in Para-10, of the order, though, agreed that the assessee was not the owner of the house property, however, taking note of the fact that the assessee has taken



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the house on long lease and had been occupying the premises for a period of more than 12 years approved the finding of the learned Commissioner (Appeals) that by virtue of provisions of section 27(iiiib), r/w clause (f) of section 269UA, the assessee should be treated as deemed owner of the property. Accordingly, the Tribunal dismissed the ground raised by the assessee by upholding the order of the learned Commissioner (Appeals). Against the order of the Tribunal, assessee preferred appeals before the Hon'ble Jurisdictional High Court.

7. The Hon'ble Jurisdictional High Court in judgment dated 28th November 2005, in ITA no.388/2004, ITA no.389/2004 and 458/2004, upheld the decision of the Tribunal on the issue holding as under:-

"3. As far as first submission is concerned, the definition excludes only those tenants from month to month or which are for a period not exceeding one year. In the instant case, the assessee has been a tenant for a long period and had let out the premises further to Bank of Baroda. Surely, the income therefrom will have to be covered under the definition as it has been amended with effect from April 1, 1988. As far as the judgment in the case of CIT v/s T.P. Sidhwa (supra) is concerned, it was rendered on December 10, 1980, on the law as it then stood. That being so, we do not find any error in the decision of the Tribunal."

8. Still aggrieved with the decision of the Hon'ble Jurisdictional High Court, assessee challenged the same before the Hon'ble Supreme Court.

9. The Hon'ble Supreme Court, while disposing of assessee's appeal for the assessment year 1991-92 in Civil Appeal no.1930/2007, in order dated 24th September 2014, referring to the provisions contained under section 27(iiiib) and 269UA(f) observed, as per sub-clause (i) section 269UA(f), transactions of lease for a term of not less than 12 years amounts to transfer in relation to immovable property referred to in sub-clause (i) of clause (d) of section 269UA(f). The Hon'ble Supreme Court observed, explanation appended to sub-clause (i) of section 269UA(f), clarifies that the lease which provides for extension of term by a further term or terms shall be deemed to be a lease if the agreed term for which such lease is to be granted and further term or terms is not less than 12 years. The Hon'ble Supreme Court observed if the agreed term of lease is not less than 12 years, it is deemed to be a transfer of immovable property and such transferee is deemed to be the owner of immovable property under section 27(iiiib). Having held so, the Hon'ble Supreme Court observed that neither the Tribunal nor the Hon'ble Jurisdictional High Court have given a definite finding of fact about the pre-requisite of section 269UA(f)(i) r/w Explanation except, observing that the assessee has been tenant for a long period and has let out the premises. The Hon'ble Supreme Court, therefore, restored the matter back to the file of the Tribunal for deciding afresh in accordance with law. Relevant



observations of the Hon'ble Supreme Court in this regard is extracted hereunder for convenience:-

"4. Neither the order of the Income Tax Appellate Tribunal nor the order of the High Court indicate any consideration of the above aspects in respect of the house property named Kanti Lal House except observing that the assessee has been a tenant for a long period and that it had let out the premises. No definite finding of fact about the pre-requisites of section 269UA(f)(i) read with explanation as noted above has been recorded either by the Tribunal or by the High Court.

5. Having regard to the above flaw in consideration of the case, we are satisfied that the matter needs reconsideration by the Tribunal since the question involves determination of facts as indicated above. We, accordingly, deem it appropriate to remand the matter to the Income Tax Appellate Tribunal, Mumbai.

6. Consequently, civil appeal is allowed. The impugned order of the High Court dated 28.11.2005, in I.T.A. no.458 of 2004 and the order of the Income Tax Appellate Tribunal dated 03.11.2003 in I.T.A. no.6550/Bom./95 (Assessment Year 1991-1992) are set aside. I.T.A. no.6550/Bom/95 (Assessment Year 1991-1992) are restored to the file of the Income Tax Appellate Tribunal, "I" Bench, Mumbai, for fresh hearing and disposal in accordance with law."

10. Following the aforesaid decision, identical issue arising in other assessment years under appeal were also restored back to the file of Tribunal by the Hon'ble Supreme Court in separate orders.

11. The facts and issue are identical in other assessment years except for the assessment year 1994-95, wherein though, the learned Commissioner (Appeals) decided the issue in favour of the assessee, however, the Tribunal reversed the decision of the learned Commissioner (Appeals) by holding that rental income received from Kantilal House has to be assessed as income from house property. This is how the present appeals came up for adjudication before us.

12. Learned Authorised Representative reiterating the stand taken in the earlier round of litigation submitted that the assessee has entered into tenancy with the original owner on monthly basis, therefore, it cannot be said that property has been leased out to the assessee for a period exceeding 12 years. To demonstrate such facts, the assessee sought to rely upon certain additional evidences and through a separate petition filed under rule 29 of the Income Tax (Appellate Tribunal) Rule, 1963, sought admission of the same. The learned Authorised Representative in this context referred to the photocopy of a certificate dated 7th January 1998, purportedly issued by Himmatlal Kantilal, claimed to be the landlord of the subject property, stating therein that the assessee had been occupying the premises prior to the year 1950 on



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month to month basis. The learned Authorised Representative also referred to the lease agreement entered with the Bank of Baroda on 29th March 1996 and specifically referred to clause (b) of the said agreement to impress upon the fact that the assessee is tenant of Kantilal House. The learned Authorised Representative submitted, though, the assessee might be occupying the property for a long period, but, it is only by virtue of oral agreement and there was no written agreement. Therefore, the owner at any time can issue notices to the assessee to vacate the premises. The assessee also referred to the rental receipt sought to be produced as additional evidence. Learned Authorised Representative submitted, after the death of owner Himmatlal Kantilal, the assessee continues to be a tenant of the property which is administered by the estate. The learned Authorised Representative submitted, section 27(iii), does not apply to lease on month to month basis or for a period not exceeding one year. He submitted, as per section 106 of the Transfer of Property Act, 1882, a lease of immovable property for any purpose other than agricultural or manufacturing shall be deemed to be a lease from month to month if there is no written contract or there is a local law or usage to the contrary and such lease shall be determinable on the part of either leasee or lessor by giving 15 days notice expiring with the end of a month of the tenancy. He submitted, as there is no written contract between the assessee and the landlord, the conditions of section 106 of Transfer of Property Act, is fulfilled and the tenancy is on month to month basis. Referring to section 107 of the Transfer of Property Act, the learned Authorised Representative submitted in a case where the lease is for more than one year registered instrument is mandatory. In this context, he referred to some judicial precedents as submitted in the paper book. He submitted, as per the aforesaid provision of Transfer of Property Act, until notice to vacate / quit is given, tenancy continues from month to month and such notice duration is uncertain, hence, the tenancy is classified as month to month. He submitted, month to month tenancy does not cease to be such merely because the lessee is in possession of the premises for a long time or built structures which are costly and substantial. In this context, he relied upon the following decisions:-

- i) *Ambika Devi v/s Sanchita Nandan Prasad, AIR 1960 Patna 289;*
- ii) *Dr. Sudhir Kumar Mukherjee & Ors., v/s Nirsi Dhobin & Ors., AIR 1961 Patna 321; and*
- iii) *Bajrang Sahai v/s Mt. Mulia, 28 AIR 1941 Allahabad 399.*

13. Learned Authorised Representative submitted, though, the aforesaid facts were brought on record by the assessee on oath through affidavits before the High Court and Supreme Court, the Revenue has not controverted assessee's averments made in affidavit. He submitted, as



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the assessee is a tenant on monthly basis, he cannot be treated as deemed owner under section 27(iib), therefore, rental income derived from Kantilal House should be treated as business income of the assessee.

14. Learned Departmental Representative on the other supporting the view expressed by the learned Commissioner (Appeals) and the Tribunal submitted that the very fact that the assessee had been occupying the property prior to the year 1950 suggests that it is a long term lease. He submitted, the assessee has leased out the property to Bank of Baroda for a period exceeding 12 years which indicates that the assessee has got lease of the property for more than 12 years. He, therefore, submitted that the assessee is deemed owner of the property in terms of section 27(iib) r/w section 269UA(f). In support of such contention, the learned Departmental Representative relied upon the following decisions:-

- *CIT v/s Podar Cement Pvt. Ltd. [1997] 226 ITR 625 (SC)*
- *Mysore Minerals Ltd. v. CIT (1999) 239 ITR 775 (SC)*

15. We have carefully and patiently considered the contentions of the parties and perused the material on record in the light of decisions relied upon. As could be seen from the order of the Hon'ble Supreme Court while restoring the matter back to the file of the Tribunal reproduced herein above, the specific direction of the Hon'ble Supreme Court is to find out whether the period of lease is not less than 12 years to satisfy the conditions of section 269UA(f)(i) r/w section 27(iib). Undisputedly, it is evident from the facts on record that the assessee had been a lessee of Kantilal House property since the year 1948. It is also evident that the assessee has entered into lease agreement with Bank of Baroda for leasing out the ground floor of the property admeasuring 2,300 sq.ft. for a term of 12 years commencing from 1st April 1962 and expiring on 31st July 1974. It is further evident, after the expiry of the said agreement, the assessee entered into another agreement with Bank of Baroda on 30th March 1973, leasing out not only the part of the ground floor earlier leased out to them but also leased out additional space and such lease agreement with Bank of Baroda continued from time to time as is evident from lease agreement dated 29th March 1996, sought to be produced before us by way of additional evidence. It is pertinent to mention here, in response to a query raised by the Bench, the learned Authorised Representative on the instructions of assessee submitted that the lease continued with Bank of Baroda till the year 2004 when it vacated the premises, though, the assessee is still occupying the premises till date. Thus, from the aforesaid facts, it is evident that the assessee is in possession of the Kantilal House property since the year 1948 and continues to occupy the same even after the death of the landlord. As opposed to aforesaid facts, to get over the mischief of section 27(iib) r/w section 269UA(f), the assessee has attempted to take shelter behind the



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provisions of section 106 and 107 of the Transfer of Property Act, by stating that there is no written agreement between the assessee and the landlord and the assessee is a tenant on monthly basis. To substantiate such claim the assessee has relied upon a photocopy of the certificate purportedly issued by the landlord Late Shri Himmatlal Kantilal on 7th January 1998 certifying that the assessee is occupying the premises on monthly basis. Learned Authorised Representative has also relied upon clause (b) of the lease agreement with Bank of Baroda to demonstrate that the assessee is a tenant of the subject premises. Besides, the above, it is the contention of the assessee that the averments made in the affidavit filed before the High Court and Supreme Court to the effect that the assessee is a monthly tenant has not been controverted by the Department. Keeping in view the aforesaid facts, it needs to be decided whether the assessee is a monthly tenant as per exception provided under section 27(iiiib) or it fulfills the condition of section 269UA(f)(i) along with its explanation. As noted earlier, the Assessing Officer while completing the assessment has accepted assessee's claim of business income as far as rent received from Kantilal House simply on the basis that the assessee is not the owner of the said property. As it appears, the Assessing Officer has neither examined the applicability of section 27(iiiib) r/w section 269UA(f)(i) nor has made any enquiry to find out whether the assessee can be treated as deemed owner of the property. The learned Commissioner (Appeals), as it appears, while coming to the conclusion that the assessee is deemed owner of the property at Kantilal House has also not factually examined, what is the exact period of lease. In fact, as it appears from the order of the learned Commissioner (Appeals), the contention of the assessee for treating rental income from Kantilal House as business income is, the property was leased to Bank of Baroda for opening its branch for the business purpose of the assessee as the assessee was to benefit from the service or services from the Bank in its premise and the dominant purpose of such letting out is to run the business more efficiently and smoothly with the said bank service available in the premises. It does not appear from the order of the learned Commissioner (Appeals) that the assessee ever claimed that it was a tenant on monthly basis. Even before the Tribunal also, as it appears from the facts recorded by the Tribunal in Para-11 of its order passed earlier, the assessee never took the contention that he is a tenant on monthly basis, hence, outside the purview of section 27(iiiib) of the Act. Thus, as it appears, assessee's claim of being a tenant on month to month basis and also the fact that there is no written agreement between the assessee and the landlord was not examined at any stage earlier i.e., either by the Assessing Officer or by the learned Commissioner (Appeals). Moreover, the certificate dated 7th January 1998, purportedly issued by the landlord has not been referred to either by the Assessing Officer or by the learned Commissioner (Appeals) or even in the earlier order of the Tribunal. Moreover, the authenticity and genuineness of the certificate also needs verification / examination. It is also necessary to



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observe, to demonstrate that the assessee is a tenant, the learned Authorised Representative has relied upon the lease agreements with Bank of Baroda. Admittedly, these lease agreements were not before the Departmental Authorities and the assessee has sought to produce them for the first time by way of additional evidence. Therefore, natural justice demands that the Department must also examine such evidence filed for the first time before us. Moreover, considering the fact that the assessee is in occupation of the subject premises as a tenant since the year 1948 and continues to do so even today, prima-facie, gives an impression that the assessee has taken the premise under a long term lease. Therefore, for proving the fact that it has taken the premise on a monthly tenancy, that too, in the absence of a written agreement requires high degree of evidence. The entire onus is on the assessee to prove that he is a tenant on monthly basis, more so, when the assessee has entered into long term lease agreement extending beyond period of 12 years with Bank of Baroda by letting out the premise. A question arises, when the assessee itself is not sure of the period of tenancy as it is on monthly basis and the landlord can terminate it at any time on 15 days notice in terms of section 106 of T.P. Act, how the assessee can enter into an agreement with a nationalized bank for a long term lease for 12 or more years. Therefore, heavy onus is cast upon the assessee to prove the fact that he is a tenant on monthly basis, therefore, comes within the exception provided under section 27(iiib) and the lease is not for a period exceeding 12 years to attract the provisions of section 269UA(f). As the matter requires thorough inquiry and investigation to ascertain assessee's claim of tenancy on monthly basis and further, additional evidence on the basis of which the assessee has sought to demonstrate / establish his claim of monthly tenancy was not before the Departmental Authorities and without properly examining the said evidences as well as the assessee's claim of monthly tenancy which has not at all been examined at any stage earlier, we are inclined to restore the matter back to the file of the Assessing Officer to verify assessee's claim of monthly tenancy. As stated earlier, a heavy burden is cast upon the assessee to prove the fact of monthly tenancy by producing clinching evidence, considering the fact that it continues to be in occupation of the property since the year 1948. The argument of the learned Authorised Representative that the averments made in affidavits filed before the High Court and Supreme Court claiming monthly tenancy has not been controverted by the Department is too simplistic and general in nature, hence, cannot be accepted on the face of of it without a thorough inquiry or the assessee demonstrating it through positive evidence. Moreover, the Hon'ble Supreme Court has specifically directed the Tribunal to examine the exact period of lease to satisfy the condition of section 269UA(f)(i). Had it been a fact that assessee's claim of monthly tenancy was uncontroverted, then nothing remains to be decided. We, therefore, do not accept assessee's contention that assessee's claim of monthly tenancy has not been controverted by the Department.



16. In view of the aforesaid, we set aside the impugned order passed by the learned Commissioner (Appeals) and restore the matter back to the file of the Assessing Officer to decide the issue relating to the proper head under which the rental income from Kantilal House is to be assessed after thorough inquiry and investigation and only after providing adequate opportunity of being heard to the assessee.

17. The aforesaid decision of ours applies mutatis mutandis to all other appeals.

18. In the result, all the appeals are allowed for statistical purposes.

(Under-lined being emphasis supplied by us)

As evident from para-15, it was observed by co-ordinate bench that the assessee was in occupation of *Kantilal House* since the year 1948 and continues to do so even today which prima-facie would establish that the premise was taken under long-term lease. Therefore, in the absence of any written contract, the submissions that tenancy was on 'month to month' basis would require higher degree of evidence. The entire onus was placed on assessee to prove the same by clinching evidences in the background of the fact that the assessee entered into long term lease agreement extending beyond a period of 12 years with *Bank of Baroda*. It was also observed that when the assessee was not sure of the period of tenancy then how could it enter into a lease agreement with a nationalized bank for a period of 12 or more years. Therefore, heavy onus was casted upon assessee to prove that he was tenant on monthly basis as covered by exception provided u/s 27(iii b) and the lease was not for a period exceeding 12 years so as to attract the provisions of Section 269UA(f). Accordingly, the matter was restored back to the file of Ld. AO to verify the assessee's claim of monthly tenancy.

4.1 Pursuant to the aforesaid directions, the matter was re-examined by Ld.AO vide order dated 08/12/2017 u/s 143(3) r.w.s. 254 of the Act.



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During set-aside proceedings, the assessee was required to furnish copies of lease agreement entered into with *Bank of Baroda* and to furnish detail of property assessment with *Bombay Municipal Corporation* along with copies of returns filed by assessee thereunder.

4.2 To verify the assessee's claim of monthly tenancy, notice u/s 133(6) was issued to the legal heirs of *Late Shri Himatlal Kantilal*, who responded by submitting that assessee has paid monthly rents for the said premises and also mentioned that the assessee is occupying the premises since 1948 and no rental agreement has been made for them. The Ld. AO observed that sub-letting would not be possible unless there was an understanding that the assessee had the right to sub-let the premise. The payment on monthly basis was done for convenience and not on the basis of any such binding agreement.

4.3 So far as the assessee's reliance on Sections 106 & 107 of the Transfer of Property Act were concerned, the same were controverted by Ld. AO by observing that the premise was let out to *Bank of Baroda* for a period of more than 12 years. The assessee leased out ground floor for a term of 12 years from 1st April 1962 expiring on 31st July, 1974. After expiry, another agreement dated 30/03/1973 was entered into for leasing out not only the part of ground floor as leased out earlier but some additional space was also leased out. The Ld.AO opined that such agreement would not be possible unless the assessee has entered into lease agreement / has an understanding with *Shri Himatlal Kantilal* that the assessee would continue over the possession of the property as a tenant for the period which was more than 12 years. It was also noted that although the lease with *Bank of Baroda* continued till 2004, however,



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the assessee was still occupying the premise even after the death of original landlord i.e. *Shri Himatlal Kantilal*. In the above background, the shelter taken by the assessee u/s 106 & 107 of The Transfer of Property Act & Sec. 27(iib) r.w.s. 269UA(f) were found to be not tenable. Finally, it was held that the rental income would be taxable as *Income from House Property*.

4.4 In the alternative, as held in quantum order for AY 1994-95 order dated 27/01/1998, it was opined that such income would be taxable under residuary head i.e. *Income from other sources*. The case law of Hon'ble Bombay High Court in the case of **CIT V/s T. P. Sidhawa (133 ITR 840)** was held to be not applicable since in that case, the rental income was not chargeable to tax.

5. Aggrieved, the assessee assailed the stand of Ld. AO vide impugned order dated 06/07/2018 wherein first appellate authority, after appreciating the controversy, confirmed the stand of Ld. AO by observing as under: -

6.4.4 The undisputed facts that emerge from the above order of the Hon'ble Tribunal are that the appellant is in possession of the Kantilal House property since the year 1948 and continues to occupy the same premises till date, even after the death of the landlord. It is also evident that the appellant has entered into lease agreement with Bank of Baroda from 1st April-1962 and the lease continued with the Bank till the year 2004 when it vacated the premises. However, to get over the mischief of section 27(iib) r.w.s. 269UA(f), the appellant has attempted to take shelter behind the provisions of section 106 and 107 of the Transfer of Property Act, by stating that there is no written agreement between the appellant and the landlord and the appellant is a tenant on monthly basis. To substantiate such claim the appellant has relied upon a photocopy of the certificate purportedly issued by the landlord Late Shri Himmatlal Kantilal on 7th January 1998 certifying that the appellant is occupying the premises on monthly basis and further relied upon the lease agreement with the Bank to demonstrate that the appellant is a tenant of the subject premises. However, taking note of the fact that the appellant is in occupation of the subject premises as a tenant since the year 1948 and continues to do so even today, which prima facie gives an impression that the assessee has taken the premise under a long term lease, the Hon'ble tribunal has held that **"the entire onus is on the assessee** to prove that "he is a tenant on monthly basis, more so,



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when the assessee has entered into long term lease agreement extending beyond period of 12 years with the Bank by letting out the premise", **"more so, when the assessee has entered into long term lease agreement extending beyond period of 12 years with Bank of Baroda by letting out the premise."**

6.4.5 Thus, taking note of the fact that the additional evidence on the basis of which the assessee has sought to demonstrate / establish his claim of monthly tenancy i.e. the lease agreements with Bank of Baroda and the certificate dated 7th January 1998, purportedly issued by the landlord, were not before the Departmental Authorities, and considering that assessee's claim of being a tenant on month to month basis was not examined at any stage earlier i.e., either by the AO or by the Id. CIT(A) and further that the authenticity and genuineness of the certificate also needs verification / examination, the Hon'ble tribunal has restored the matter back the file of the AO to verify assessee's claim of monthly tenancy, pursuant to the directions issued by the Hon'ble Tribunal, the AO has assessed the rental income from the demised premises as "Income from Other Sources", after verifying the facts.

6.4.6 The facts of the present case are now tested in the light of the above background. The main thrust of the arguments of the appellant is that the rental income was not at all chargeable to tax since the appellant was not the owner of the property but only a monthly tenant. The appellant has sought to demonstrate / establish his claim of monthly tenancy relying on the lease agreements with Bank of Baroda and the certificate dated 7th January 1998, purportedly issued by the landlord.

6.4.7 The 'Income from House Property' is an artificially defined income and the liability arises from the fact that the assessee is the owner of the property. The liability is irrespective of the fact whether the property has been let out, whether the owner has received rent etc. Section 27, in its certain clauses, enacts deeming provisions about ownership for the purposes of section 22 to 26 of the Act. The relevant clause (iiib) of section 27 reads as under:

"Owner of house property", "annual charge", etc., defined. 27. For the purposes of sections 22 to 26

(i) ***

(ii) ***

(iiia) ***

(iiib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;]

6.4.8 The provisions of section 27(iii) were substituted by the Finance Act, 1987 (w.e.f. 01.04.1988) and the scope and effect of the amendment made in section 27 of the Act is elaborated in the following portion of the Department Circular No. 495 dated 22 September 1987.

Enlarging the meaning of ownership of house property

23.1 The Amending Act has extended the meaning of the expression "ownership" for the purpose of computing income under the head "Income from house property". The expression "ownership" meaning legal ownership had the effect of excluding cases where an assessee possessed all rights to an immovable property except the husk of the title.



23.2

..... There is another practice whereby property is transferred to the purchaser after receiving the consideration but without getting the sale registered under s. 54 of the Transfer of Property Act. This is done by executing power of attorney in favour of a persons who by virtue of that power of attorney enjoys the property. In such cases, legally, the property remains with the registered owner but for all practical purposes the holder of the power of attorney is the owner. A similar situation arises where possession of any immovable property is allowed to be taken or retained in part performance of a contract of the nature referred to in s.53A of the Transfer of Property Act, 1882. All these types of transactions have the effect to transferring the house property in fact, though not in law. With the extended definition of the expression "ownership", transactions covered by s.269UA of the IT Act, 1961 (including transfer of property by power of attorney), shall be considered as having the effect of transfer of title. The Amending Act by insertion of sub-cls, (iii), (iiia) and (iiib) in s.27, covers all the transactions referred to above for the purpose of determining the ownership of the property for assessing income under the head" Income from house property."

6.4.9 Further, in the Memorandum explaining provisions in Finance Bill, 1987 concerning s.27, it was explained as follows:

SIMPLIFICATION AND RATIONALISATION OF PROVISIONS

Enlarging the meaning of "owner of house property".

27. Under the existing provisions of s. 22 of the IT Act, any income from house property is chargeable to tax only in the hands of the legal owner. As per s.27 of the IT Act, certain persons who are not otherwise legal owners are deemed to be the owners for the purposes of these provisions.

Under the Transfer of Property Act, the transfer of ownership can be effected only by means of a registered instrument. However, in the recent times various other devices are sought to be employed for transferring one's ownership in property. As a result, there are situations in which the actual owner, say of an apartment in a multi-storeyed building, or a holder of a power of attorney is not the legal owner of a property. In some cases, pending resolution of disputes, the legal as well as the beneficial owners are assessed to tax in respect of the same income.

As a measure of rationalisation, the Bill seeks to enlarge further the meaning of the expression "owner of house property", given in cl. (iii) of s. 27 by providing that a person who comes to have control over the property by virtue of such transactions as are referred to in cl. (f) of s. 269UA will also be deemed to be the owner of the property. The amendment also seeks to enlarge the applicability of this clause to a member of company or other AOP. Corresponding amendments have also been proposed in regard to the definition of "transfer" in s.2(47) of the IT Act, s.2(m) of the WT Act defining "net wealth" and s. 2(xii) • of the GT Act defining "gift".

These amendments will take effect from 1st April, 1988, and will, accordingly, apply in relation to the asst. yr. 1988-89 and subsequent years."

6.4.10 A plain reading of the of the above circular and the memorandum makes it clear that the meaning of the expression "owner of house property", given in cl. (iii) of s. 27 was enlarged further by providing that a person who comes to have control



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over the property by virtue of such transactions as are referred to in cl. (f) of s. 269UA will also be deemed to be the owner of the property. Hence, to resolve the controversy it is also necessary to refer to relevant cl. (f) of s. 269UA as applicable to the year under appeal. The relevant cl. (f) of s. 269UA of the Act reads as follows:

"269UA(f) 'transfer', —

(i) in relation to any immovable property referred to in sub-cl. (i) of cl. (d), means transfer of such property by way of sale or exchange or **lease** for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in s. 53A of the Transfer of Property Act, 1882 (4 of 1882)

Explanation.—For the purposes of this sub-clause, a **lease** which provides for the extension of the term thereof by a further term or terms shall be deemed to be a **lease** for a term of not less than twelve years, if the aggregate of the term for which such **lease** is to be granted and the further term or terms for which it can be so extended is not less than twelve years;

6.4.11 In the instant case, relying on the lease agreements with Bank of Baroda and the certificate dated 7th January 1998, purportedly issued by the landlord, the AR has argued that the present tenancy is from month to month, therefore the appellant cannot be considered as deemed owner u/s 22 of the Act, since the lease from month to month for a period not exceeding one year is excluded from the definition of deemed owner in section 27 (iiib) itself. It is evident that the assessee has entered into licence agreement with Bank of Baroda for letting out the ground floor of the property admeasuring 2,300 sq. ft. for a term of 12 years commencing from 1st April; 1962 and expiring on 31st July 1974. It is further evident after the expiry of the said agreement, the assessee entered into another agreement with Bank of Baroda on 30th March 1973, leasing out not only the part of the ground floor earlier leased out to them but also leased out additional space and such lease agreement with Bank of Baroda continued from time to time as is evident from lease agreement dated 29th March 1996. The Relevant clauses of the lease agreement dated 29th March 1996 for ground floor is extracted hereunder for convenience:

WHEREAS:

(a) One Mr. Himatlal Kantilal (hereinafter for convenience and brevity sake referred to as "the OWNERS") is the sole and absolute owner and well and sufficiently entitled to and/or otherwise seized and possessed of all that place or parcel of land bearing Ca Dastral Survey No.1496 of Girgaon Division in the Registration District and Sub-District of Bombay City and Bombay Suburban and assessed by Bombay Municipal Corporation (BMC) under D-Ward, No.515 Street No. 14 together with the buildings standing thereon one of them known as "Kantilal House" (hereinafter for convenience and brevity sake referred to as "the said building") lying being and situated at 14, Mama Parmanand Marg, Opera House, Bombay 400004 (hereinafter for the sake of convenience and brevity referred to as "the said property");

(b) The Lessors are the lawful tenants of various premises in the said building at and for the monthly rent reserved and on the terms and conditions agreed upon by and between the said owner on the one hand and the Lessors on the other hand.



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(c) From and out of the said various tenanted premises by and under an **Agreement dated 29th January, 1964**, duly entered into by and between the Lessors herein, therein referred to as "**the Licensor**" and the Lessees herein, therein referred to as "**the Licencee**", the Lessors granted to the Lessees a licence of part of the ground floor admeasuring 2,300 sq. ft. which includes a strong Room (hereinafter referred to as "the old strong Room") **for a term of 12 years commencing from 1st August, 1962** and expiring by efflux of time on 31st July, 1974, at and for the monthly compensation and on the terms and conditions as more particularly stated in the said Agreement dated 29th January, 1964;

(d) As the Lessees were short of space, the with the consent and concurrence of the Lessors constructed a Mezzanine floor admeasuring 600 sq. ft. approximately in the said **licenced premises** and by and under an **Agreement dated 30th March, 1973**, duly entered into by and between the Lessors herein, therein referred to as "**the Licensor**" and the lessees herein, therein referred to as "**the Licencee**", the Lessors granted to the Lessees a **Licence** of said Mazzanine floor with effect from 16th August, 1972, at and for the compensation and on the terms and conditions as more particularly stated in the said Agreement dated 30th March, 1973. Under the said Agreement it was, inter alia, agreed that the said Agreement shall be **coextensive with the said Agreement dated 20th August, 1964** and therefore licence granted under the said Agreement dated 30th March 1973 of the Mezzanine floor was to expire by efflux of time simultaneously with the expiry of the licence granted of the said ground floor premises under the said Agreement dated 29th January, 1964. i.e. on 31st July, 1974 as aforesaid;

(e) The Lessees however remained in occupation with the subsequent consent of the Lessors of the demised premises after the expiry of the said licence period granted under the **Licence Agreement dated 29th January 1964 i.e.** from 1st August 1974, till 31st July, 1976 at and for the licence fee reserved and on the same terms and conditions as was agreed upon in the said Licence Agreement.

(f) The lessors have by and under an **Indenture of Sub-Lease dated 20th November, 1976** duly entered into between the **Lessors herein, therein referred to as "the Sub-Lessors"** on the one hand and the **Lessees herein, therein referred to as "the Bank"** on the other hand, the Lessors had given to the Lessees portion of their premises on the ground floor admeasuring about 2,578 sq.ft. and on the mezzanine floor admeasuring about 520 sq. ft. aggregating to 3,098 sq.ft. **on lease for a period of 8 years commencing from 1st August, 1976** and expiring by efflux of time on 31st July, 1984 at and for the monthly lease rent reserved and on the terms and conditions as more particularly stated therein.

(g) As there was some doubt about the area demised to the Lessees and therefore it was mutually agreed to take joint measurement by the representative of the Lessors and the Lessees, which were taken on 15th February, 1985 which revealed that the area of the ground floor is 2,557.23sq.ft. which includes the said old strong room admeasuring 90.57sq.ft. and a mezzanine floor admeasuring 530.83 sq.ft. totally aggregating to Rs.3,088.06.



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(h) As aforesaid the lease period of 8 years granted under the said Indenture of sub-lease dated 20th November, 1976 expired by efflux of time and therefore by and under an Indenture of Lease dated 4th April, 1985 duly entered into by and between the Lessors on the one hand and the Lessee on the other hand, the said Lease was renewed for a further period of 9 years and 9 months, commencing from the 1st August, 1984 and expiring on 30th April, 1984 by efflux of time. The total area under the said Indenture of Lease was 3,088.06 sq.ft. at the revised lease rent of Rs.10/- per square feet per month aggregating to Rs.30,880.60 ps per month until the Lessees handed over the vacant and peaceful possession of the said old strong room of 90.57 sq.ft. to the Lessors which was to be handed over after the Lessors construct new strong within the demised premises 35 agreed and as more particularly mentioned in the said Indenture of Lease dated 4th April, 1985 after the vacant and peaceful possession of the said old strong room was handed over as aforesaid (which was handed on 26th December, 1990), the area demised and the lease rent both were reduced by Rs.90.57 sq.ft. and Rs,905.70 respectively and were therefore reduced to 2,997.40 sq.ft. and Rs.29,974.90 respectively. The access to the Lessors to the said old strong room remained the same from the demised premises as it was before.

(i) As aforesaid the Lease period granted under the said Indenture of Lease dated under the said Indenture of Lease dated 4th April, 1985 expired on 30th April, 1994 and the Lessors have now agreed to extend the Lease of the demised premises at the revised lease rent for a period of 10 years commencing from the 1st May, 1994, and expiring by efflux of time on 30th April, 2004 at and for the lease rent hereunder reserved and upon the terms and conditions as hereinafter appearing.

6.4.12 The lease agreement dated 29th March 1996 for first floor is similar to the above agreement for ground floor however in place of clause (c) to (i) reproduced above, it has only two clauses the clause (c) & clause (d) as under:

(c) From and out of the said various tenanted premises the Lessor have by and under an **Agreement dated 1st June, 1984, 1964**, duly entered into between the Lessors herein, therein also referred to as "the Lessors" on the one hand and the Lessees herein, therein also referred to as "the Lessees", the Lessors had granted to the Lessees portion of their premises on the first floor of the said building admeasuring 1,795 sq. ft. on **lease for a period of 10 years commencing from 1st June, 1984** and expiring by efflux of time on 31st May, 1994, at and for the monthly lease rent reserved and on the terms and conditions as more particularly stated therein;

(d) As aforesaid the Lease period granted under the said Indenture of Lease dated under the said Indenture of Lease dated 1st June, 1984 expired on 31st May, 1994 and the Lessors have now agreed to extend the Lease of the demised premises at the revised lease rent for a period of 9 years and all months commencing from the 1st June, 1994, and expiring by efflux of time on 30th April, 2004 at and for the lease rent hereunder reserved and upon the terms and conditions as hereinafter appearing.

6.4.13 A close perusal of the above Indenture of lease dated 29th March 1996 would show that the initial agreement between the appellant and the bank is a **Licence Agreement** entered on 29th **January 1964**, wherein the appellant is referred as "**the Licensor**" and the bank as "**the Licencee**". On expiry of the said



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agreement for a **term of 12 (Twelve)** years on 31st July 1974, the bank remained in occupation of the demised premises till July 1976 at and for the licence fee on the same terms and conditions as agreed upon in the Licence Agreement dated 29th January 1964. Thereafter the appellant and the bank entered into an "**Indenture of Sub-Lease**" dated 20th November 1976 whereby the bank was granted lease for a **period of 8 (Eight) years** w.e.f. 1st August 1976 and in this indenture the appellant is referred as "**the Sub-Lessors**" and the Bank of Baroda as "**the Bank**". On the expiry of the lease on 31st July 1984, the said lease was renewed for a further **period of 9 years and 9 months** w.e.f. 1st August 1984 under the "Indenture of Lease" dated 4th April 1985 and again on 29th March 1996 for a **period of 10 years** w.e.f. 1st May 1994 by and under the "Indenture of Lease" under consideration.

6.4.14 It is apparent from the above discussion that though the appellant has initially granted licence to the Bank for part of Ground Floor of the demised premises vide **Licence Agreement 29th January 1964**, wherein the appellant is referred as "**the Licensor**", and on expiry of the said Licence Agreement the said portion of the demised premises was leased by and under "**Indenture of Sub-Lease**" dated 20th November 1976 wherein the appellant is referred as "**the Sub-Lessors**". This lease was renewed from time to time till the expiry of the lease when the bank vacated the demised premises in April 2004. Considering that the appellant was referred as "Licensor" initially, subsequently as "Sub-lessors" and later as "Lessor" in the Indentures of Lease, which point to the fact that the appellant is also lessee of the demised premises, the AR was called upon to produce the Licence Agreement and the Lease Deeds to ascertain the nature of appellant's rights in the demised property. However, the AR expressed his inability to produce the said agreement / indentures on the ground that these documents are not traceable now. It may be recalled here that the Hon'ble Tribunal while restoring the matter to the AO has categorically held that "a heavy burden is cast upon the assessee to prove the fact of monthly tenancy by producing clinching evidence, considering the fact that it continues to occupation of the property since the year 1948.", therefore it was incumbent on the appellant to produce these documents to prove that there was no long term agreement with the owner. However, the appellant could not produce these documents for verification of facts. When the facts lay within the special knowledge of the appellant which it failed to establish, a statutory presumption can be drawn against it in view of s. 105 of the Evidence Act. All the evidence and material relating to the lease were within the special knowledge of the appellant, the onus to produce the same as per s. 106 of the Evidence Act was upon the appellant. The law has cast initial onus on the appellant and the appellant has failed to discharge its burden.

6.4.15 Now that the appellant has placed reliance on clause (b) of the lease agreement with Bank of Baroda to demonstrate that the assessee is a tenant of the subject premises, it is my view that the tenancy cannot be considered on month to month basis merely because the rent has been fixed for every month. This is so because the nature of the transaction depends upon the manner in which it is described by any party to the transaction but will be determined on principles of law applicable to the facts existing as held by the Hon'ble High Court of Calcutta in the case of Hari Krishna Kanoi & Anr. vs. Appropriate Authority & Ors. (1994) 207 ITR 0743. Further, as held by the Hon'ble Supreme Court of India in Govind Impex (P) Ltd. & Ors. vs. Appropriate Authority, Income Tax Department (2011) 330 ITR 0010 "One term of the lease cannot be taken into consideration in isolation.



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Entire document in totality has to be seen to decipher the terms and conditions of lease."

6.4.16 It can be seen that the appellant has been described as Sub-Lessor in the "Indenture of Sub-Lease" dated 20th November 1976, as mentioned in clause (f) of the lease deed dated 29th March 1996. The fact the appellant is referred as sub-Lessors in the aforesaid indenture negates the claim of the appellant that it is a monthly tenant, had it been the case the appellant was a monthly tenant, the appellant would have not been referred as Sub-lessor. A sublease is the lease of all or a portion of premises by a tenant who has leased the premises from the owner and Sublessor is a tenant who leases a leased property to another tenant. Thus, it was incumbent on part of the appellant to produce these documents to demonstrate that it had not leased the demised premises from the owner when the aforesaid indenture of sublease was executed. The Sub-Lease Agreement would have been definitely one of the determinative factor in determining the nature of tenancy. It may be also be recalled here that the Hon'ble Tribunal has categorically observed in Para 15 of the order while restoring the matter to the file of the AC that when the assessee itself is not sure of period of tenancy as it is on monthly basis and the landlord can terminate it at any time on 15 days notice in terms of section 106 of Act, how the assessee can enter into an agreement with a nationalized bank for a long term lease for 12 or more years. In view of the aforesaid that there cannot be a sublease without a lease, the claim of the appellant that it was a monthly tenant for the said premises, cannot be accepted.

6.4.17 As regards the reliance placed by the appellant on upon a photocopy of the certificate purportedly issued by the landlord Late Shri Himmatlal Kantilal on 7th January 1998 certifying that the appellant is occupying the premises on monthly basis, it is my view that since Shri Himmatlal Kantilal, is now deceased, it can not be examined and for verification of the certificate contemporaneous supporting documents and in the absence of any supporting documents, the certificate so issued can not be accepted on its face value. In this regard I place on the decision of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax vs. Durga Prasad More (1971): 82 ITR 0540 (SC) wherein it has been held that

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of *he present kind a party who relies on a recital in a deed has to establish the truth of those recitals, other-wise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents,"

6.4.18 As discussed in earlier part of this order, the appellant has failed to produce any contemporaneous documents for verification of the certificate. Shri Himmatlal Kantilal, was father of the Sh. Mukesh Himatlal, Managing Director of the appellant company. Therefore, the claim of the appellant company that it has always been a



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tenant on month to month basis cannot be given much credence considering the fact that the property happens to be owned by the father of the Managing Director of the appellant company more particularly because the contemporaneous, evidence whatever exist, were not produced by the appellant for examination.

6.4.19 In view of the aforesaid it is concluded that the appellant has leased the demised premises from the owner from 1st August, 1962 when the appellant licenced a part of the ground floor of the demised premises for a term of 12 years to Bank of Baroda by virtue of Agreement dated 29th January, 1964 and by virtue of provisions of section 27(iii), r.w. clause (f) of section 269UA, the appellant should be treated as deemed owner of the property. Accordingly, the rental income from Kantilal House premises is properly assessable u/s 22 of the Act as "Income from House Property".

6.4.20 Further, it has also emerged from the Indenture of Lease dated 29th March 1996 that the appellant is entitled to receive rent from the Bank in its own right. As per sub clause (ii) of clause 2 of the aforesaid agreement, the Bank is under obligation to pay all the existing ground rents and rates, taxes, cesses, assessments, dues etc. imposed or charged by the Municipality, Government or any local or other authority; and as per subclause (iii) of the aforesaid clause 2, the Bank is also under obligation to pay any and all increases in Municipal taxes, cesses including repair cesses or any other impositions of whatsoever nature, charged or levied or imposed upon the Lessors by on and after the date of execution of this Indenture. However, under the aforesaid subclause (iii) of the aforesaid clause 2 the appellant is under obligation to "sign and affirm such appeal and/or revision and such other applications and other papers as may be required by the Lessees", "if the Lessees decided to prefer Appeal and/or revision against imposition of Municipal taxes, rates assessments on the demised premises." It is relevant to note here that the owner has no role to play in this regard. The Relevant clauses of the lease agreement dated 29th March 1996 are extracted hereunder for convenience:

NOW THIS INDENTURE WITNESSETH and it is hereby agreed and declared between the parties hereto as follows:-

1. ****

2. The Lessees to the intent that the obligations may continue through out the term hereby created both hereby covenant with the Lessors as follows.

(i) ***

(ii) To pay and discharge all the existing ground rents and rates , taxes, cesses, assessments, dues, outgoings, impositions outgoings and burdens whatsoever on the demised premises thereon rated, assessed imposed or charged whether by the Municipality, Government or any local or other authority in respect of the said building or upon the said owner in respect thereof or whether payable in law by the owners or occupiers thereof which are present Rs. 7,629.81 (Rupees Seven thousand six hundred twenty nine and paise eighty one only.) per month.

(iii) To pay any and all increases in Municipal taxes, cesses including repair cesses or any other impositions of whatsoever nature hereafter charged or levied or imposed upon the Lessors by on and after the date of execution of this Indenture. However, it is agreed by and between the parties that the Lessors shall immediately on receipt of demand in respect of such Municipal rates, taxes assessments, imposition and of the liabilities and out



M/s Nahalchand Laloochand Private Limited goings in respect of the demised premises notify the same in writing to the Lessees PROVIDED HOWEVER that if the Lessees decided to prefer Appeal and/or revision against imposition of Municipal taxes, rates assessments on the demised premises the Lessors shall at the cost of the Lessees sign and affirm such appeal and/or revision and such other applications and other papers as may be required by the Lessees and the Lessors shall assist the Lessees in such proceedings.

6.4.21 Hence, considering that the appellant is competent to sign and affirm such appeal, revision and other applications and other papers against imposition of Municipal taxes, rates assessments on the demised premises, it can be safely concluded that the appellant is owner of the property in its own right. The Hon'ble Supreme Court in the case of CIT vs. Podar Cement Private Limited (1997) 226 ITR 625 (SC) has ruled that under the common law, 'owner' is a person who has got valid title legally conveyed to him after complying with the requirements of law such as the transfer of property act, registration act etc. but, in the context of section 22 of the Income Tax Act, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, 'to tax the income,' owner' is a person who is entitled to receive income from the property in his own right.

6.4.22 Accordingly, even on the principles laid down in the decision of the Hon'ble Supreme Court in the case of CIT vs. Podar Cement Private Limited (Supra), the income from the above properties is to be assessed under the head "Income from House Property" in the hands of the appellant.

6.4.23 As regards the contention of the AR that rental income is not assessable u/s 56 of the Act as income from other sources in view of the jurisdictional High Court's decision in *CIT vs. T.P. Sidhwa (133 ITR 840) (Bom)*, wherein it is held that the rental income from house property cannot be assessed u/s 22 where the assessee is not the owner; nor can it be assessed under the residual head merely because the same could not be brought to tax u/s 22 as the heads are mutually exclusive, it is my view that this issue is academic now in view of my clearing finding that by virtue of provisions of section 27(iib), r.w. clause (f) of section 269UA, the appellant should be treated as deemed owner of the property and that the rental income from Kantilal House premises is properly assessable u/s 22 of the Act as "Income from House Property".

6.4.24 In view of the aforesaid, these grounds of appeal are partly allowed.

As evident, Ld. CIT(A) has *inter-alia*, observed that the assessee failed to produce any contemporaneous documents for verification of certificate issued by *Shri Himatlal Kantilal*. The terms of various lease agreements entered into by the assessee with *Bank of Baroda* were also examined to arrive at a conclusion that in the context of Sec. 22, owner would mean a person who was entitled to receive income from the property in his own right. Reliance was placed on the decision of Hon'ble Supreme Court in



CIT V/s Podar Cement Pvt Ltd. (226 ITR 625) for the said conclusion.

Therefore, the income was rightly held to be taxable under the head *Income from House Property*. Consequently, it was opined that the issue whether the said income could be assessed as *Income from Other Sources* would be rendered academic.

Aggrieved as aforesaid, the assessee is under further appeal before us.

6. We have duly considered the rival submissions including written submissions, perused relevant material on record and deliberated on various judicial pronouncements as cited before us. Our adjudication to the issue would be as given in succeeding paragraphs.

7. As already narrated by us in para-3, the coordinate bench had observed the assessee was in occupation of *Kantilal House* since the year 1948 and continues to do so even today which prima-facie would establish that the premise was taken under long-term lease. In the absence of any written contract, the submissions that tenancy was on 'month to month' basis would require higher degree of evidence. The entire onus was placed on assessee to prove the same by clinching evidences in the background of the fact that the assessee entered into long term lease agreement extending beyond a period of 12 years with *Bank of Baroda*. It was also observed that when the assessee was not sure of the period of tenancy, then how could it enter into a lease agreement with a nationalized bank for a period of 12 or more years. Therefore, heavy onus was casted upon assessee to prove that he was tenant on monthly basis as covered by exception provided u/s 27(iiib) and the lease was not a period exceeding 12 years to attract the provisions of Section 269UA(f). We find that except for letter from legal



heirs of the deceased landlord which merely stated that the assessee has paid monthly rents, no other evidence could be adduced by the assessee to substantiate the fact that tenancy was on 'month to month' basis despite being specifically directed by the Tribunal to do so. In such eventuality, the only documents that would be available to adjudge the assessee's claim would be in the shape of lease agreements entered into by the assessee with *Bank of Baroda*. From the perusal of the same, it is observed that despite assertions by the assessee that tenancy was on 'month to month' basis and the same could be terminated by tendering 15 days' notice, the assessee conveniently entered into long-term lease agreement for aggregate period exceeding 12 years and that too with a Nationalized Bank, who require approval of regulatory authorities to open /operate the branches. Further, the setting up of branch would entail heavy infrastructure cost for the Bank. In the said background, it is difficult to acquiesce to the fact that Bank would agree to enter into such long-term lease agreement for as many as 12 years despite being fully aware of the fact that the tenancy was on 'month to month' basis and the premise could be got vacated by landlord by giving a very short notice. The same would not be possible unless there is assurance of high degree of successful performance of the lease agreement. In fact, clause 8(a) of lease agreement dated 29/03/1996 entered into by the assessee with *Bank of Baroda* read as under: -

The lessors do hereby covenant with the Lessees as follows: -

- a) That on the Lessees paying the lease rent hereinbefore reserved and performing and observing the covenant, conditions and agreements on the part of the Lessees hereinbefore contained shall peacefully and quietly hold and enjoy the demised premises for the term hereby granted without any interruption by the Lessors or anybody lawfully claiming through under or in trust for them.



M/s Nahalchand Laloochand Private Limited

Therefore, it could safely be gathered that the Bank was assured of peaceful enjoyment of the said premise for the agreed period of lease without any interruptions. Hence, the entire facts and circumstances do not convince us to accept the argument that the tenancy was on 'month to month' basis and the assessee was covered in the exceptions contained in Sec. 27(iiiib). We rely on the decision of Hon'ble Supreme Court rendered in **CIT V/s Durga Prasad More (82 ITR 540)** wherein it was observed that the authorities were entitled to take into the surrounding circumstances to find out the realities of the recitals made in the documents. Keeping in view the entirety of facts and circumstances, we hold that the tenancy was not on 'month to month' basis as asserted by the assessee but it was for aggregate period exceeding 12 years in terms of Sec. 269UA(f)(i). Accordingly, for the purpose of Sec. 27(iiiib) r.w.s. 269UA(f)(i), the assessee was deemed owner of the property and therefore, the stated income was rightly brought to tax by revenue authorities as *Income from House Property*. In view of the same, the questions whether the income could be assessed as *income from other sources* would be tendered academic in nature. Finally, by concurring with the stand of lower authorities, we dismiss the appeal. As stated in opening paragraphs, the aforesaid adjudication would apply to all the other appeals also.

8. Resultantly, all the appeals stand dismissed.

Order pronounced in the open court on 2nd January, 2020.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



मुंबई Mumbai; दिनांक Dated : 02/01/2020
Sr.PS, Jaisy Varghese

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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.