

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7369/MUM/2018
Assessment Year: 2014-15**

Wendy Leslie Pereira,
2nd Floor, Leslico House
Bhavani Shankar Road, Dadar
West, Mumbai-400028.

Vs. ACIT-21(3),
Piramal Chambers, Parel,
Mumbai-400012.

PAN No. ACWPP6401C
Appellant

Respondent

Assessee by : Mr. Mandar Vaidya, AR
Revenue by : Mr. Uday Bhaskar Jakke, DR

Date of Hearing : 29/01/2020
Date of Pronouncement : 20/03/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

- a The Ld. CIT(A) erred in confirming and adopting the rent paid by the earlier licensee for the earlier period as Annual value (ALV) for the present year for the purpose of section 23(1)(a) of the Income tax Act.

- b The appellant submits that looking to the facts and circumstance of the case and in law, the Ld. CIT(A) has failed to consider Municipal value of property or actual rent received, whichever is higher as ALV and treating notional rent based on earlier year as ALV.
- c The appellant submits that looking to the facts and circumstance of the case and in law, the Ld. CIT(A) has failed to consider mandate given by the Hon'ble Jurisdictional High Court in Tip Top Typography 368 ITR 330(Bom) that for purpose of determining ALV to undertake and apply known method of working out the Annual Value.
- d In view of the above, the addition made be dropped and Municipal value of property or actual rent received, whichever is higher should be considered as ALV u/s 23(1)(a) of Income Tax Act, 1961

3. Briefly stated, the facts of the case are that the assessee filed the revised return of income for the assessment year (AY) 2014-15 on 29.11.2014 declaring total income of Rs.1,69,31,250/-. She had shown income from salary at Rs.22,19,208/- ; income from house property at Rs.21,42,000/-; income from other sources at Rs.1,26,93,213; short term capital gains on sale of shares at Rs.29,004/-.

During the course of assessment proceedings, the Assessing Officer (AO) noticed that there is large decrease in annual lettable value, though there was no corresponding sale of the property. In response to a query raised by the AO to explain it, the assessee filed a reply dated 14.07.2016 stating that the rental income was less as compared to the previous year mainly because of monthly rent from Joseph Leslie Dynamics Mfg. Pvt. Ltd. is reduced from Rs.2,68,125/- to Rs.97,500/- and the reason for reduction was on account of change in management. It was clarified before the AO that previously it was German Collaborators Company Joseph Leslie Dragger Mfg. Pvt. and after exit of

German collaborators, presently the agreement is with Joseph Leslie Dynamics Mfg. Pvt. The comparative details of rent were also filed, wherein the comparison of rent received in FY 2013-14 and 2012-13 are indicated as follows :

<u>Sr. No.</u>	<u>Description of property</u>	<u>Assessee's share</u>	<u>Rent in FY 2013-14</u>	<u>Rent in FY 2012-13</u>
1.	Leslico House	50%	Rs.11,70,000/-	Rs.64,35,000/-
2.	Flat No. 8, Plot No. 612, Windmere	100%	Rs.23,40,000/-	Rs.19,80,000/-
3.	504, Capricco	100%	Rs.1,35,000/-	Rs.55,000/-

The AO on examination of the above, observed that the rent received from the property at Leslico House has substantially reduced to 20% of the rent as that the earlier year. Further, he found from the website of Ministry of Corporate Affairs (MCA) that the assessee was a major shareholder and Director in the company to whom the property has been rented i.e. Joseph Leslie Dynamiks Mfg. Pvt.

Again to clarify the position, the AO asked the assessee to justify the low rent and explain as to why the rent received in the preceding year be not considered as the ALV of the property as per the provisions of section 23(1)(a) of the Act. In reply to it the assessee submitted *vide* letter dated 12.08.2016 that the ratable value by Municipal Corporation for the property is Rs.1,72,340/- and accordingly the rent charged for the part at Rs.1,95,000/-, being much higher should be adopted as the fair rental value of the property. It was further stated before the AO that the provisions for fixation of annual rent under the Municipal Corporation Act is in *pari materia* with section 23 of the Act and accordingly the rent fixed under the Municipal Laws takes into

consideration everything and accordingly shall form the basis for arriving at annual value to be determined u/s 23(1)(a) of the Act and thereby no further notional addition can be made. Also the assessee submitted that the actual rent received provides a more accurate and satisfactory measure of the amount for which the property might reasonably be expected to let out from year to year and accordingly must be assessed to tax on the basis of actual rent received. Referring to the decision in *CIT v. Satya & Co. Ltd.* (1994) 75 Taxman 193 (Cal), it was contended by the assessee that the Revenue was bound to fix the ALV on the basis of Municipal Valuation, unless the same was lower than the actual rent received. The assessee also referred before the AO the decision in the case of *M/s Sheila Kaushish v. CIT* (1981) 131 ITR 435 (SC) and *CIT v. Poddar Bros (P.) Ltd.* (1999) 240 ITR 925, 926, 927 (Cal). Thus the assessee submitted that the income from house property has been correctly calculated on the basis of annual ratable value as determined by the Municipal Authority and the actual rent being higher should be adopted for determining the income from house property.

However, the AO was not convinced with the above explanation of the appellant for the reason that the assessee had actually rented the property to the same company in the preceding year for a rent of Rs.5,36,250/- per month and on change of management the rent was drastically reduced to Rs.1,95,000/- per month. The AO further mentioned that the assessee has not brought out any factual evidence of curtailment of space or lesser privileges during the impugned assessment year and therefore, it can be safely concluded that reasonable rent for which the property can be expected to be let out is Rs.5,36,250/- per month for the provisions of section 23(1)(a) of the

Act. The AO further noted that the assessee has not brought out any case that the said property is covered under the Rent Control Act. Then referring to the judgment of the Hon'ble Bombay High Court in the case of *CIT v. Tip Top Typography* (2014) 48 taxmann.com 191 (Bom), the AO noted that as per the said decision in a normal course, the Municipal Valuation is a fair indicator of the ALV of the property; however, it is in circumstances when the rent is not influenced by extraneous/intravenous factors resulting in deflation/inflation of rent due to other motives. Further, referring to the above decision, the AO noted that if the Assessing Officer has cogent material to hold otherwise, then it is open to him to make other inquiries to determine the fair rent for determining the ALV as per the provisions of section 23(1)(a) of the Act.

It is further noted by the AO that the reason not to accept the annual rent as the ALV in the instant case is that the parties involved are related. Finally, it is observed by him that in the present case the issue has been made much easier, as the property was rented out earlier at higher rent. Further, it is observed by him that if the assessee argues that the rent presently received is the ALV, then it leads to a more dangerous conclusion that the assessee had received the additional consideration in the earlier year for other than the rental amount and may be in the nature of deemed dividend etc., which otherwise would have been taxable at a much higher rate as compared to the income shown in the nature of house property, wherein the assessee can claim mandatory deduction to the extent of 30% u/s 24 of the Act. Also the assessee has not made any submission of the property being covered under the Rent Control Act and the standard rent being fixed. Therefore, the AO held that the same aspect is not to be considered for determining the ALV.

At the end relying on the decision in *Tip Top Typography* (supra), the AO concluded that the ALV of the assessee's share of 50% of the property known as Leslico House rented to Joseph Leslie Dynamics Mfg. Pvt. is Rs.31,17,500/- and adopted it accordingly for determining the income from house property for the year under consideration.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 28.09.2018, the Ld. CIT(A) dismissed the appeal filed by the assessee on the reason that (i) the same property was given on rent to the same company with slight change from 01.01.2010 onwards for a monthly rent of Rs.2,68,125/-, (ii) the leave and license agreement dated 01.01.2010 for a period of 36 months i.e. from 01.01.2010 to 31.12.2013 and subsequent leave and license agreement dated 01.01.2014 for a further period of 36 months i.e. from 01.04.2013 to 31.03.2016 are exactly same, (iii) the second agreement dated 01.01.2014 is word-for-word replica of the earlier agreement dated 01.01.2010, (iv) each term and condition of rights and responsibilities of licensor and licensee are exactly similar without even an iota of difference.

Having made an examination of the two agreements, the Ld. CIT(A) observed that the same property was let out to the same Company for a much higher value on similar terms and conditions in the earlier three years and therefore to adopt the ALV of the property, there would be no better comparable with the AO then the earlier actual rent being received by the assessee. Further, the Ld. CIT(A) observed that change of management of licensee company is irrelevant to the issue at hand.

Observing that as per the agreements dated 01.01.2010 and 01.01.2014, the licensor is wholly and exclusively the assessee (Ms. Wendy Leslie Pereira), the Ld. CIT(A) dismissed the appeal.

5. Before us, the Ld. counsel for the assessee files a Paper Book (P/B) containing (i) return of income and computation of the assessee for the AY 2012-13 and 2014-15, (ii) license and agreement dated January 2010 and January 2014 and (iii) Municipal Valuation of the property.

It is clarified by him that the above documents were produced before the lower authorities.

Also the assessee filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules for admitting additional evidence, enclosing a copy of the leave and license agreement dated 07.07.2012 between Shri Ganesh Vishwas and one Joshi and Sameer Thakoor. Elaborating the significance of the above document, the Ld. counsel submits that the issue involved in the appeal is computation of 'annual value' for the purpose of section 23(1)(b) of the Act and the above document is a 'leave and license agreement' in the same area as the assessee and hence could provide valuable guideline in deciding the annual value for the purpose of section 23(1)(b) of the Act in the hands of the assessee. Stating that the said document has been entered into by the parties at arm's length, the Ld. counsel submits that as per the said agreement, the market rent is Rs.50/- per sq. ft. (viz. Rs.15,000/- per month for 300 sq. ft.) and as per the assessee's agreement, the rent received by the assessee is Rs.109/- (13,500 sq. ft. + 237.50 sq. ft. + 250 sq. ft.) which is higher than the market rate. It is stated that this document is very crucial and further

the issue involved would be a recurring issue and hence it is of utmost importance that the annual value is arrived at after taking into consideration all the evidence. Further, it is explained that comparable instances would provide the most valuable guideline for determining the annual value.

Submitting a copy of affidavit filed by the assessee on the above, the Ld. counsel submits that the said document could not be produced before the lower authorities, since it is between third parties who are complete strangers to the assessee and hence it took some time for the assessee to trace the parties who have entered into similar transactions in the same areas of the assessee. Thus it is stated that the application be allowed and the additional evidence be admitted.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the application filed by the assessee for admission of the additional evidence be dismissed on the ground that the leave and license agreement dated 01.01.2010 for a period of 36 months i.e. from 01.01.2010 to 31.12.2013 and subsequent leave and license agreement dated 01.01.2014 for a further period of 36 months i.e. from 01.04.2013 to 31.03.2016 are exactly the same. Further, it is stated by him that in the present case, because of the facts and circumstances of the case, change of management of licensee company is not relevant. Further stating that the transaction is between related parties, the Ld. counsel explains that the order passed by the Ld. CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

As per section 23(1)(a), the annual value of any property shall be the sum for which the property might reasonably be expected to be let from year to year. It may neither be the actual rent derived nor the municipal valuation of the property. It is something like notional rent which could have been derived, had the property been let.

In determining the annual value, there are four factors which are normally taken into consideration i.e. (i) actual rent received or receivable, (ii) municipal value, (iii) fair rent of the property and (iv) standard rent.

Reasonable expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. In determining the reasonable rent, several factors have to be taken into consideration, such as, location of the property, annual ratable value of the property fixed by the municipalities, rents of similar properties in neighborhood, rent which the property is likely to fetch having regard to demand and supply, cost of construction of the property and nature and history of the property. These factors play vital role in determining reasonable expected rent of a house property.

In *Tip Top Typography* (supra), the Hon'ble Bombay High Court elaborating the nature of enquiries that the Assessing Officer can make, has held at para 47 the following :

“.....the enquiries that the Assessing Officer can make, would be for ascertaining the going rate. He can make a comparative study and make a analysis. In that regard, transactions of identical or similar nature can be ascertained by obtaining the requisite details. However, there also the Assessing Officer must safeguard against adopting the rate stated therein straightway. He must find out as to whether the property which has been let out or given on leave and license basis is of a similar nature, namely, commercial or residential. He should also satisfy himself as to

whether the rate obtained by him from the deals and transactions and documents in relation thereto can be applied or whether a departure there from can be made, for example, because of the area, the measurement, the location, the use to which the property has been put, the access thereto and the special advantages or benefits.

In the instant case, as mentioned earlier, the leave and license agreement dated 01.01.2010 for a period of 36 months i.e. from 01.01.2010 to 31.12.2013 and subsequent leave and license agreement dated 01.01.2014 for a further period of 36 months i.e. from 01.04.2013 to 31.03.2016 are exactly the same.

In the instant case, as stated by the AO at para 4.2 of his order dated 08.10.2016, as per the website of MCA the assessee was a major shareholder and Director in the company to whom property has been rented i.e. Joseph Leslie Dynamiks Mfg. Ltd.

We are of the considered view that the above principles in *Tip Top Typography* (supra) are applicable to this case.

Considering the facts and circumstances of this case, we admit the additional evidence filed by the assessee. Accordingly, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make an order afresh by examining the "Leave and License Agreement dated 7.7.2012 between Shri Ganesh Vishwas and one Joshi and Sameer Thakoor" after following the principles laid down in *Tip Top Typography* (supra) narrated hereinbefore. We direct the assessee to file the relevant documents/details of the said "Leave and License Agreement". Needless to say, the AO would give reasonable opportunity of being heard to the assessee before finalizing the order.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 20/03/2020

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 20/03/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai