

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6578/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2006-07)

Jubilant Enterprises Pvt. Ltd. 11-B, Mittal Tower, B-Wing, Free Press Journal Marg, Mumbai-400021.	बनाम/ Vs.	ACIT-3(2)(1) Aayakar Bhavan, Mumbai- 400020.
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आयकर अपील सं/ I.T.A. No.6048/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2006-07)

ACIT-3(2)(1) Room No.674, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	Jubilant Enterprises Pvt. Ltd. 11-B, Mittal Tower, B- Wing, Free Press Journal Marg, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCJ4688D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anuj Kisnadwala
Revenue by:	Shri Sunil Deshpande (DR)

सुनवाई की तारीख / Date of Hearing: 01/04/2021

घोषणा की तारीख /Date of Pronouncement: 17/06/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee as well as revenue has filed the above mentioned appeals against the order dated 18.07.2019 passed by the Commissioner of Income Tax (Appeals) -08, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2006-07.



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ITA. NO. 6048/Mum/2019

The revenue has filed the present appeal against the order dated 18.07.2019 passed by the Commissioner of Income Tax (Appeals) -08, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2006-07

2. The revenue has raised the following grounds:-

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to the Annual Letting Value made on the basis of reasonable expectation from the letting of the property as per provisions of Section 23(1)(a) without controverting the facts brought on record by the Assessing Officer?
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete the 16% interest charged by him, on the interest free deposit received by the assessee to determine the Annual Letting Value of the rented property ignoring the obvious fact that there is a direct link between the low rental income admitted and the abnormally high interest free security deposit received by the Land Lord?
3. The appellant prays that the order of CITA) on the above grounds be set aside and that of Assessing Officer be restored.
4. The appellant craves leave to amend, alter, delete or add grounds which may be necessary.”

3. The brief facts of the case are that the assessee filed its return of income on 23.11.2006 declaring total income to the tune of Rs.6,14,49,635. Thereafter, the case of the assessee was reopened u/s 147 of the Act. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is engaged in the business of dealing in yarn on commission basis through its division Jai Synthetics. The assessee



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has shown the rent of Rs.1,47,90,000/- in respect of the property at Corporate Park. The assessee has shown rental income of Rs.2,53,79,832/- in respect of its Kamala Mill Compound Properties. The assessee was asked to justify and explain the annual value so taken in respect of the said properties in the light of annual rent shown and deposits taken. After the reply of the assessee, the income of the assessee Corporate Park Properties was assessed in sum of Rs.2,12,53,863/- and income from Kamala Mill Compound Property in sum of Rs.6,20,98,762/-. The assessee has also claimed the BPT Lease Rent in sum of Rs.1,97,712/- against the rental received from the Jai Centre. The said claim was declined and added to the income of the assessee. Thereafter, some disallowance was assessed u/s 14A r.w. Rule 8D and the total income of the assessee was assessed in sum of Rs.12,10,13,784/-. The assessee was not satisfied, therefore, filed the present appeal before the CIT(A) who partly allowed the claim of the assessee but the revenue was not satisfied, therefore, the revenue filed the present appeal before us.

ISSUE Nos. 1 & 2

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“3.3.2 This ground pertains to AO recomputing the annual letting value in respect of office premises at corporate part commercial premises at Rs.3,21,21,981/- as against Rs.1,47,90,000/- and annual letting value in respect of office premises at Kamla Mill Compound at Rs.9,23,27,492/- as against Rs.2,53,79,832/- I find that this issue came up before the



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Hon'ble ITAT, Mumbai in appellant's own case for AY 2009-10 in ITA No. 7101/Mum/2014 & ITA No.7282/Mum/2014 dated 20.07.2016. The relevant extract of the order of Hon'ble ITAT, Mumbai is reproduced here as follows:-

2. With regard to Grounds No.1, 2 and 3 of the appeal relating to the issue of determination of ALV, the brief facts are that during the assessment proceedings the AO noted that the assessee had shown rental income from its properties located at Corporate Park and Kamala Mills Compound. The assess cc was asked to explain the ALV along with rent and deposits taken. The assessee in this respect filed the following chart:-

Particulars of Property	Name of Tenant	Annual rent (Rs.)	Deposit taken (Rs.)
Unit 6, Corporate Park, Sion Trombay Road, Chembur, Mumbai (10150 sq.ft.)	Axis Bank Ltd.	1,89,80,500	1,82,70,000
Unit 15, Corporate Park, Sion Trombay Road, Chembur, Mumbai(10150 sq.ft.)	- Do -	43,64,400	4,76,100,000
Unit 15, Corporate Park, Sion Trombbay Road, Chembur Mumbai(10150 sq.ft.)	- Do -	43,65,,400	4,62,87,500
Unit 1 to 13, 2 nd Floor, Kamala Mill Compound, Trade World, B wing Senapati Bapat Marg, Lower authorities Parel, Mumbai.	ICICI Bank Ltd.	1,81,85,807	2,62,76,412 (Refunded on 04.08.2008)
Unit 2, 3 rd Floor, Address-d0-	Baxter India Pvt. Ltd.	9,46,871	14,20,500
Unit 7 & 8 Basement, Address – do-	- Do -	12,37,210	17,88,000 (Refunded on 1.11.2008)

The assessee submitted that the actual rent received in respect of the above stated properties had been offered for taxation. The assessee also



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submitted with regard to the three properties located At Corporate Park that the rent of Unit -6 was more than the rent of Nos. 14 and 15 because of location advantage viz, main road etc. and that the agreements in respect of Unit Nos. 14 and 15 quite old, executed in the year 2001 and 2000 respectively, as, the agreement in respect of Unit No.6 was executed in the year 2008. The AO however, was not satisfied with the above explanations given by the assessee. He observed that the assessee had received interest-free deposits in relation to the above properties and that the said deposits might have affected the rental value of the properties. He, thereafter, deputed an Inspector to conduct the enquiry regarding the fair rental value of the properties in question. The AO thereafter, considered the notional/estimated fair market rates given by the Inspector in relation to the financial year 2011-12. Based on the said market rates he calculated the fair rent for the assessment year under consideration by considering adhoc average annual increase @10% and thereby doing the backward calculation from the financial year 2011-12 and arrived at a fair market value for the year under consideration in respect of the rates obtained by the Inspector could not be considered to be reliable and credible evidences. He thereafter observed that, as per the settled law as laid down by various High Courts, the ALV is the sum at which the property may reasonably let out from year to year uninfluenced by any extraneous circumstances and that actual rent received is a reliable yardstick in normal circumstances. That however, the ALV determined cannot exceed the standard rent as per the Rent Control Legislation applicable to the properties. He however, observed that the provisions of Maharashtra Rent Control Act, 1999 were not applicable in the case in hand, as the tenants were Public Limited Companies having paid up capital of more than Rs.1 Crore each. He however, observed that the municipal valuation relating to the properties in question was available. He observed that the actual rent received by



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the assessee in respect of the properties was far higher than the municipal rateable value fixed by MCGM. He observed that the provisions of Section 154 (1) of the Municipal Corporation Act, 1888 deal with determination of value of the land or building also uses the words "annual for which such land or building might reasonably be expected to let from year to year". He observed that the said wordings are similar to the wordings of Section 23 of the Income Tax Act. He, therefore, held that the provisions of Section 23(1) (a) of the Income Tax Act were in para-material with that of the provisions of BMC. Thus, the annual value fixed by the municipal authorities can be safely treated as rational and reasonable yardstick for determination of ALV u/s 23 (1) (a) of the Income Tax Act He, in this respect also referred to the following decisions:

1. Mrs. Sheila Kaushish Vs. CIT 131 ITR 435 (SC)
2. Diwan Daulat Kapoor Vs. New Delhi Municipal Committee 122 ITR 700 (SC)
3. C/T Vs. Moni Kumar Subba 240 CTR 97 (Del) (FB) and
4. Smitaben N. Ambani Vs CWT 323 ITR 104 (Bom)

properties at Corporate Park at Rs.4,44,27,866/- and in respect of the properties at Kamala Mill Compound at Rs.1,44,92,240/-. The AO further noted that even if, notional interest @16% of the deposits is taken and added to the rental value declared by the assessee, then the annual rental value, so arrived would be almost the same as arrived at by him on the basis of the report of the Inspector. He accordingly made addition of Rs.1,97,72,400/- in respect of Unit Nos. 14 and 15 of Corporate Park and Rs.32,07,862/- in respect of Kamala Mill Compound.

3. Being aggrieved by the order of the AO, the assessee preferred appeal before the learned CIT (A). The learned CIT (A) after considering the submissions of the assessee observed that the AO had mainly relied upon



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the Inspector's report for financial year 2011- 12 for determining the ALV of the properties in question for the year under consideration. He also noted that the assessee had taken a that the said Inspector's report was not confronted to him. He, observed that even otherwise the report of the Inspector was more or less general report and not specific in nature. The said report did not contain the names and addresses of the property agents/dealers contacted by the Inspector for the purpose of ascertaining the prevailing market rate. Even, it did not mention any comparable instance of commercial properties in Corporate Park and Kamala Mill Compound which were let out The Inspector had simply reported that he had contacted certain agents who were said to have been providing let out charges to various parties. The said report was vague and even no names of such agents were mentioned. No specific details were given, only the rates per sq. ft were mentioned. However, no details of the specification or infrastructures etc. were mentioned to which those rates were applicable. He, therefore, held that no details of comparable instances were obtained by the Inspector. He, therefore, held that in the absence of any specific details, the so called prevailing market He further observed that whatever benefits were derived by the assessee form the interest free deposits that were duly reflected and offered for taxation in the return of income as per the provisions of the Income Tax Act He further relying upon the decision of the Hon'ble Bombay High Court in the case of Tip Top Typography & Ors. passed in Income Tax Appeal No. 1213/2011 vide Order dated 08-08-2014 observed that the Hon'ble High Court in the said case laid down certain principles regarding determination of ALV of properties and it was held that the actual rent received in normal circumstances would be a reliable evidence unless the rent is inflated or deflated by reasons of extraneous consideration and that the AO is not prevented from carrying out any independent investigation or enquiry regarding determination of fair market value



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where he has derived a positive material to indicate that the parties have suppressed the prevailing rate of the locality. The AO must not make a guess work or act on conjecture or surmises. He can make a comparative study and make analysis. In this regard, transactions of identical and similar nature can be ascertained by obtaining the requisite details. The AO must safeguard against adopting the rate stating therein straightway, rather, he should take into account all relevant factors. That the AO must comply with the principles of fairness and justice and should disclose the material in his possession to the assessee so as to obtain his view. That if the letting out of the properties does not reflect any extraneous circumstances, then merely because an interest-free security deposit has been obtained, the AO should not presume that this sum or the interest derived there from is the rental income of the assessee. After considering the above principles, the learned CIT (A) observed that in the case in hand, the AO did not have any definite and positive material to show that the assessee has suppressed the prevailing market rate of the properties in question. The AO had made no attempt to ascertain transactions of identical or similar nature or comparable instances showing actual letting out of commercial properties in the same premises at higher rates than that have been disclosed by the assessee. Considering the above factual position and in the light of the decision of the Hon'ble Bombay High Court in the case of Tip Top Typography & Ors. (supra), the learned CIT (A) deleted the addition made by the AO to the ALV of the properties.

We have heard the rival contentions and have also gone through the records. As discussed above, the learned CIT (A) has thoroughly discussed the factual aspects and has found that the AO has determined the fair market value on the basis of a vague and general report of the Inspector. There was no credible and reliable evidence before the AD for arriving at the fair market value of the properties. Even, the municipal valuation of the properties was much lower than the actual rent received



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by the assessee. There was no evidence on that similarly placed properties like that of the assessee were higher rental value than that was offered by the assessee. order of the learned CIT (A) is quite elaborative and is based on a very well reasoning. We do not find any infirmity in his order while deleting the addition made by the AD in respect to the ALV of the properties question. Accordingly, we uphold the same and dismiss these grounds of appeal of the Revenue.

3.3.3 Respectfully following the above decision of Hon'ble ITAT, Mumbai, these grounds of the appeal are therefore allowed in terms of the order of the Hon'ble Tribunal.”

5. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of decision of Hon'ble ITAT in the assessee's own case for the A.Y.2009-10 in ITA. No.7101/Mum/2014 & 7282/Mum/2014 dated 20.07.2016. The CIT(A) has also recorded the finding of the Hon'ble ITAT in his order mentioned above. Accordingly, we find that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE NO.3

6. Issue no.3 is pre-mature in nature which is not required to be adjudication, hence, this issue is hereby dismissed.

ISSUE NO.4



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7. Issue no. 4 is formal in nature which is not required to be adjudication.

In the result, the appeal filed by the revenue is hereby dismissed.

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8. The assessee has moved petition seeking withdrawal of the appeal on the ground that the matter is settled under Vivad Se Vishwas Scheme 2020.

9. Learned Departmental Representative does not oppose the prayer so made by the assessee.

10. There is no dispute that once the matter is resolved under Vivad Se Vishwas Scheme 2020, the related appeal is required to be withdrawn.

11. In view of the above position, as also bearing in mind entirety of the case, we deem it fit and proper to dismiss the appeal as withdrawn.

12. In the result, the appeal filed by the assessee is hereby dismissed as withdrawn and appeal filed by the revenue is hereby dismissed accordingly.

Order pronounced in the open court on 17/06 /2021

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/06/2021

Vijay Pal Singh (Sr. P.S.)

Sd

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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