

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.1215/Mum/2020
(निर्धारणवर्ष /Assessment Year: 2014-15)

ACIT 25(2) Mumbai. Room No. 220, 2 nd FLR, Kautilya Bhavan BKC Bandra(E), Mumbai- 400051	बनाम/ Vs.	Amrut Enterprises. 203, Avon Arcade, Dasrathlal Road, vile Parle(W), Mumbai- 400056
स्थायीलेखासं ./जीआइआरसं ./PAN No AAOFA3252E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

आयकरअपीलसं./ I.T.A. No.1017 & 1018/Mum/2020
(निर्धारणवर्ष /Assessment Year: 2014-15 & 2015-16)

Amrut Enterprises. 203, Avon Arcade, Dasrathlal Road, vile Parle(W), Mumbai- 400056	बनाम/ Vs.	JCIT 25(2), Mumbai. Room No. 502, 5 th FLR, Pratyakshar Bhavan, BKC, Bandra(E), Mumbai-400051
स्थायीलेखासं ./जीआइआरसं ./PAN No AAOFA3252E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. S Khandelwal & Shri Nilkanth Khandelwal
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Manoj Sonha, Sr.AR.
सुनवाईकीतारीख/ Date of Hearing	:	04.10.2022
घोषणाकीतारीख / Date of Pronouncement	:	02.01.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid cross appeals have been filed by the Assessee as well as by the Revenue for the AY 2014-15; and appeal filed by the Assessee for the AY 2015-16 against separate impugned order of even date 12.12.2019, passed by Ld. CIT (Appeals) 37, Mumbai for the quantum of assessment passed u/s 143(3).

2. In the Assessee's Appeal the common issues which has been raised is that Learned CIT(A) has erred in law and on facts in sustaining the addition amounting to Rs. 1,31,49,000/- in the AY 2014-15; and Rs. 1,05,19,200/- in the assessment year 2015-16, on account amount received as *Mesne* profits. In revenue's appeal for AY 2014-15, grounds read as under:-

1. The learned Commissioner (Appeals) erred in sustaining the addition made by the Assessing Officer (AO) amounting to Rs. 1,31,49,000 being amount received as mesne profits.

2. The learned Commissioner (Appeals) erred in not appreciating the fact that mesne profits was received under the decree of the Court and it was awarded for deprivation of use of property and thus, it is a capital receipt not chargeable to tax.

3. Will take up appeal for the AY 2014-15 and our finding given in this year will apply *mutatis mutandis* for the AY 2015-16 also.

4. The facts in briefs qua the issue involved are that, during the previous year relevant to A.Y. 2014-15, the Assessee received sum of Rs 6,31,49,000/- as *mesne* profits from SBI. As per the order of the Court of Small Causes, Mumbai, whereby SBI was ordered to pay compensation for the wrongful possession of the property. In the return of income filed u/s 139(1), Assessee had shown the *Mesne* profit received at Rs. 6,31,49,000/- as rental income and offered to tax under the head, "Income from house property" against which it claimed deduction u/s 24(a) at the rate of 30% and offered Rs. 4,42,04,300/- for tax. During the course of the assessment proceedings the Assessee submitted a revised claimed / computation vide letter dated 21.11.2016 stating that amount received as *mesne* profits is a capital receipt and not chargeable to tax in the hands of the Assessee.

5. The background of the matter is that, State Bank of India was occupant and lessee of the premises situated at 58, Nehru Road, Vile Parle, (E) Mumbai, as per lease agreement dated 3rd July, 1990

with the then owners. The agreement was for period of 9 years starting from 1st Jan 1989 to 30th Jun 1998. The lease rentals payable by SBI as per the lease agreement was Rs. 7 sq. ft. per month for initial term of 5 years and was increased for the second term of 4 & 1/2 years which were to be finalized by mutual negotiations between the lesser and the lessee. However, SBI continued to pay the lease rental at the initial rate of Rs. 7 per sq. ft per month and did not increase the rate till the expiry of lease agreement on 30th Jun 1998. Even, after the expiry of the lease agreement on 30th Jun, 1998. SBI continued to occupy the said premises and did not hand over the possession of the premises to the owners.

6. Thereafter, legal notice dated 10th Nov, 2006 was served by the owner to SBI to vacate the premises and pay certain amount as mention there in the notice. In the meantime the Assessee had become the owner of the premises and filed suit against SBI in Small Causes Court for; a) recovery and vacant possession of said premises; b) Arrears of rent payable; c) Interest thereon; d) *mesne* profit; and e) Interest thereon, as SBI continued to occupy the said

premises even after expiry of lease period as per Lease deed dt. 3rd July 1990. Assessee had accepted on account of rent payments at old rate from SBI till 9th November 2006 and thereafter assessee stopped accepting rent payments from SBI after notice dated 10th November 2006 and also during pendency of various suits filed by assessee in Small Causes Court.

7. On 6th November 2009, the Court of Small Causes at Mumbai (Bandra Branch) passed an order whereby SBI was ordered to handover the vacant and peaceful possession of the said premises to the Assessee. SBI was also directed to pay the Assessee, *mesne* profit for the period 1/12/2006 till assessee gets vacant and peaceful possession of the premises. **However, the claim of assessee for arrears of rent / difference in rent and interest thereon was rejected by Hon'ble Court.** Also claim of SBI regarding protection against eviction under provision of Maharashtra Rent control Act, 1999, was rejected by the court and also the plea of SBI that it is a Bank and provision of aforementioned act are not applicable to the premises let out to Bank. Notice dated 10/11/2006 given by the Assessee to the SBI for termination of tenancy of the premises was held legal and valid

as SBI was in unlawful/ illegal possession of the said premises from 01/12/2006 onwards till SBI handed over possession of the same to Assessee. In lieu of order dt. 6th November 2009, the assessee filed *Mesne Profit* (Misc. Application) No. 3 of 2010 in TE & R. SUIT No. 13/16 of 2007 against SBI in May 2010 along with Architect and Valuer, Mr. Roshan Namavati's Report in respect of *mesne profit* payable by SBI to Assessee from 1st Dec '2006 onwards.

8. On 7th January 2014, the assessee and SBI agreed upon an out of court settlement and filed consent terms with the Hon'ble Court. On 5th February 2014, Hon'ble Judge of Small Cause Court passed order in *Mesne Profit* (Misc. Application) No. 3 of 2010 in view of settlement between both parties by way of Consent Terms dt. 7th January 2014. Assessee and SBI had filed cross appeals (Appeal No. 25 of 2010 in T E&R. SUIT NO # 13/16 OF 2007 and Appeal No. 30 of 2010 in TE&R Suit No # 13/16 OF 2007) against order dt. 6th November, 2009, in Small Causes at Bombay (Bandra Branch). Against the said appeal, the Court passed 2 orders dt. 18th January 2014, whereby SBI was directed to pay an amount of Rs. 5,00,00,000/- (Rupees Five Crore) towards *Mesne Profit* to

Assessee. Both appeals were disposed of in lieu of the consent terms dt. 7th January 2014 by the Hon'ble court. Further, SBI agreed to pay additional *mesne* profits w.e.f. 1st January 2013 at the rate of Rs 180 per sq. ft. per month for the premises admeasuring 4,870 sq ft. carpet area to the assessee till the date of entering into new premises. Owing to this, the assessee received Rs 5 Crore plus Rs 1.31 Crore as *mesne* profits during the year. Accordingly, Assessee made revised claimed firstly, on account of lump sum amount as per Court order, that is for *mesne* profits at Rs. 5 Crore; and secondly, additional *mesne* profits as per order, Rs. 1,31,49,000/-. Accordingly in the revised claimed amount of Rs. 6,31,49,000/- was claimed as capital receipts.

9. Before the, Ld. Assessing Officer, Assessee had relied upon various decisions which has been noted at page 3-4 of the assessment order. The Ld. Assessing Officer, after reproducing the Assessee's reply and explanation, rejected the claim and distinguished the decisions relied upon by the Assessee held that in view of the decision of 'Hon'ble Supreme Court' in the case of **"Goetze" (India) Ltd Vs. CIT reported in 284 ITR 323**, Assessee

cannot may ammendment in the return of income by way of any application at the assessment stage without revising the return. Thus, he rejected claim of the Assessee the *Mesne* profit is capital receipt.

10. However, Ld. Assessing Officer while coming to the conclusion has mainly relied upon the judgment of **“Hon’ble Madras High Court in case of CIT Vs. P Mariappa Gounder (Supra)”, 147 ITR 176**, when it was held that *mesne* profits are deemed to be income and they are to be treated as revenue receipts.

11. The Ld. CIT (A), after noting down the facts of the case, sequence of events and the various Court orders determining the compensation and *mesne* profit as well as the judgment relied upon by the Assessee and the Assessing Officer, noted that there are, various judgments favoring both the sides, wherein in some it was held as revenue receipts chargeable to tax and others treated to be capital receipts not chargeable to tax.

12. Ld. CIT (A), further observed that the assessee received two tranches of payment and the character of the two payments received are significantly different. The payment received of Rs. 5

crores for the period 1.12.2006 to 30.12.2012 is a lump-sum payment which was received by the assessee as a compensation paid for deprivation of capital asset and the balance Rs.1,31,49,000/- as additional *mesne* profits at the rate of Rs 180 per sq. ft. for 4870 sq ft. per month w.e.f. 1" January, 2013 till the date of entering into new premises.

13. After going through the orders of the court and various observations made there and analyzing the various judgments, he held and observed as under:-.

21. Thus, after reading the court's order it is clear that the payment received by appellant for the period 30.11.2006 to 31.12.2012 is in the nature of Mesne profits, which is clear from the definition of Mesne Profits' under section 2(12) of Code of Civil Procedure 1908 which clearly takes within its scope any receipt against wrongful possession of property. The nature of deprivation suffered by the assessee is crucial for the purpose of determination of nature of receipt of mesne profits. Where the compensation is paid for deprivation of capital asset, or source of income, it would be a capital receipt in the hands of recipient of the compensation. On the

other hand, where the sums are awarded by the court in the nature of restitution of interest, dividend or any other yield, out of the property is contrast to awarding compensation, the sum awarded is on the nature of income."

14. Before us, Ld. DR strongly referred and relied upon the decision of **“Hon’ble Madras High Court in case of CIT Vs. P Mariappa Gounder (Supra)”**, when and it was held that;

22. When therefore the court decrees mesne profits, that decree is in recognition of the position that the true owner is entitled to the income from the property and the person in wrongful possession is to compensate the true owner in that regard by paying either the actual income from the property or a reasonable estimate of that income. Having regard to these characteristics of mesne profits, there can be no doubt that they are also a species of taxable income..."

The DR stated that the said decision is approved by the Supreme Court. The DR then referred to the Delhi High Court decision in the case of **Skyland Builders (P) Ltd (429 ITR 255)**, para 50 of the order which reads as under;

"50. Reliance placed by Mr Jagia on Smt. Leela Ghosh (supra) is of no avail for two reasons. Firstly, when Smt. Leela Ghosh (supra) was decided and the Calcutta High Court dissented from the view of the Madras High Court in P. Mariappa Gounder (supra), the decision of the Supreme Court in P. Mariappa Gounder (supra), was not available. P. Mariappa Gounder (supra); was decided by the Supreme Court much later i.e. 21-1-1998, whereas Smt. Leela Ghosh (supra) was decided on 18-1-1993. In the light of the Supreme Court having affirmed the decision of the Madras High Court in P. Mariappa Gounder (supra). the dissent in Smt. Leela Ghosh (supra) loses its force. Secondly, this Court has already followed the decision of the Madras High Court in P Gounder (supra), and taken note of that decision being affirmed by the Supreme Court, while deciding Uberoi Sons (Machines) Ltd (supra). The same is a decision of a co-ordinate bench of this court, and we are bound by that decision. We have not been persuaded by the submissions of Mr Jagia to take a contrary view. Therefore, We reject the appellant's reliance on Smt. Leela Ghosh (supra)."

15. On the another hand, the Ld. Counsel, for the Assessee submitted that, the observation of the Hon'ble High Court, has not been approved by the Hon'ble Supreme Court on the issue in hand. The issue before the, Hon'ble Supreme Court in the case of, **P. Mariappa Gounder 232 ITR 2**, was only year of taxability and not the issue whether mesne profit is taxable or not? Although, the point of reference before the **Hon'ble Madras High Court in P. Mariappa Gounder** case was following;

"(1) Whether mesne profits, decreed by a court of law, can be held to be taxable income in the hands of the decree holder?"

"(2) The other question is about the relevant year in which mesne profits are to be charged to income-tax?"

16. He further, referred to the various observation of the Ld. CIT (A) as well as the submissions made before him. Thus, he submitted that;

(a) Both the amounts of mesne profits arise from the orders of the Court given on the basis of consent terms filed in the Court on 7th January, 2014.

(b) The claim of arrear rent and additional rent and interest thereon was rejected by the Court.

(c) The nomenclature mesne profits is used by the Court, fully understanding the meaning thereof, in contradistinction to a nomenclature used by parties to an Agreement. The Court knowingly has used the words mesne profits for deprivation of subject premises.

(d) The basis of calculating mesne profits being rate of Rs 180 per sq ft per month on 4870 sq ft does not mean it is in lieu of rent; this is only manner to calculate the mesne profits. The compensation is still given for unlawful deprivation of the subject premises by the SBI.

In view of the above, he submitted that mesne profits of Rs 5,00,00,000 and Rs 1,31,49,000 be held to be capital receipt, and thus, the appeal of the appellant be allowed and that of the Department be dismissed.

17. We have heard the rival submissions, perused the relevant finding given the impugned orders as well as the material referred to before us. In so far as, the issue raised in the revenue's appeal,

the main contention which has been raised that Ld. CIT (A), has erred in accepting in the claimed of the Assessee in view of the decision **Hon'ble Supreme Court in the case of "Goetze" (Ind) vs. CIT Supra.** The Ld. CIT (A), has clearly held that, the issue of taxability of mesne profits was raised before the Assessing Officer much before the completion of the assessment and therefore, in light of the judgment of Hon'ble Jurisdictional High Court in the case of **CIT vs. Pruthvi Brokers and Share holders 394 ITR 336 (Bom)**", and decision of Delhi High Court in **Jai parabolic reported in 306 ITR 42**, he held that, such a claim can be entertained at the appellate stage. Accordingly, we are in agreement with the order of the Ld. CIT(A), that this issue can be raised at the appellate stage an accordingly, **ground No.1 raised by the revenue is dismissed.**

18. The core issue before us is, whether, the mesne profits received by the Assessee from SBI by the order of the Court, is revenue receipt or capital receipt. Though, the term "*mesne profit*" has not been defined in the income tax Act, *albeit* it has been defined in **section 2 (12) of the Code of Civil Procedure, 1908** as '*those profits is the person in wrongful position of such property*

actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession'. In short, it means a any receipt against wrongful possession of property. The term 'mesne profits' relates to the damages or compensation recoverable from a person who has been in wrongful possession of immovable property. The Mesne profits are nothing but a compensation that a person in the unlawful possession of others property has to pay for such wrongful occupation to the owner of the property. The definition of '*Mesne Profits*' under section 2(12) of Code of Civil Procedure 1908 clearly takes within it scope any receipt against wrongful possession of property. The nature of deprivation suffered by the assessee is crucial for the purpose of determination of nature of receipt of mesne profits. Where the compensation is paid for deprivation of capital asset, or source of income, it would be a capital receipt in the hands of recipient of the compensation.

19. In short, mesne profits are a nature of damages for deprivation of for use and occupation of the property which is some

kind of which is not in the nature of avoiding or arrear rents. In order to, understand whether the mesne profit which has been awarded by the court which in the nature of damages for a wrongful occupation of the property or not, it would be relevant to note down the following chronology of event.

Sr. No	Date	State Bank of India, Vile Parle (E) Branch- Brief Facts of Matter & Time Line
1	12 th Dec, 1968	SBI first time entered into lease deed dated 12th December, 1968 with then owners of the said / subject premises. Total area leased - 2670 sq. ft. Area of 2200 sq ft on ground floor along with area of 470 sq. ft. in the basement which was located at survey no.: 58-A, Nehru Road, Vile Parle (East), Mumbai- 400 057.
2	July 1983	An additional area of 2200 sq. ft. on the first floor of the same premises was leased to SBI, Vile Parle (East) Branch along with old area of 2670 sq ft. aggregating to total area of 4870 sq. ft. for period of '5' years starting from July-1983. As on that date SBI was still operational from same/said/ subject premises which was leased to it in year 1968.
3	3 rd July 1990	After renewal, total area of 4870 sq. ft. was leased to SBI, Vile Parle (East) Branch, for further period of nine years and six months starting from 1st January 1989 to 30th June 1998 vide registered Lease Deed dated 3rd July 1990. As on that date, SBI was still operational from the same/ subject / said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft..
4	10 th Nov	Termination Notice dated 10th Nov 2006 was served by

	2006	us (Owner) to SBI and SBI was asked to vacate the premises and pay certain amounts as mentioned in said Notice As on that date, SBI was still operational from the same subject/said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal / Occupation of Same subject premises for period from 30th June 1998 till 30th July 2015 as Lease Deed / Agreement dated 3rd July, 1990 had already expired on 30th June 1998.
5	Year 2007	T.E&R Suit No.: 13/16 of 2007 was filed by us (Owner) against SBI, Vile Parle (East), Branch, in Small Cause Court at Bombay (Bandra Branch) Mumbai, for Vacating the said / subject premises and also recovery of some amounts. As on that date, SBI was still operational from the same/ subject / said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal Occupation of Same / subject premises for period 30th June 1998 till 30th July 2015 as Lease Deed/ Agreement dated 3rd July, 1990 had already expired on 30th June, 1998.
6	6 th Nov,2009	The Hon'ble Court of Small Causes at Bombay (Bandra Branch) passed an order and asked SBI, Vile Parle (E), Branch to handover vacant possession of the said / subject / same/ premises to us (Owner) along with some other directions in TE & R Suit No: 13/16 of 2007. As on that date, SBI was still operational from the same subject/ said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal Occupation of same / subject premises for period 30th June 1998 till 30th July 2015 as Lease Deed / Agreement dated 3rd July, 1990 had already expired on 30 th June, 1998.

7	May 2010	In view of the order dated 6th November, 2009 of the Hon'ble Court of Small Causes at Bombay (Bandra Branch) in suit No. T.E & R 13/16 of 2007, we (Owner) filed Mesne Profit (Misc. Application) Suit No.: 3 of 2010 for determining Mesne Profit payable by SBI from period 1st December. 2006 onwards. As on that date, SBI was still operational from the same subject / said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal / Occupation of same / subject premises for period 30th June 1998 till 30th July 2015 as Lease Deed / Agreement dated 3rd July, 1990 had already expired on 30th June, 1998.
8	7 th Jan, 2014	SBI and the owner (us) agreed upon an out of Court Settlement and filed Consent Terms with the Hon'ble Small Cause Court (Bandra Branch), Mumbai in Various Suits. As on that date, SBI was still operational from the same/ subject/said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal / Occupation of same / subject premises for period 30th June 1998 till 30th July 2015 as Lease Deed / Agreement dated 3rd July, 1990 had already expired on 30th June, 1998.
9	5 th Feb, 2014	Hon'ble Judge of Small Causes Court (Bandra, Branch) Mumbai passed order in suit of Mesne Profit (Misc. Application) No. 3 of 2010 and also in Appeal No: 25 of 2010 and also Appeal No: 30 of 2010 in T. E & R. Suit No. 13/16 of 2007 in view of Settlement/Consent terms dated 7 th January, 2014 and directed SBI, Vile Parle (East), Branch to pay an amount of Rs. 5,00,00,000/- (Rupees Five Crores) to Owner towards Mesne Profit and also directed SBI to pay additional Mesne Profit at the rate of Rs. 180 per sq. ft. per month with effect from

		1st January 2013 for the said/subject/ same suit premises of Area 4870 sq. ft. till the date of entering into New Premises to be offered by Owner/Developer as and when same is ready for occupation/shifting after receipt of Occupation Certificate (O.C) from Concerned authorities. As on that date, SBI was still operational from the same subject / said premises, which was leased to it in year 1968 of Area admeasuring 4870 sq. ft. SBI, Vile Parle (East) Branch was in illegal / Occupation of same / subject premises for period 30th June 1998 till 30th July 2015 as Lease Deed / Agreement dated 3 rd July, 1990 had already expired on 30th June, 1998.
10	1st Aug, 2015	SBI, Vile Parle (East) Branch, finally handed over vacant possession of the said / subject/ same Suit premises of Area admeasuring 4870 sq. ft on Ground floor/ First floor / Basement to us (Owner) for first time since 12th December. 1968 and shifted it's entire operations to New Premises admeasuring 2705 sq. ft. on Ground Floor & First Floor constructed/developed by us (owner) on same plot of Land after execution of fresh Lease Deed / Agreement dated 6th August, 2015 for lease period starting from 1st August, 2015 on Revised Lease Rental of Rs. 280/- per sq. ft. per month payable by them to owner (us) along with other Terms & Conditions.

20. From the above event, it is seen that SBI was occupying the premises of area admeasuring 4870 sq. ft. from the period of 3rd June, 1998 till 30th July, 2015, even though leased had already

expired on 30th June, 1998. The Court had awarded amount of Rs. 5 core and Rs. 180 per sq. ft per month with effect from the 1 Jan, 2013 was paid to the assessee for illegal occupation of the premises of the SBI. Whenever decree for, mesne profits is passed, the real owner is compensated for the deprivation of the sums that are rightfully his. It is kind of compensation for the suffering a person has undergone due to illegal occupation and the hardship faced by the person. As noted by the Ld. CIT (A), Assessee has received two tranches of payments from SBI, through 3 orders of the Court which are as under:

1. Order dated 06.11.2009 wherein it was held that the SBI was occupying the property illegally and was also directed to pay the assessee Mesne Profit for the period 1/12/2006 till assessee gets vacant and peaceful possession of the premises.

The claim of assessee for Arrears of Rent / Difference in Rent and interest thereon was rejected by Hon'ble Court. Notice dt. 10/11/2006 given by the Assesses to the SBI for termination of tenancy of the premises was held legal and valid and SBI was in unlawful/ illegal possession of suit said premises from

01/12/2006 onwards till SBI handed over possession of the same to Assessee.

2. Order dated 07.01.2014 SBI agreed to pay additional mesne profits w.e.f. 1st January 2013 at the rate of Rs 180 per sq. ft. per month for the premises admeasuring 4,870 sq ft. carpet area to the assessee till the date of entering into new premises Owing to this, the assessee received Rs 1.31 Crore as mesne profits during the year.

3. Order dated 18.01.2014 SBI was directed to pay an amount of Rs. 5,00,00,000/- (Rupees Five Crore) towards Mesne Profit to Assessee.

21. It is seen that, in the first order dated 06.11.2009, Court has clearly stated that, *"I therefore, hold that the plaintiff is not entitled to claim the arrears of rent and interest as claimed in this suit. As plaintiff is not entitled to claim the arrears of rent, the question of limitation does not survive."*

Further they added in paragraph 35 & 42

"Hence, by notice dated 10.11.2006 sent by the original plaintiff to the defendant, the tenancy was terminated. The said notice was

duly received by the decedents advocate on 11.11.2006 and hence, tenancy stood terminated by the end of the month i.e. on 30.11.2006 to 30.12.2012.

The possession of defendant over the suit premises from 01.12.2006 was therefore unlawful. The defendant is therefore liable to pay Mesne profit to the plaintiffs for wrongful use and occupation of the suit premises."

Finally the court order at para 3 and 4 of the order at page 38 –

"3. Defendant is also directed to pay to the plaintiff the Mesne profits for the period from 01 12 2006 till plaintiff gets vacant and peaceful possession of suit premises. However an enquiry is directed under order 20 Rule 12 of Code of Civil Procedure for determination of Mesne profits for the above period.

4. The claim of the plaintiff for difference in rent amounting to Rs. 2,25,75,226/- is dismissed."

22. Thus, the difference in rental amount was clearly rejected by the Court and gave very clear cut finding that, **no arrear rent is payable to the Assessee in absence of rent agreement. What the court has directed was purely mesne profit on account damages**

for property being illegally occupied by the SBI. After, two different order dated, 07.01.2014 & 18.01.2014, the Assessee received Rs. 5 crore, as one time lump sum payment for the period of 01.12.2006 to 31.12.2012, but another sum of Rs.1,31,49,000/- was given separately for the period 01.01.2013 to 31.01.2014 which was on the basis of some calculation per sq. ft area. **No way, the court has said it is compensation of an arrear rent for this period. This in our opinion, even this amount of Rs, 1,31,49,000/- is similar to the lump sum payment of Rs. 5 crore and purely in the nature of mesne profit.**

23. The Ld. CIT (A) has referred to section 25B which was inserted from AY 2001-02 in the Income Tax Act, wherein it has been contemplated that if the Assessee has received any amount by way of arrear of rent from property not charged to income tax any previous year, then the amounts received after deduction of sum equal to 30% of such amount shall be deemed to the income chargeable under the head income from house property. Accordingly, he held that, the amount of Rs. 1,31,49,000/- is in the nature of arrear rent, for which he held is taxable.

24. Such a finding of the Ld. CIT(A) in our view is incorrect, in view of the clear cut order of the Court wherein it has been categorically directed and held that, no part of the mesne profit is arrear rent and this claim of the Assessee was specifically rejected. The Court has clearly bifurcated the compensation for two periods; for one period it has directed to pay lump sum period payment (01.12.2006 to 31.12.2012); and second on the basis of certain calculation based on area and rate for 01.01.2013 to 31.01.2014. Thus, the part of the amount received of Rs. 1,31,49,000/- cannot be held to be hit by section 25B of the Act.

25. Before us, the department has relied upon, the decision of Hon'ble Madras High Court as referred to by the Assessing Officer and another judgment of **Hon'ble Delhi High Court in the case of Sky Land Builders P. Ltd vs. ITO, (2020) 121 taxman.com 151.** Ld. DR has also relied upon, another decision of **Hon'ble Madras High Court in the case of Kenpadevamma vs. CIT (2002) 121 taxman 35.**

26. On the other hand, the Assessee has relied upon the decision of Hon'ble Bombay High Court in the case of **Good Will Creators P.**

Ltd. 386 ITR 394; decision in the case of **M/s. Annamma Alexander 191 ITR 551 Kerala High Court;** and judgment of **Calcutta High Court in the case of Smt. Leela Ghosh 205 ITR 9.**

The Hon'ble Bombay High Court in the case of "**CIT vs. Good Will Creators P. Ltd (Supra)** held that, mesne profits received by the Assessee from a person on a wrongful possession of his property is a capital receipt not chargeable to tax, conforming the view of the Tribunal relying upon the decision of the special bench of the Tribunal in the case of **Narang Overseas P. Ltd reported in 111 ITT 1.**

27. Hon'ble Kerala High Court in the case of **CIT vs. M/s Annamma Alexander (Supra),** has considered and distinguished the view taken by the **Hon'ble Madras High Court in P. Mariappa Gounder** case in the following manner:-

"The decision of the Madras High Court in P Mariappa Gounder's case (supra) at p. 681 prima facie supports the plea of the revenue that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income. The discussion is contained in p. 681 With great respect to the learned Judges, who rendered the

said decision, we are of the view that the said decision fails to give due effect to the decision of the Judicial Committee of the Privy Council in Girish Chunder Lahiri's case (supra) and the decision of the Supreme Court in Lucy Kochuwareed's case (supra) at p. 158, para 24. It is also not in accord with the earlier Bench decision of this Court in Periyar & Pareekanni Rubbers Lid's case (supra) and the decision of the Patna High Court in Rani Prayag Kumari Debi's case (supra). To the extent the said decision of the Madras High Court holds that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income, we express our respectful dissent, in view of the clear character of the receipt mesne profits- as a capital receipt.

The Hon'ble Court went event to the extent of holding that amount of interest received on mesne profit cannot be treated as revenue receipts taxable in the hands of the Assessee. The court has referred to the various decisions and also the report of Judicial Committee of the principle laid down by Privy Council in **Girish Chandar Lahari vs. Sakshi**" and many other decisions of the Hon'ble Supreme Court.

28. Further, Hon'ble Calcutta High Court in the case of **CIT vs. Smt Leela Ghosh**, wherein Hon'ble Calcutta High Court after referring to various decisions rendered on mesne profit and definition given in the CPC have also deferred from the view taken by the Hon'ble Madras High Court. Relevant observations of their Lordships in this regard read as under:-

17. All the aforesaid cases clearly support the assessee in this reference. Since the mesne profits are only damages for loss of property or goods, these are not in the nature of revenue receipts. The receipt of Rs. 2 lakhs is clearly capital in nature. The counsel for the revenue, however, invited our attention to a decision of the Madras High Court in CIT v. P. Mariappa Gounder [1984] 147 ITR 676. In that case, the assessee agreed to purchase a Tile Factory under an agreement dated 22-5-1950. The vendor, contrary to the agreement and in breach thereof, sold it to another person and put him in possession. The assessee sued the vendor for specific performance. This suit was decreed in favour of the assessee and the same was affirmed by the Supreme Court. The Supreme Court also decreed mesne profits payable to the assessee as fixed by the

trial Court. The Madras High Court held that a claim to mesne profits is usually directed against the one who has deprived the true owner of possession of his' property and who has thereby prevented the true owner from enjoying the income therefrom or usufruce of the property. When in such a suit or proceeding, the Court awards mesne profits to the true owner, it represents a just recompense to the true owner for the deprivation of the income which ought to have come into his hands, but for the interference of the person in wrongful possession of the property. It is in recognition of this principle that the true owner is entitled to the income from the property and the person who is in wrongful possession is to compensate the true owner by paying either the actual income from the property or a reasonable estimate of that income. Consequently, the mesne profits are also a species of taxable income.

18. With great respect to the learned Judges, we could not persuade ourselves to agree with the views expressed by the Madras High Court in the aforesaid decision so far as it holds that mesne profits awarded by the Court for wrongful possession are liable to be assessed as income. Neither the decision of the Privy

Council in Girish Chunder Lahiri's case (supra) nor the decision of the Supreme Court in Lucy Kochuvareed's case (supra) was either cited or noticed by the learned Judges of the Madras High Court. In fact, even the decision of the Patna High Court in Rani Prayag Kumari Debi's case (supra) and that of the Kerala High Court in Perriyar & Pareekanni Rubbers Ltd.'s case (supra) were neither noticed nor considered by the Madras High Court.

In our view, on the facts of this case, the Tribunal was justified in holding that the mesne profits of Rs. 2 lakhs received by the assessee in this case were in the nature of damages and, therefore, capital receipt.

29. In view of the, aforesaid decisions and the way has been deferred by the two High Court the Reliance placed by the department in case of **“P. Mariappa Gounder”** is not followed and accordingly, respectively following the judgment of Jurisdictional High Court in the case of good will creators P. Ltd. this issue is decided in the favor of the Assessee.

30. In so far as the decision of Hon'ble Delhi High Court in the case of **Sky Land Builders P. Ltd. (supra) vs. ITO**, the Hon'ble

High Court referred to the decision of Supreme Court in **P. Mariappa Gounder** and held that, since Madras High Court decision has been confirmed, therefore the Calcutta High Court and Kerala High Court cannot be followed. But that in case before the Hon'ble Supreme Court the only issue was year of taxability and nowhere there was any issue raised, whether the mesne profit receipts for illegal occupation of property is revenue receipt or capital receipt. Thus, the decision of Hon'ble Delhi High Court is not being followed for this reason and accordingly, we are following the decision of M/s. Annamma Alexander 191 ITR 551 Kerala High Court; judgment of Calcutta High Court in the case of Smt. Leela Ghosh 205 ITR 9; and more importantly the judgement of Hon'ble Jurisdictional High Court in the case of CIT vs. Good Will Creators P. Ltd (Supra). Thus, we hold that entire receipts of Rs. 6,31,49,000/- is capital receipts is not chargeable to tax.

31. Accordingly, appeal of the Assessee is allowed and revenue appeal is dismissed.

32. In AY 2015-16 the amount of Rs. 1,05,19200/- is also in the nature of mesne profits only as discussed in detail in the aforesaid

appeal which was for subsequent period till 30th July, 2015. Thus, above finding given above will apply mutatis mutandis.

33. Accordingly, the appeals of the Assessee for A.Y. 2014-15 and 2015-16 are allowed and revenue's appeal for A.Y. 2014-15 is dismissed.

Orders pronounced in the open court on 2nd Jan, 2023.

Sd/-

**(S Rifaur Rahman)
Accountant Member**

Sd/-

**(Amit Shukla)
Judicial Member**

मुंबई Mumbai;दिनांक Dated : 02.01.2023

Mrs. Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**