

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.139, 140, 141 & 142/Mds/2016

निर्धारण वर्ष / Assessment Years : 2002-03, 2004-05, 2005-06 & 2006-07

M/s Madras Application Software  
Development Export Company  
Private Limited,  
No.6, Smith Road,  
Chennai - 600 034.

v. The Assistant Commissioner of  
Income Tax,  
Company Circle IV(1),  
Chennai - 600 034.

PAN : AACCM 8764 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 30.03.2016

घोषणा की तारीख/Date of Pronouncement : 22.04.2016

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) – 8, Chennai, dated 30.10.2015, pertaining to assessment years 2002-03, 2004-05, 2005-06 and 2006-07. Since common issue

arises for consideration in all these appeals, we heard the appeals together and disposing of the same by this common order.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee let out a house to M/s Data Software Research Company Pvt. Ltd. for a monthly rent of ₹7500/-. The Assessing Officer estimated the rental value at ₹1,90,240/- as against the rental income declared by the assessee at ₹90,000/-. The Assessing Officer estimated the rental value at ₹12,00,000/- per annum after increasing the same at the rate of 25% per annum. According to the Ld. counsel, increasing the rental value at 25% is abnormal. It cannot be anybody's imagination that the rental value is increased at the rate of 25% per annum. The CIT(Appeals) estimated the rental income at ₹3,00,000/- per annum. According to the Ld. counsel, at the best, the rental value can be increased 15% at an interval of three years. Therefore, the assessee may not have any grievance if the rental value is fixed at the increased rate of 15% in every three years.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that for the assessment year 2002-03, the assessee accepted before the Commissioner the revision of

rental income by 25%. By taking into consideration of this acceptance made by the assessee before the Commissioner, the appellate Commissioner estimated the rental income at ₹3,00,000/- per annum. Similarly, for assessment year 2004-05, the appellate Commissioner estimated the rental income at ₹4,68,750/-. For the assessment year 2005-06, by adopting 25% increase per annum, the rental income was worked out to ₹5,85,938/- per annum. Similarly for the assessment year 2006-07, the rental income was estimated by appellate Commissioner at ₹7,32,422/- per annum. Since the house property was let out to holding company of the assessee, according to the Ld. D.R., the income has to be estimated.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Section 23 of the Income-tax Act, 1961 (in short 'the Act') clearly says that the annual value shall be the sum for which the property may reasonably be expected to let out from year to year or where the property is let out and the actual rent received or receivable by the owner in respect thereof. In the case before us, a property was let out to a holding company, namely, M/s Data Software Research Company Pvt. Ltd.

Since the property was let out to a holding company, the authorities below increased the rent received by 25% per annum. This Tribunal is of the considered opinion that increasing the value at the rate of 25% per annum is highly arbitrary. The rental value cannot increase at the rate of 25% year to year.

5. The rental value would depend upon the demand for the property in the market. Normally, when the property was let out for agreed rent between the lesser and the lessee, the agreed rent shall be taken as rent receivable. In this case, the assessee let out the property to a holding company. Therefore, we have to ascertain whether the building was let out at the market rate. Copy of the rental agreement is not available on record. The property appears to be situated at Crescent Street, Arch Bishop Mathias Avenue, Raja Annamalaipuram, Chennai. The built-up area appears to be 2584 sq.ft. It is not known whether any land appurtenant to the building is available or not. The Assessing Officer apparently computed the rental value on the basis of Inspector's report and the Municipal value. The building is admittedly in the city of Chennai and it is governed by Tamil Nadu Rent Control Act. Tamil Nadu Rent Control Act provides for method of calculation of rental value.

Therefore, the Assessing Officer is expected to compute the annual rental value of the property on the basis of the method provided in the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. Since the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 was not taken into consideration and the Commissioner enhanced the rent at the rate of 25% per annum, this Tribunal is of the considered opinion that the Assessing Officer has to compute the rental value of the property by taking into consideration of the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960. Once it is determined under the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 for the assessment year 2002-03, it would be reasonable to increase the rent at the rate of 15% for every three years as suggested by the Ld.counsel for the assessee. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall examine the issue in the light of the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and estimate annual rental income for assessment year 2002-03 and thereafter the rent of the building so determined for assessment year 2002-03 may be increased by 15% for every three years. If there is any difficulty, it is open to the

Assessing Officer to refer the matter to the Valuation Officer to ascertain the rent of the building after applying the provisions of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960.

6. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 22<sup>nd</sup> April, 2016 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 22<sup>nd</sup> April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.