

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM**

ITA No.2319/Mum/2017

(A.Y:2012-13)

Income Tax Officer WD 1(2)(2) R. No. 527, 5 th Floor, Aayakar Bhavan, M.K. RD, Mumbai-400 020	Vs.	Sudheer Omprakash Bahl 41-B Jolly Maker Apartment 1 Cuffe Parade Mumbai-400 005 PAN No-AAMPB8549F
Appellant	..	Respondent
Revenue by	..	Shri Rakesh Ranjan, DR
Assessee by	..	Shri M Subramaniam, AR
Date of hearing	..	05-06-2017
Date of pronouncement	..	09-06-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of CIT(A)-2, Mumbai, in appeal No. CIT(A)-2/IT-77/2015-16 dated 21-04-2015. The Assessment was framed by ITO Ward-1(2)(2), Mumbai for the A.Y. 2012-13 vide order dated 30-03-2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO of ALV under section 23(1)(a) of the Act. For this Revenue has raised following two grounds: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct the deleting the addition of Rs.46,46,371/- made under the head 'Income from House Property', relying on High Court order in the assessee's own case for earlier years without appreciating that each assessment year is separate unit and hence Annual Letable Value determined by A.O. was

on the basis of substantial evidence brought on record that assessee was showing lesser rental income compared to that shown by owners in respect of flats located in the same building "

2. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in holding that fair rent determined by the AO was not in accordance with section 23(1)(a) of the I.T. Act, when the facts and circumstances indicate otherwise on the basis of substantial evidence brought on record?"

3. At the outset, the learned Counsel for the assessee stated that the CIT(A) relying on the decision of the Hon'ble Bombay High Court consistently from AYs 1999-2000 to 2005-06 in assessee's own case and following the same allowed the claim of the assessee by observing in Para 5 as under: -

"The Bombay High Court has in the case of the appellant himself on the same issue for the earlier A.Yrs 1999-2000 to 2005-06, held vide their order dated 22nd August 2014 as under:

All these appeals are filed by the Revenue. They are directed against an order of the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal has held that the ratio of the Full Bench decision of the Delhi High Court in the case of Commissioner of Income Tax Vs Moni Kumar Subba and which is reported in (2011) 333 ITR 38 (Delhi) does not permit the revenue to reject the

amount determined as rent or license fees by the assessee on mere doubt or suspicion. There has to be cogent and satisfactory material to indicate that the rent -or fees determined by the parties are not indicative of the fair or market rent. The Annual Letting value has to be determined and decided only In such cases where there is established fraud, collusion or an attempt is made by the parties to inflate or deflate the rent because of relationship or such other consideration, otherwise the determination of the rent or fees between the lessor and the lessee cannot be said to be influenced by any exigencies aforesaid for the Income Tax Authorities to determine and decide the Annual Letting Value. In all these cases, the parties have fairly brought to our notice a judgment of this Court in Commissioner of Income Tax-12, Mumhai Vs. Tip Top Typography Income Tax Appeal No. 1213 of 2011 and connected appeals] decided on 8th August, 2014. One of us (S.C. Dharmadhikari, J.) is a party.to this judgment. We have followed the ratio of the Full Bench of the Delhi High Court in the above case and respectfully concurred with it. In such circumstances and when he revenue was unable to produce any material so as to challenge

the determination made by the parties, the approach of the Commissioner of Income tax and the Tribunal and to determine the annual letting value on the basis of valuation of Municipal Corporation cannot be termed as perverse or vitiated by any error of law apparent on the face of it. In fact, in some of the appeals, the Tribunal has determined the letting value at a rate more than the municipal valuation. In such circumstances, the quantum of rent determined can be safely termed as fair. The appeals are devoid of any merit as they do not raise any substantial question of law and they are accordingly dismissed. No costs.

The appellant has actively agitated against the action of the AO to resort to the adoption of rateable value in place of the actual rent received by the appellant. He has cited the decision of Bombay High Court in Tip Top Typography to justify his stand. He has strongly contended that the ratio of the said case squarely applies to the facts of the present case of the appellant as per the unambiguous observations made by the Hon'ble Bombay High Court in his own case.

On going through the Order of the Bombay High Court in the assessee's own case it is observed that while dismissing the appeal of

the department against the addition to the rental income, the Bombay High Court has inter alia also referred to the judgment in the case of Tip Top Typographics with approval and has specifically stated that (the law) "does not permit the revenue to reject the amount determined as rent or license fees by the assessee on mere doubt or suspicion. There has to be cogent and satisfactory material to indicate that the rent or fees determined by the parties are not indicative of the fair or market rent. The Annual Letting value has to be determined and decided only in such cases where there is established fraud, collusion or an attempt is made by the parties to inflate or deflate the rent because of relationship or such other consideration, otherwise the determination of the rent or fees between the lessor and the lessee cannot be said to be influenced by any exigencies aforesaid for the Income Tax Authorities to determine and decide the Annual Letting-Value."

3.5 After examining all aspects it is seen that it cannot be denied that there is no relationship whatsoever between the Licensor and the Licensee, viz. the IndusInd Bank in the present case, nor is there any finding that there are any suspicious circumstances or any fraud or collusion surrounding the Leave & License arrangement entered into by the assessee. That being so, the case of Tip Top Typographics cited by the assessee's representative as well

as of Moni Kumar Subba, and the ratio thereof cited approvingly by the Hon'ble High Court in the assessee's own case, covers the facts of the assessee's case. On the facts of the present case, the conditions precedent to resort to enquiry or adoption of the prevailing rateable value are absent. In view of the same, and in my considered opinion, the rent actually received by the appellant shall be taken to be the actual rent for tax purposes. Respectfully following the Hon'ble Bombay High Court in appellant one's case order dtd. 22.08.2014, I am of the considered opinion that the estimation of rent done by the AO is not justifiable one. Accordingly, I direct the AO delete the addition of Rs. 46,46,371/-. Hence, this ground of appeal is allowed."

4. Now before me, the learned DR could not controvert the findings of CIT(A) and respectfully, following the Hon'ble Bombay High Court decision, I dismiss the appeal of Revenue.

5. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 09-06-2017.

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 09-06-2017

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

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

//True Copy//
BY ORDER,
Assistant Registrar
ITAT, MUMBAI