HIGH COURT OF JUDICATURE AT BOMBAY

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.513 OF 1997
WITH
INCOME TAX REFERENCE NO.43 OF 2000
WITH
INCOME TAX REFERENCE NO.44 OF 2000

Smt. Kokilaben D. Ambani ..Applicant.

V/s.

The Commissioner of Income-tax,
Mumbai City VI, Mumbai ..Respondent.

Mr.J.D.Mistri, Senior Advocate with Mr.Raj Darak for the applicant.

Mr.Vimal Gupta, Senior Advocate with Ms.Padma Divakar for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 11TH SEPTEMBER, 2014

P.C. :-

1. In all these Income Tax References which are at the instance of the assessee Smt. Kokilaben D. Ambani, the Tribunal has referred the following question and which is common to all the three references. The same reads as under:-

" Whether on the facts and circumstances of the case, the

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::

HIGH COURT OF JUDICATURE AT BOMBAY
सत्यमेव जयते

Tribunal was right in law in holding that the annual letting value of the self occupied flat in Usha Kiran Building has to be the sum equivalent to the standard rent under the Bombay Rent Control Act and not the Municipal Annual Rateable value in computing the property income u/s.23 of the Income Tax Act, 1961 ? ”

2. The facts in Income Tax reference of 1997 would be enough to dispose of these references.

3. The assessee is an individual. The assessment year is 1984-85. The assessee who is the owner of a flat and occupant herself was subjected to an assessment. The assessee returned income of ₹1,032/- only on the basis of municipal rateable value. Based on the computation of income in the earlier assessment year at ₹39,718/-, the assessing officer adopted the income of the flat for this assessment year at the same figure. The assessing officer took into account the total cost of the property at ₹3,86,000/- and adopted the standard rent at 15% on the total cost to arrive at the gross annual letting value of the property at ₹59,900/-. The Commissioner of Income Tax i.e. the first appellate authority upheld this basis and the income. Thereafter, the matter was carried to the Tribunal and it was held that the standard rent determined on the basis of 10% yield could not be said to be excessive. The assessee's appeal and particularly the ground in that behalf was dismissed.

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::

HIGH COURT OF JUDICATURE AT BOMBAY

4. The assessee, therefore, requested the Tribunal to refer the above question.

5. What we find is the order of Reference is dated 26th July, 1994. Prior to that order being passed by the Tribunal, there was in field a decision of the Division Bench in the case of **M.V.Sonawala V/s. Commissioner of Income Tax** reported in **(1989) 177 ITR 246.**

7. During the pendency of the reference, we had before us the Division Bench judgment in the case in the case of **Smt. Smitaben N. Ambani V/s. Commissioner of Wealth Tax** reported in **[2010] 323 ITR 104 (Bom)** and finally a judgment by the Division Bench of this Court dated 8th August, 2014 in Income Tax appeal No.1213 of 2011 along with other Appeals to which one of us (S.C.Dharmadhikari, J.) is a party.

8. In such circumstances, we are of the opinion that the question forwarded by the Tribunal does not require any separate decision or answer. There are enough guidelines in the judgments referred by us and they would enable us to answer this question by referring to what has been held by the Full Bench of the Delhi High

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Court and followed by us in *Income Tax Appeal No.1213 of 2011* in *Commissioner of Income Tax-12 V/s. Tip Top Typography* decided on 8th August, 2014. The conclusion of the Full Bench of the Delhi High Court reads as under:-

(I ALV would be the sum at which the property may be reasonably let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances.

(ii) An inflated or deflated rent based on extraneous consideration may take it out of the bounds of reasonableness.

(iii) Actual rent received, in normal circumstances, would be a reliable evidence unless the rent is inflated/deflated by reason of extraneous consideration.

(iv) Such ALV, however, cannot exceed the standard rent as per the Rent Control Legislation applicable to the property.

(v) if standard rent has not been fixed by the Rent Controller, then it is the duty of the assessing officer to determine the standard rent as per the provisions of rent control enactment.

(vi) *The standard rent is the upper limit, if the fair rent is less than the standard rent, then it is the fair rent which shall be taken as ALV and not the standard rent.*

We would like to remark that still the question remains as to how to determine the reasonable / fair rent. It has been indicated by the Supreme Court that extraneous circumstances may inflate / deflate the "fair rent". The question would, therefore, be as to what would be circumstances which can be taken into consideration by the Assessing Officer while determining the fair rent. It is not necessary for us to give any

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::

HIGH COURT OF JUDICATURE AT BOMBAY

opinion in this behalf, as we are not called upon to do so in these appeals. However, we may observe that no particular test can be laid down and it would depend on facts of each case. We would do nothing more than to extract the following passage from the Supreme Court judgment in the case of Motichand Hirachand Vs. Bombay Municipal Corporation, AIR 1968 SC 441, 442 :

"It is well-recognized principle in rating that both gross value and net annual value are estimated by reference to the rent at which the property might reasonably be expected to let from year to year. Various methods of valuation are applied in order to arrive at such hypothetical rent, for instance, by reference to the actual rent paid for the property or for others comparable to it or where there are no rents by reference to the assessments of comparable properties or to the profits carried from the property or to the cost of construction."

9. In our view, in the judgment in *Tip Top Typography* after concurring with the conclusion of the Full Bench of the Delhi High Court, we have held that the assessing officer in the cases of properties, which are subject to Rent Control Legislation cannot ignore the same. If the standard rent has not been fixed under the Rent Control Legislation by the competent authority, it is the duty of the assessing officer to determine the same in terms of the Rent Control Legislation. The law has been crystallized in terms of the decision of the Hon'ble Supreme Court as also the Full Bench of the Delhi High

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::

HIGH COURT OF JUDICATURE AT BOMBAY

Court. In these circumstances, we do not find any basis for an apprehension that the Tribunal would ignore the Rent Control Legislation and prefer some other mode in determining the fair rent or annual letting value of the property under section 23(1)(a). We have also stated that the principle cannot be any different for self occupied properties and in relation to which the exercise must be carried out in terms of the relevant section 23(1) of the I.T. Act. The reference is answered accordingly and disposed of.

(A.K. MENON, J.) **(S.C.DHARMADHIKARI, J.)**

::: Uploaded on - 17/09/2014 ::: Downloaded on - 28/08/2020 15:37:37 :::