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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 91 OF 2001

The Commissioner of Income Tax ... Appellant

Versus

M/s. Ruchi Properties Ltd. ... Respondent

Mr. Vimal Gupta with Mr. P.S. Sahadevan for the Appellant.

Mr. J.D. Mistry with Mr. Raj Darak for Respondent.

CORAM: F.I. REBELLO &
R.S. MOHITE, JJ.
DATED: JANUARY 15, 2008

P.C.

. The appeal has been preferred on the following two questions :

> "i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the annual letting value of flats determined by the A.O. by overlooking the relations between the parties conduct of the parties in referring the matter to arbitration without there being any dispute and the tenancy agreements entered into by and between the parties, which clearly justify the action of

the A.O. in determining the Annual letting value of the flats by taking rent at Rs.1,00,000/- per month per flat as per agreement dated 29.11.1990.

ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the annual letting value determined by the A.O. in respect of garden space, foyer and driveway at Rs.66,04 lakhs being cost of funds given at the interest free deposit when the said garden space foyer and driveway was let out as separate property by a separate agreement dated 4.4.92?"

. In so far as first question is concerned, there is finding of fact recorded that the actual rent received is more than municipal value. In that light of that matter, the question as framed would not arise.

. In so far as second question is concerned, we note that in the similar case in C.I.T. Vs. M/s. Cygnus Negri Investment Pvt.Ltd. in Income Tax Appeal No. 3830/Bom/91 decided on 26.2.1998 a similar question which arose herein was answered in favour of the assessee. That matter was taken in appeal to this court where the appeal was summarily rejected. S.L.P. was preferred. The Apex Court had confirmed the order of this court. That judgment is reported in 253 ITR 78 (Statute). In the light of the above, in our opinion, the question of law as framed would not arise. Consequently appeal dismissed.

(R.S. MOHITE, J.) **(F.I.REBELLO, J.)**