

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. Nos.2883/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2006-07)

Shri Rajendra Barot, 601, Shri Amba Shanti Chambers, Opp. Hotel Leela, Andheri Kurla Road, Andheri (E), Mumbai - 400 059.	बनाम/ Vs.	DCIT, Central Circle 23, R.No. 409, Aayakar Bhavan, M.K. Marg, Mumbai-400020.
स्थायी लेखा सं./ PAN : AENPB9154P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. Nos.2965/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2006-07)

DCIT, Central Circle 23, R.No. 409, Aayakar Bhavan, M.K. Marg, Mumbai-20.	बनाम/ Vs.	Shri Rajendra Barot, Opp. Hotel Leela, Andheri Kurla Road, Andheri (E), Mumbai - 400 059.
स्थायी लेखा सं./ PAN : AENPB9154P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. Nos.2887 and 2888/Mum/2011

(निर्धारण वर्ष / Assessment Years : 2006-07 and 2007-08)

Mrs.Rekha Barot, 601, Shri Amba Shanti Chambers, Opp. Hotel Leela, Andheri Kurla Road, Andheri (E), Mumbai - 400 059.	बनाम/ Vs.	DCIT, Central Circle 23, R.No. 409, Aayakar Bhavan, M.K. Marg, Mumbai-400020.
स्थायी लेखा सं./ PAN : AENPB5677H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Shri Anuj Kishnadwala
प्रत्यर्थी की ओर से/ Revenue by :	Shri K B Shukla

सुनवाई की तारीख / Date of Hearing : 26.10.2016

घोषणा की तारीख /Date of Pronouncement : 20.12.2016

आदेश / ORDER

Per RAJESH KUMAR, Accountant Member:

These are four appeals filed by the respective parties. These appeals are directed against the separate orders dated 25.1.2011 passed by the Id.CIT(A)-40, Mumbai. Since issue involved in all these appeals are common, therefore, for the sake of convenience, these appeals were clubbed together, heard together and are being decided by this common order.

I.T.A. Nos.2965/Mum/2011

The grounds of appeal taken by the Revenue are as under :

"1.(a) On the facts and in the circumstances of the case and in law, the Ld CIT (A) failed to appreciate that the Annual Value has offered by the assessee was grossly understated and the Assessing Officer was justified in determining Fair Market Value in terms of Section 23(1)(a) by adding notional interest @ 7% on interest-free deposit of Rs. 1,20,50,000/-.

(b) On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition made at Rs. 8,43,500/- being notional interest which could form a part of Annual Letting Value of the property in terms of section 23(1)(a) of the Act."

2. Briefly stated relevant facts of the case are that the assessee is an individual and the main source of income of the assessee are salary income, income from house property, long term capital gains and income from other

sources. A search and seizure action was conducted u/s 132 of the Act on 19.7.2007 at the premises of Barot Group under which the assessee was also covered. Some books of accounts and documents were found and seized. A notice u/s 153A of the Act was issued on the assessee on 27.2.2008 which was complied with by the assessee by the by filing return of income dated 17.3.2008 declaring a total income of Rs.17,41,160/-. Thereafter, notice under section 143(2) dated 12.08.2008 was issued and served upon the assessee on 22.08.2008. During the assessment proceedings, AO noticed that the assessee had given his property being Shri Amba Shanti Chamber property on rent of Rs.9 lakhs and also received interest free refundable deposit of Rs. 1,20,50,000/-. The AO noted that the assessee has received interest free deposit in lieu of letting out of the property. The AO observed that the assessee deliberately reduced the rent of the property by receiving a very huge interest free security deposit and estimated Annual Letting Value of the property at Rs.17,43,500/- which was calculated by adding 7% interest on the interest free security deposits of Rs.1,20,50,000/- to the actual rent received. Aggrieved by the order of AO, the assessee preferred an appeal before the Id.CIT(A),who in turn allowed the appeal of the assessee by observing and holding as under :

"9.16 Considering the above submission and respectfully following the decision of the jurisdictional tribunal and High Court, it is held that the addition cannot be made in respect of notional interest under the head income from house property. In view of this, addition on account of notional interest of Rs.8,43,500/- from AY 2002-03 to AY 2007-08 and addition of Rs.50,43,500/- in AY 2008-09 is directed to be deleted. The AO will also reduce the permissible deduction u/s 24(a) by

taking the revised annual value of property. This ground of appeal is, accordingly allowed"

Aggrieved by the order of Id. CIT(A), the revenue is in appeal before this Tribunal.

3. At the outset, the Id.AR submitted before us a copy of decision of the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No.2966/Mum/2011 (2007-08) dated 12.10.2015 and contended that an identical issue has been decided by the Tribunal in favour of the assessee and present assessment year also stands covered by the above mentioned decision of the Tribunal. The Id. DR could not controvert the contention of the Id.AR and also could not file any material contrary to the submissions of the Id.AR.

4. We have heard both the parties on the issue and perused the material placed before us including the orders of authorities below and decision of the Tribunal relied upon by the assessee. We find from the order of the Tribunal, the issue raised by the assessee stands covered in favour of the assessee. For the sake of ready reference and brevity, we reproduce operative part of the order as under :

*"21. We heard both the parties and perused the orders of the Revenue Authorities as well as the cited decisions relied on by the Ld Counsel for the assessee and also the relevant material placed on record. The issue involved in the present appeal relates to the **correctness of the ALV of the property, which was rented out.** AO considered the rental advance and the notional interest thereon for arriving at the ALV. This is the matter of dispute between the both the parties before the first appellate authority as well as the Tribunal. Identical issue was decided by the Tribunal in favour of the assessee by its various decisions mentioned above. On perusal of the cited decisions of the Tribunal (supra), we find the decision of the Tribunal in the case*

of *M/s. Gagan Trading Co. Ltd vs. ITO in ITA No.5288 & 5468/M/2012 (AY 2009-2010)*, dated 29.7.2015, wherein one of us (**AM**) is a party to the said order of the Tribunal, is relevant here since the identical issue was decided by the Tribunal. Therefore, for the sake of completeness of this order, we find it relevant to extract the relevant portions of the said order of the Tribunal (*supra*) dated 29.7.2015 which is as under:

"5. wherein the said questions were answered in favour of the assessee and against the Revenue by relying on the Bombay High Court judgment in the case of *CIT vs. Tip Top Typography [2014] 48 taxmann.com 191 (Bombay)*. Further, an identical issues were raised in the said appeal and the same were again decided in favour of the assessee vide order dated 29.1.2014 in ITA Nos.6104 and 6578/M/2011 and the contents of para 6 of the said Tribunal's order are relevant in this regard, which read as under:

"6.

"In our opinion, the similar issue as involved in the present case thus, has been decided by the coordinate bench of this Tribunal in favour of the assessee in the case of *Reclamation Reality India Pvt Ltd (supra)* and since the said decision has been rendered by the Tribunal relying on and following the judgments of Hon'ble Apex Court and the Hon'ble jurisdictional High Court, we are of the view that the judicial propriety and judicial discipline require us to follow the same. Accordingly, respectfully following the said judicial pronouncement, we modify the impugned order of the Ld CIT (A) on this issue and direct the AO to accept the income from house property declared by the assessee adopting the **municipal ratable value** as annual letting value of its property. Ground no.1 of the assessee's appeal is accordingly allowed whereas the solitary ground raised in the Revenue's appeals is dismissed."

Respectfully, following the findings of the coordinate Bench, Revenue's appeal is dismissed and assessee's appeal is allowed."

6. *Thus, it is a decided issue that AO is prevented in this case and property from disturbing the ALV qua the (i) considering the notional interest on deposit and (ii) not considering the Municipal Ratable value-based-ALV of the property. In this year, AO has not garnered any incriminating material against the assessee's claim relating to ALV of the property in question. After considering the above submissions of the assessee as well as the arguments of the Ld DR for the Revenue, who essentially argued for setting aside the appeal to the file of the AO, we find the need for dismissing the arguments of the Ld DR."*

22. *In the present case, AO has not brought on record any material to demonstrate that the actual rent charged by the assessee is less than the fair market value or the interest free security deposit has affected the rent charged by the assessee. We cannot support the mode of additions made by the AO on estimate basis in the absence of any evidence on record. Considering the same, respectfully following the above cited decisions of the Tribunal (supra) and also following the principle of consistency, we are of the opinion that the decision taken by the CIT (A) in deleting the addition made by the AO is fair and reasonable and it does not call for any interference. Accordingly, **grounds raised by the Revenue in both the appeals are dismissed.***

5. From the above facts, we find that the the case of the assessee is identical as to that decided by the coordinate bench in assessee's own case (supra). Therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal, we dismiss the appeal of the revenue.

I.T.A. Nos.2887/Mum/2011

6. During the course of hearing, the Id.AR did not press ground no.1, hence dismissed as not pressed.

7. The issue raised in the ground no.2 relates to upholding the order of AO by the Id. CIT(A) qua the addition of Rs.19 lakhs made under section 2(22)(e) of the Act on account of advances given by M/s Ideal Toll Road Investments and Corporation Pvt Ltd. (ITRIOL) in which the assessee holds 22.23% and the assessee is the most beneficial share holder in the company namely M/s Bharat Infrastructure and Engineering Pvt Ltd.(BIEPL) in which the assessee holds 17.33% of the voting powers and the issue raised in second limb of ground is without prejudice to the first one that the Id. CIT(A) erred in not considering the submissions of the assessee that the amount of Rs.19 lakhs was received from ITRIOL is in the nature of inter corporate deposit and not in the nature of loan or advances thereby erred in making addition u/s 2(22)(e) of the Act.

8. During the course of assessment proceedings, the AO observed that the assessee was the beneficial owner in BIEPL and during the year under consideration the said company received a loan of Rs.19 lakhs from M/s ITRIOL in which the assessee was also beneficial owner and therefore, the AO further noted that as per the provisions of section 2(22)(e) of the Act the same has been taxed under the head deemed income in the hands of the BIEPL on substantive basis . The AO also made addition on protective basis in the hands of the assessee under section 22(2)(e) of the Act and added the same to the total income of the assessee. Aggrieved by the order of the

AO, the assessee preferred an appeal before the Id. CIT(A) and the Id.CIT(A)

dismissed the appeal of the assessee by observing and holding as under :

"8.5 I have carefully considered the issue. For A.Y. 2006-07, no specific submissions/reply is filed by M/s.BIEL during the assessment proceedings as well as during the appellate proceedings in this regard. In view of this, addition made by the AO is hereby confirmed in the hands of the appellant for A.Y. 2006-07.

8.6 So far as 'the' other years are concerned, the appellant's contention has been that the money transacted is in respect of purchase of property and, therefore, it do. partake the character of loan or deposit and section 2(22)(e) is not attracted. The Id. AR claimed that Maduvan Project, the development could not proceed further due to court litigations. In this case, copy of letter showing flat booked was filed during the assessment proceedings. The amount in question has been borrowed in 2006 and the same have been returned in 2007 with interest. It is difficult to appreciate how a fund paid to M/s.BIEL in 2006 had to be repaid by BIEL in 2007 on account of litigation. The subsisting relation between the company and the appellant is such where the probability of entering into such a contract without any intention of buying of flat is very high. Therefore, in my considered opinion; there is substantial merit in the AO's contention that the bogey of allotment of flat has been merely created to escape "the provisions of section 2(22)(e) of the IT Act. In view of this, the contention of the appellant is not accepted and addition of Rs.25,00,000/- made by the AO is confirmed in the hands the appellant. The said amount cannot be said to have been utilized for purchase of the flat. Since the said addition is deleted, in the hands of M/s. BIEL, in view of the decision of the jurisdictional High Court, addition is confirmed in the hands of the appellant on substantive basis, though the addition was made on protective basis in this case by the Id.AO. This ground of appeal is decided against the appellant"

9. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below on the issue. We find that the addition under section 2(22)(e) of the Act of Rs.19 lakhs has been made in the hands of the assessee on the protective basis, whereas the addition was made in the hands of M/s.BIEPL on substantive

basis. We find from the order of the Id. CIT(A) that jurisdictional Tribunal deleted the addition made on substantive basis in the hands of M/s.BIEPL . The Id. AR argued before us that since substantive addition made in the hands of M/s.BIEPL has been deleted by Co-ordinate Bench and therefore the addition made on protective basis deserved to be deleted and the matter is to be examined at the end of the AO for denovo assessment of the case. We are fully in agreement with the submissions of the Id. AR that since substantive addition has been deleted in the hands of M/s.BIEPL and thus, the protective addition be set aside and the matter be restored to the file of the AO. Accordingly, we set aside the order of the Id.CIT(A) and restore this matter to the file for AO for fresh examination of the matter and decide the same in accordance with law after being providing necessary opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

I.T.A. No.2888/Mum/2011 & I.T.A. Nos.2883/Mum/2011

10. The issues raised in these appeal are identical to that as decided by us in ITA No.2887/Mum/2011 except figures, and therefore, our decision in ITA No.2887/Mum/2011 would ,mutatis mutandis, apply to these appeals as well. The issue in these appeals are restored back to AO to make de-novo assessment after hearing the assessee and he is directed accordingly.

11. In the result, the appeal of the revenue for the assessment year 2006-07 is dismissed and remaining appeals are allowed for statistical purposes.

The above order was pronounced in the open court on 20th Dec,2016.

Sd

(MAHAVIR SINGH)

न्यायिक सदस्य / Judicial Member

sd

(RAJESH KUMAR)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :20.12.2016

SRL,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai