

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 4449/Mum./2018**  
**(Assessment Year : 2014-15)**

Deena Asit Mehta  
67, 3<sup>rd</sup> Block, Poddar Chambers  
S.A. Brelvi Road, Fort  
Mumbai 400 001 PAN – AABPM6683L

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-4(1)(1), Mumbai

..... Respondent

Assessee by : Shri Yogesh Thar, a/w  
Shri Chaitanya D. Joshi and  
Ms. Ketki Mittal

Revenue by : Shri T. Shankar, Sr. A.R. – CIT

Date of Hearing – 22.02.2022

Date of Order – 08/04/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee against the order dated 13 June 2018 passed by the Commissioner of Income Tax (Appeals)-9, Mumbai ("CIT(A)") for the assessment year 2014 – 15.

2. The appeal is listed before us pursuant to order dated 16 August 2021 passed under section 254(2) of the Act in MA No. 16/MUM/2021, whereby the Co-ordinate Bench of Tribunal recalled its earlier order dated

22 July 2020 passed under section 254(1) of the Act and restored the appeal to its original position for fresh hearing.

3. In this appeal, the assessee has raised following grounds:

1) *The Learned CIT(A) has erred in retaining and confirming the addition of Rs. 17,01,000/- out of the total addition of Rs. 27,48,594/- made by the Assessing Officer.*

2) *The Learned Commissioner of Income Tax has erred in estimating additional property income calculated at 9% on the interest free deposit of Rs. 95,00,000/- received by your petitioner from the Leave and Licensee of the office premises of which she is the tenant.*

3) *The Learned Commissioner of Income Tax has erred in treating, - the Leave and License fee received by her in respect of the tenanted office premises given by her two leave and licenses as property income.*

4) *The Learned Commissioner of Income tax erred in estimating @ 9% of an amount of Rs. 1,75,00,000/- received by her as interest free deposit in respect of the leave and license granted for giving on rental basis her residential flat and treating such amount of Rs. 15,75,000/- as additional property income of your petitioner.*

5) *The Learned CIT(A) has erred in confirming and adding of Rs. 193,400/- paid by your petitioner as interest on various loan raised by her in the part, these loans were utilized for the purpose of purchasing shares, which are her stock in trade.*

6) *The order appealed against is bad in law and is against the principle of natural justice.*

7) *The order appealed against is based on surmises and conjectures.*

8) *Your Petitioner reserves the right to add, to delete and/or amend any of the foregoing grounds.*

4. In ground nos. 1 to 4, the assessee has raised common issue of addition made on account of notional interest on interest free deposit's received by the assessee.

5. The brief facts of the case pertaining to this issue as emanating from record are: The assessee is an individual and engaged in share broking and

dealing in shares and securities. During the year under consideration, the assessee was a tenant of office accommodation situated at Podar Chambers, SA Brevli Road, Mumbai. The assessee paid Rs. 5,941 per annum as rent of said premises. The said premises was further given on Lease and License basis to two companies, namely, Asit C. Mehta Investment Intermediate Ltd and Asit C. Mehta Forex Private Limited for the total rent of Rs. 3,40,000. After reducing the rent paid by the assessee i.e. Rs. 5,941, the balance amount of Rs. 3,34,059 was declared as **Lease and License fees under the head "Income from Other Sources"**. The assessee had also given her residential flat on rental basis to Asit C. Mehta Investment Intermediate Ltd for annual rent of Rs. 9 lakhs on and from 1 April 2012. After deducting 30% standard deduction, the balance income of **Rs.6,30,000 was declared as "Income from House Property"**. The assessee also received interest free deposits from the licensees amounting to Rs. 2.70 crores. The Assessing Officer vide order dated 8 November 2016 passed under section 143(3) of the Act, following the approach adopted in assessment year 2012-13 which was upheld by CIT(A), added 10% of **security deposit received by assessee under the head "Income from Other Sources"**.

6. The CIT(A) vide impugned order dated 13 June 2018, following the decision of **Co-ordinate Bench of Tribunal in assessee's own case for** assessment year 2012-13, added amount equal to 9% of security deposit **as additional Annual Letting Value under the head "Income from House**

Property". The CIT(A) further allowed deduction under section 24(a) of the Act at 30% and made net addition under the head "Income from House Property" of RS.17,01,000. Being aggrieved the assessee is in appeal before us.

7. During the course of hearing, Shri Yogesh Thar, learned Authorised Representative ("*learned A.R.*") submitted that Hon'ble Jurisdictional High Court in CIT v/s Tip Top Typography (2014) 368 ITR 330 held that where a premises is covered by Rent Control Act, Assessing Officer must undertake exercise contemplated by the rent control legislation for fixation of standard rent. However, the aforesaid decision was not pointed out to the Co-ordinate Bench of Tribunal during the course of hearing of assessee's appeal for assessment year 2012-13. The learned AR further submitted that, in this regard, assessee also filed miscellaneous application under section 254(2) of the Act. However, the said miscellaneous application for assessment year 2012-13 was dismissed by the Tribunal on the basis that rectification cannot be made on the ground of a case law which was not referred during the course of appeal hearing, but subsequently referred during hearing of miscellaneous application. The learned A.R. further submitted that in another decision dated 4 September 2014, Hon'ble Jurisdictional High Court in CIT v/s Shailaja S. Hemdev in ITA No. 576 and 578 of 2012, following the earlier decision in Tip Top Typography (supra), held that notional interest on security deposits cannot be taken into consideration for determining and computing the annual letting value.

8. On the other hand, Shri T. Shankar, learned Departmental Representative (***“learned DR”***) submitted that no new arguments have been placed by the assessee in the present appeal and all these arguments were considered by the Co-ordinate Bench of Tribunal in its order for assessment year 2012–13. Learned DR further submitted that the assessee has not produced any document to show as to how the rent paid by her of Rs. 5,941 is the municipal rent. Learned DR further submitted that the **Co-ordinate Bench of Tribunal in assessee’s appeal for assessment year 2012–13** has taken a conscious call and is a decision which is subsequent to **Hon’ble Jurisdictional High Court decision in Tip Top Typography (supra)**.

9. We have considered the rival submissions and perused the material available on record. In the present case, the lower authorities have followed the approach adopted in assessment year 2012–13 and made additions on the basis of interest free deposits received by the assessee **from the licensees. In assessee’s appeal for assessment year 2012–13**, the Co-ordinate Bench of Tribunal in ITA No. 3549/MUM/2016 vide order dated **9 February 2018 dismissed the appeal following the decision of Hon’ble Punjab and Haryana High Court in CIT v/s K. Streetlite Electric Corporation (2011) 336 ITR 348** and held that security deposit was to circumvent real rent and **same shall fall within the ambit of “Income from House Property”**. Though, the Co-ordinate Bench of Tribunal passed its order for assessment year 2012–13 on 9 February 2018, however, the decision dated 8 August **2014 passed by Hon’ble Jurisdictional High Court in Tip Top Typography**

(supra) was not brought to its attention. In Tip Top Typography (supra), substantial questions of law, which arose for consideration before the Hon'ble Jurisdictional High Court, are as under:

*"(i) Whether on the facts and circumstances of the case and in law, Tribunal was right in holding that the fair rental value specified in section 23(1)(a) is the municipal value or actual rent received whichever is higher and not the annual letting value on the basis of comparable instances as adopted by the Assessing Officer, though the property under consideration was not covered by Rent Control Act?*

*"(ii) Whether on the facts and circumstances of the case and in law, Tribunal was right in remitting the matter back to the file of the Assessing Officer with a direction to verify the rateable value fixed by the Municipal Authorities and if the same is less than the actual rent received, then the actual rent received should be taxed?"*

10. The Hon'ble Jurisdictional High Court decided the appeal by observing as under:

*"47] We are of the view that where Rent Control Legislation is applicable and as is now urged the trend in the real estate market so also in the commercial field is that considering the difficulties faced in either retrieving back immovable properties in metro cities and towns, so also the time spent in litigation, it is expedient to execute a leave and license agreements. These are usually for fixed periods and renewable. In such cases as well, the conceded position is that the Annual Letting Value will have to be determined on the same basis as noted above. In the event and as urged before us, the security deposit collected and refundable interest free and the monthly compensation shows a total mismatch or does not reflect the prevailing rate or the attempt is to deflate or inflate the rent by such methods, then, as held by the Delhi High Court, the Assessing Officer is not prevented from carrying out the necessary investigation and enquiry. He must have cogent and satisfactory material in his possession and which will indicate that the parties have concealed the real position. He must not make a guess work or act on conjectures and surmises. There must be definite and positive material to indicate that the parties have suppressed the prevailing rate. Then, the enquiries that the Assessing Officer can make, would be for ascertaining the going rate. He can make a comparative study and make a analysis. In that regard, transactions of identical or similar nature can be ascertained by obtaining the requisite details. However, there also the Assessing Officer must safeguard against adopting the rate stated therein straightway. He must find out as to whether the property which has*

been let out or given on leave and license basis is of a similar nature, namely, commercial or residential. He should also satisfy himself as to whether the rate obtained by him from the deals and transactions and documents in relation thereto can be applied or whether a departure therefrom can be made, for example, because of the area, the measurement, the location, the use to which the property has been put, the access thereto and the special advantages or benefits. It is possible that in a high rise building because of special advantages and benefits an office or a block on the upper floor may fetch higher returns or vice versa. Therefore, there is no magic formula and everything depends upon the facts and circumstances in each case. However, we emphasize that before the Assessing Officer determines the rate by the above exercise or similar permissible process he is bound to disclose the material in his possession to the parties. He must not proceed to rely upon the material in his possession and disbelieve the parties. The satisfaction of the Assessing Officer that the bargain reveals an inflated or deflated rate based on fraud, emergency, relationship and other considerations makes it unreasonable must precede the undertaking of the above exercise. After the above ascertainment is done by the Officer he must, then, comply with the principles of fairness and justice and make the disclosure to the Assessee so as to obtain his view.

48] We are not in agreement with Shri Chhotaray that the municipal rateable value cannot be accepted as a bonafide rental value of the property and it must be discarded straightway in all cases. There cannot be a blanket rejection of the same. If that is taken to be a safe guide, then, to discard it there must be cogent and reliable material.

49] We are of the opinion that market rate in the locality is an approved method for determining the fair rental value but it is only when the Assessing Officer is convinced that the case before him is suspicious, determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. We are of the view that municipal rateable value may not be binding on the Assessing Officer but that is only in cases of aforesaid nature. It is definitely a safe guide.

50] We have broadly agreed with the view taken by the Full Bench of the Delhi High Court. Hence, the issue of determination of the "fair rental value" in respect of properties not covered by or covered by the Rent Control Act is to be undertaken in terms of the law laid down in the Full Bench decision of the Delhi High Court.

51] We quite see the force in the arguments of Ms. Vissanjee that ordinarily the license fee agreed between the willing licensor or a willing licensee uninfluenced by any extraneous circumstances would afford reliable evidence of what the landlord might reasonably be expect to get from a hypothetical tenant. She has in making this submission, answered the issue and summed up the conclusion as well. Then, it is but natural and logical that in the event, the transaction is influenced by any extraneous circumstances or vitiated by fraud, or the like that the Assessing Officer can adopt a "fair rent" based on the opinion obtained from reliable sources.

*There as well, we do not see as to how we can uphold the submissions of Mr. Chhotaray that the notional rent on the security deposit can be taken into account and consideration for the determination. If the transaction itself does not reflect any of the aforestated aspects, then, merely because a security deposit which is refundable and interest free has been obtained, the Assessing Officer should not presume that this sum or the interest derived therefrom at Bank rate is the income of the assessee till the determination or conclusion of the transaction. The Assessing Officer ought to be aware of several aspects and matters involved in such transactions. It is not necessary that if the license is for three years that it will operative and continuing till the end. There are terms and conditions on which the leave and license agreement is executed by parties. These terms and conditions are willingly accepted. They enable the license to be determined even before the stated period expires. Equally, the licensee can opt out of the deal. A leave and license does not create any interest in the property. Therefore, it is not as if the security deposit being made, it will be necessarily refundable after the third year and not otherwise. Everything depends upon the facts and circumstances in each case and the nature of the deal or transaction. These are not matters which abide by any fixed formula and which can be universally applied. Today, it may be commercially unviable to enter into a lease and, therefore, this mode of inducting a 'third party' in the premises is adopted. This may not be the trend tomorrow, therefore, we do not wish to conclude the matter by evolving any rigid test.*

*52] We have also noted the submissions of Shri Ahuja. We are of the opinion that even in the cases and matters brought by him to our notice, it is evident that the Assessing Officer cannot brush aside the rent control legislation, in the event, it is applicable to the premises in question. Then, the Assessing Officer has to undertake the exercise contemplated by the rent control legislation for fixation of standard rent. The attempt by the Assessing Officer to override the rent control legislation and when it balances the rights between the parties has rightly been interfered with in the given case by the Appellate authority. The Assessing Officer either must undertake the exercise to fix the standard rent himself and in terms of the Maharashtra Rent Control Act, 1999 if the same is applicable or leave the parties to have it determined by the Court or Tribunal under that Act. Until, then, he may not be justified in applying any other formula or method and determine the "fair rent" by abiding with the same. If he desires to undertake the determination himself, he will have to go by the Maharashtra Rent Control Act, 1999. Merely because the rent has not been fixed under that Act does not mean that any other determination and contrary thereto can be made by the Assessing Officer. Once again having respectfully concurred with the judgment of the Full Bench of the Delhi High Court, we need not say anything more on this issue."*

11. As is evident and also admitted by the learned AR that the aforesaid decision of Hon'ble Jurisdictional High Court in Tip Top Typography (supra)



was not pointed out and therefore not considered by the Tribunal. Thus, the Co-ordinate Bench of Tribunal had no benefit **of the decision of Hon'ble Jurisdictional High Court while deciding the assessee's appeal** for assessment year 2012-13 and accordingly addition was upheld on the basis of security deposit received by the assessee by following decision **rendered by Hon'ble Punjab and Haryana High Court in K. Streetlite Electric Corporation (supra)**. The decision in Tip Top Typography (supra) is **rendered by Hon'ble Jurisdictional High Court and is thus binding on us**. However, in the present case, the addition has been made following the approach adopted in the assessment year 2012-13. Therefore, we deem it appropriate to remand this issue to the file of Assessing Officer for **de novo adjudication in light of the decision of Hon'ble Jurisdictional High Court in Tip Top Typography (supra)**. Accordingly, ground nos.1 to 4 raised in **assessee's appeal are allowed for statistical purpose**.

12. **Insofar as ground No. 5 raised in assessee's appeal** is concerned, same was not pressed by the learned AR during the course of hearing. Accordingly, ground No. 5 is dismissed as not pressed.

13. Ground nos. 6 and 7 **raised in assessee's appeal** are general in nature and need no separate adjudication in view of our aforesaid findings.

14. The assessee has also filed an application dated 13 January 2020 seeking admission of additional ground of appeal. However, during the

course of hearing, same was not pressed and therefore is accordingly dismissed as not pressed.

15. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 08/04/2022

**Sd/-  
AMARJIT SINGH  
ACCOUNTANT MEMBER**

**Sd/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 08/04/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai