

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 625 OF 2000

Vimal R. Ambani	}	Appellant
versus		
The Deputy Commissioner of	}	
Income Tax	}	Respondent

**WITH
INCOME TAX REFERENCE NO. 269 OF 1999**

Vimal R. Ambani	}	Applicant
versus		
The Commissioner of Income Tax	}	Respondent

Mr. J. D. Mistri-Senior Advocate with Mr. P. C.
Tripathi i/b. Mr. Raj Darak for the Applicant.

Mr. Vimal Gupta-Senior Advocate with
Mr. Sham V. Walve for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.**

DATED :- MARCH 20, 2015

ORAL JUDGMENT:- (Per A. K. Menon, J.)

By this common order, we dispose of the above Income Tax
Reference and the Income Tax Appeal.

2) The Assessee, along with two others had purchased
premises for a consideration of Rs.17,75,000/-. The Assessee claims to
have 1/3rd share in the property. On 29th September, 1986, the Assessee
filed return of income at Rs.979/- in respect of assessment year 1986-

87. The Appellant/Assessee also submitted a letter, in which, the computation of income was explained and the same was computed on the basis of rateable value as arrived at by Municipal Corporation of Ahmedabad. It was contended that this rateable value should be adopted for purposes of computing the property income. The Assessing Officer, in his order dated 22nd August, 1988 under section 143(3) of the Income Tax Act, 1961, followed the view taken in the earlier years in respect of the same Assessee to the effect that the annual value should be determined on the basis of the standard rent and not on the basis of the rateable value as determined by the Municipal Corporation. He further took the view that in determining the standard rent, the return on the investment should be calculated at 12% and computed the income from house property at Rs.57,760/- instead of Rs.979/- as per the return filed by the Appellant/Assessee.

3) Being aggrieved by the order, the Appellant preferred an Appeal to the Commissioner (Appeals), who dismissed the Appeal upholding the assessment made. In further Appeal before the Income Tax Appellate Tribunal, his Appeal came to be dismissed by an order dated 20th October, 1999. It is this order that is the subject matter of challenge in the above Income Tax Appeal. The following question of law has been proposed:-

“Whether on the facts and in the circumstances of the case and in law, the ITAT was right in holding that in computing the property income under section 23 of the Income Tax Act, 1961, the Annual Letting Value of 1/3rd share in the self-occupied property at Vimal House, Ahmedabad has to be the sum equivalent to the standard rent under the Rent Control Act and not the municipal rateable value.”

4) In the meantime, the Tribunal, on the application of the Assessee/Appellant referred the following questions of law, arising out the order of the Tribunal dated 23rd December, 1991 in respect of assessment years 1982-83 and 1983-84, for opinion and answer of this Court:-

“1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that Annual Letting Value of the self-occupied property at Ahmedabad has to be the sum equivalent to the Standard Rent under the Bombay Rent Control Act and not the Municipal Rateable value in computing the property income u/s. 23 of the I. T. Act, 1961?

2. Whether on the facts and circumstances of the case the Tribunal was right in law in confirming that the orders of the C.I.T. u/s. 263 of the I. T. Act holding that the original assessment computing property income on the basis of the Municipal Rateable value was erroneous and prejudicial to the interest of revenue?”

5) The Tribunal had proceeded on the basis of decisions in respect of the same Assessee in the previous years.

6) Before us, Mr. Mistri-learned Senior Counsel appearing for the Assessee/Appellant has taken us through the decision of this Court in the matter of *M. V. Sonavala vs. Commissioner of Income Tax* reported in (1989) 177 ITR 246, in which, this Court had occasion to consider

various questions (in relation to various assessment years). The Division Bench of this Court *inter alia* considered the issue of computation of annual value of the properties within the meaning of section 23(1)(a) of the Income Tax Act, 1961 as applicable to the relevant assessment years. The Department and the Tribunal had held that the annual value of the properties requires to be taken at the amounts actually received by the Assessee as compensation in respect of different properties and not at their municipal rateable value. The Tribunal relied upon a Judgment of the Hon'ble Supreme Court in the case of *Motichand Hirachand vs. Bombay Municipal Corporation* reported in **1968 SC 441**. On behalf of the Assessee, it was contended that a more recent decision of the Hon'ble Supreme Court in the case of *Dewan Daulat Ravi Kapoor vs. New Delhi Municipal Committee* reported in **(1980) 122 ITR 700** had clearly laid down that, subject to rent control legislation which provided for fixation of standard rent, the standard rent alone could be the basis for fixation of municipal rateable value for the purpose of levy of municipal taxes.

7) It is submitted on behalf of the Assessee relying upon a Decision of the Hon'ble Supreme Court in the case of *Sheila Kaushish vs. Commissioner of Income Tax* reported in **(1981) 131 ITR 435** that the annual value of the property is required to be determined with

reference to standard rent and not the actual rent received. While deciding the said Appeal in M. V. Sonavala's case (*supra*), the Division Bench of this Court followed a decision of the Calcutta High Court in the case of *Commissioner of Income Tax vs. Prabhabati Bansali* reported in **(1983) 141 ITR 419** and held that for the purpose of computing the annual letting value, sum for which the property might reasonably be let from year to year or the annual municipal value is to be taken. The Division Bench of this Court followed the view taken by the Calcutta High Court and directed the Department to determine the annual value of the properties accordingly.

8) In another decision of this Court in the case of *Smt.Smitaben N. Ambani vs. Commissioner of Wealth-Tax* reported in **(2010) 323 ITR 104 (Bom.)**, one of the questions raised was, “*Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that while applying the provisions of rule 1BB for valuing the self-occupied property, municipal rateable value has to be adopted instead of standard rent?*” This Court held, in respect of the said question, that while applying the provisions of rule 1BB for valuing the self-occupied property, municipal rateable value with addition of statutory deductions, if any, may be adopted instead of standard rent, for arriving at the gross maintainable rent.

9) Mr. Mistri was at pains to submit that although while computing the value for the purpose of section 22 and while arriving at the annual value for the purpose of section 23, the fair rent receivable in respect of the property is to be taken into account, however, the same will be limited by the standard rent applicable in the facts of a particular case.

10) In this respect, it will be necessary to refer to a later decision of this Court in the matter of *Commissioner of Income Tax vs. Tip Top Typography* in **Income Tax Appeal No. 1213 of 2011**, to which, one of us, (S.C.Dharmadhikari, J.) is a party, in which decision, this Court has followed the decision of the Full Bench of Delhi High Court and the conclusions in the said Full Bench decision are relevant to the facts of the case at hand, which read 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 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."

11) Accordingly, while determining the annual letting value in respect of properties which are subject to rent control legislation and in cases where the standard rent has not been fixed, the Assessing Officer shall determine the same in accordance with the relevant rent control legislation. If the fair rent is less than the standard rent, then, it is the fair rent which shall be taken as annual letting value and not the standard rent. This will apply to both, self acquired properties and general cases where property is let out. While carrying out exercise

under section 23(1) of the Act, the departmental authorities shall follow these guidelines reproduced above provided in the Full Bench decision of the Delhi High Court and followed by a Division Bench of this Court in the case of *Tip Top Typography* (supra).

12) Reference will also have to be made to a decision of this Court in the case of *Smt. Kokilaben D. Ambani vs. The Commissioner of Income Tax* in **Income Tax Reference No. 513 of 1997** and connected matters decided on 11th September, 2014, wherein, we have dealt with the aforesaid questions and the guidelines set out in the various Judgments have been referred to therein.

13) Accordingly, the Appeal is allowed and the impugned order dated 20th October, 1999 is set aside. The matter stands remanded for consideration in accordance with the aforesaid norms. No order as to costs.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)