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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 13th February, 2015

+ ITA 266/2002

M/S MAYUR RECREATIONAL & DEV.LTD Appellant

Through Ms. Kavita Jha and Mr. Vaibhav
Kulkarni, Advs.

versus

CIT Respondent

Through Mr. P Roy Chaudhuri and Mr. Rohit
Madan, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. Nos. 2555-2556/2015

1. Issue notice.
2. Mr. P Roy Chaudhuri, Adv. accepts notice.
3. With consent the applications were heard.
4. Having regard to the averments made in the applications, this Court is of the opinion that the interest of justice lies in accepting the request for restoration of the appeal and condoning the delay.
5. Accordingly, the CMs are allowed and the appeal is restored to the file.

ITA 266/2002

6. In the present case, the question of law framed by the Court on 10.12.2002 was as follows :

“Whether on the facts and in the circumstances of the case the Tribunal was correct in law in remanding the case back to the Income Tax Officer to determine afresh the annual letting value of the property No.14-16, Aurangzeb Road, New Delhi in respect of assessment years 1990-91 to 1992-93?”

7. The facts briefly are that the assessee, a limited company, deals in real estate business and owned two properties : 14-16, Aurangzeb Road, which had been given to the Directors to use as residence. The properties were thereafter sold to the appellant company. Thereafter, M/s DLF Universal Ltd acquired the properties on rent from the appellant and its Directors continued to occupy the said property for the residence. The lessee i.e. DLF made some alterations in the properties at their cost in the earlier years. In AY 1990-91 and 1991-92 the assessee included Rs.43,345/- in their returns as annual letting value (‘ALV’) of the properties based upon municipal valuation and for the subsequent years the ALV returned was Rs.52,540/- again based on municipal valuation. The AO, inter alia, adopted the ALV of Rs.4,72,496/- for all the three AYs. This was based on the cost of the construction of the property and value of the land to the assessee. The CIT(Appeals) by common order of 25.5.1995 allowed the assessee’s plea and followed his previous orders. Those orders had been ultimately upheld by the ITAT for several previous years. The revenue appealed the ITAT contending that the determination of annual letting value was incorrect as it departed from the previous years for which the matters stood finally settled. Besides, the assessee relied upon decision of the Supreme Court i.e. *Sheila Kaushish V. CIT* [1981] 131 ITR 435 and certain other decisions. The ITAT however, upset the findings of the CIT and accepted the revenue’s contention.

8. During the pendency of these appeals and after the question of law was framed for other subsequent periods, the ITAT apparently controverted its previous views – which had favoured the assessee. It therefore, decided to refer the precise question, having regard to the facts of this case to a special bench. The question referred was as follows :

“Whether, on the facts and in the circumstances of the case, and having regard to all the earlier orders of the Tribunal, the IT authorities were justified in estimating the ALV of the property at Nos. 14-16, Aurangzeb Road, New Delhi at Rs. 9,32,888 as against Rs. 5,12,932 declared by the assessee in the return?”

9. After due consideration of the relevant case law including the judgment of the Supreme Court in *Dewan Daulat Rai Kapoor V. New Delhi Municipal Committee* [1980] 122 ITR 700 etc., the Special Bench in its decision (reported as *Assistant Commissioner of Income Tax V. Mayur Recreational and Development Ltd.* 301 ITR (AT) 324 held as follows :

“20. We have considered the rival submissions in the light of material available on record and the judicial pronouncements cited at the Bar. The issue before us as raised in the question referred to this Special Bench is relating to the determination of ALV of the property belonging to the assessee and situated at No. 14-16, Aurangzeb Road, New Delhi in accordance with law. The relevant provisions governing the determination of ALV are contained in Section 23 and Sub-section (1) thereof, being relevant in the present context, the provisions thereof are extracted below for ready reference:

“23. (1) For the purposes of Section 22, the annual value of any property shall be deemed to be:

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in el. (a), the amount so received or receivable; or

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in Clause (a), the amount so received or receivable;

21. The relevant property belonging to the assessee in the present case was undisputedly given on rent during the year under consideration and as such, the provisions as contained in Clause (b) of Sub-section (1) of Section 23 are applicable for determining its ALV. A perusal of the said provisions shows that the annual value of the property for determining the income from house property is deemed to be the sum for which the property might reasonably be expected to let from year to year or where the property is let and the annual rent received or receivable is in excess of such sum, the amount so received or receivable. It thus follows that the determination of the annual value is to be made at a sum for which the property might be reasonably expected to let from year to year and the same is to be compared with the actual rent received. If the rent so received or receivable is higher than the amount at which it would be reasonably expected to let from year to year, then the actual rent received will be adopted as an annual value. As held by Hon'ble Delhi High Court in the case of John Tinson & Co. (P) Ltd. v. CAT (supra), the standard rent of a property is synonymous to "the sum for which the property might reasonably be expected to let from year to year" and the AO, therefore, is duty-bound to calculate such standard rent. It was also held by the Hon'ble Delhi High Court that it is not necessary that standard rent should be fixed by the Rent Controller under the Rent Control Act for it to be taken into reckoning for the purposes of Section 23(1) and even the AO can fix the same adopting the principles and methodology laid

down in the relevant rent laws. In the case of CIT us. Raghubir Saran Charitable Trust (supra), it was held by the Hon'ble Delhi High Court that market rent could not be more than the standard rent and in a case where rent actually paid was more than the standard rent, the same has to be adopted as an ALV of the property irrespective of the fact that the market rent was actually more than the rent received by the assessee.”

10. Thereafter, the Special Bench dealt with and considered *Dewan Daulat Rai Kapoor* (supra) and summarised its conclusions as follows :

“22. In the case of Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee (supra), it was held by the Hon'ble Supreme Court that even though there would ordinarily be in a free market close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant, where the rent of the building is subject to rent control legislation, this approximation may and often does get displaced. It was also held that the determination of standard rent is not left to the unfettered and unguided discretion of the Rent Controller and he is required to fix the standard rent in accordance with formula laid down in Section 6. It was also held that the compulsive force of the formula laid down in Section 6 for the determination of standard rent is not in any way fettered down by Section 9(2), but the marginal discretion is given to the Controller to mitigate the rigour of the formula where the circumstances of the case so require. It was held that the amount calculated in accordance with the relevant formula set out in Section 6 would, therefore, ordinarily represent the standard rent of the building unless the landlord or the tenant as the case may be can persuade the Controller that there are circumstances requiring adjustment in the amount so arrived at. The annual value of a building as governed by the Delhi Rent Control Act, 1958 must be limited to the measure of standard rent determinable under that Act and the landlord cannot reasonably expect to get more than the standard rent payable in accordance with the principles laid down in the

Delhi Rent Control Act, 1958. It was held that in a case where the standard rent of a building is not fixed by the Controller, the assessing authority would have to arrive at its own figure of standard rent by applying the principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent. It was clarified that when the assessing authority arrives at its own figure of standard rent by applying the principles laid down in the relevant Rent Control Act, it does not usurp the function of the Controller because it does not fix the standard rent which would be binding on the landlord and the tenant which can be done only by the Controller under the Act. What the assessing authority thus arrives at is merely its own estimate of standard rent for the purpose of determination of ALV of the building and it is the perfect legitimate function within the scope of the jurisdiction of the assessing authority.”

11. It is thus evident that the reasoning contained in the impugned order has been discarded and in effect overruled. This Court notices that the impugned order had directed as follows :

“We are of the view that on the facts and in the circumstances of the case and for the reasons given in the impugned appellate order the Ld. CIT(A) was justified in holding that swimming pool was not plant but was part of the building and as such depreciation was allowable at 10% and not 33.33% as claimed by the assessee. The facts and circumstances of the case as mentioned in detail in the impugned order clearly show that the facilities of the swimming pool and health club were provided to the Chairman and the Directors residing in the aforesaid bungalows. The swimming pool and health club were not business apparatus and were not used for carrying on business of trading or manufacturing or professional activities. Hence, the swimming pool could not be treated as plant. The Ld. CIT(A) correctly relied on the supreme court decision in Anand Theatre reported in 244 ITR 192. We do not see any infirmity in the order of the Ld. CIT(A) for the assessment year under consideration.”

12. As a consequence of the above discussion, since the impugned order has been effectively overruled and the earlier view affirmed, the remand order should not be only in terms of para 24 but on due examination of the decision of the Special Bench and a due application of the principles therein. This Court noticed that in the revenue's appeal before the ITAT, remand was in terms of para 17 and 18 of the impugned order. The rights and contentions of the parties are kept open. The AO shall proceed to determine the annual letting value (ALV) of the suit property in respect of the years 1990-91 and 1992-93 in terms of the above directions.

13. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 13, 2015

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