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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.267 OF 1999

Ramniklal H. Ambani ..Applicant
Versus
The Commissioner of Income Tax
Bombay City-VI. ..Respondent

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Mr. J. D. Mistri, Senior Counsel, a/w P.C. Tripathi i/b. Raj Darak for the Applicant.
Mr. Ashok Kotangale a/w A. K. Saxena for the Respondent.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 21st JULY, 2016

P.C. (PER A. K. MENON, J.)

1. This is a reference filed under Section 256(1) of the Income Tax Act, 1961 (the Act) referring two questions which are reproduced below:-

> *"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that 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 Bombay Rent Control Act and not the Municipal Annual Rateable value in computing the property income under Section 23 of the Act?*

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the Commissioner of Income Tax had jurisdiction to act under Section 263 of the Act as the assessment order was erroneous in law and prejudicial to the interest of the revenue?"

2. The assessment years in question are 1982-83 and 1983-84. The issue concerns the ascertainment of Annual Letting Value(ALV) of property situated at Ahmedabad (said property). The assessee contributed 1/3rd share of the purchase price of Rs.17,75,000/-. The Assessing Officer accepted the ALV of the said property on the basis of the intellectual value fixed by the Municipal Corporation while computing the assessments under Section 143(3) for both the years. The Commissioner of Income Tax in exercise of his powers under Section 263 of the Act held that the ALV should be determined on the basis of the standard rent in accordance with the provisions of the Rent Control Act and not on the basis of the rateable value fixed by the Municipal Corporation consequent to the above, the issue was restored to the Assessing Officer for the determination. In appeal before the Tribunal, the order of the Commissioner was confirmed.

3. Mr. Kotangale appearing on behalf of the Revenue submitted that

the issue comprising the first question is covered in favour of the Assessee and against the Revenue by the decision in Income Tax Reference No.269 of 1999, Vimal R. Ambani v/s. Commissioner of Income Tax to which one of us (A.K.Menon,J.) is a party. Perusal of the said order reveals that the facts and the question of ALV and the property involved is the same and in respect of which the present assessee is a co-owner.

4. In the order dated 20th March, 2015 in Vimal Ambani (supra) we had made reference to the decision of this Court in **CIT v/s. Tip Top Typography 368 ITR 330** which quoted with approval the Full Bench judgement of the Delhi High Court in the case of ***Commissioner of Income Tax v/s. Moni Kumar Subba and Miracle Exporters P. Ltd. 333 ITR 38*** setting out the following guidelines as to the manner in which ALV is to be computed :-

> *"(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."

5. Regarding Question (i):-

This question as raised for our opinion consists of two parts the first part is in respect of fixing the ALV on the basis of the standard rent determined as per the provisions of the Rent Act. On this issue, we have already held in Vimal Ambani (supra) that the standard rent as determined under the Rent Act is the ceiling/upper limit in fixing the ALV. Fair rent is to be the basis of fixing the ALV and the fair rent may not necessarily be the standard rent. Therefore the first part of this question is answered in the negative i.e. in favour of the assessee and against the Revenue.

So far as the second part of the question is concerned viz. should the ALV be determined on the basis of rateable value? We would clarify as set out in the above guidelines that the fixation of ALV would be on the basis of fair rent and the rateable value fixed under Corporation Act may not be the sole / conclusive basis for determining the fair rent.

6. <u>Regarding question (ii):-</u>

In view of our answer to the question no.(i), this question is not being pressed by the applicant-assessee. Consequently no occasion to examine the same for answering it arises. Thus this question is returned unanswered.

7. Reference is disposed of in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**