THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

I.T.T.A.No. 276 of 2016

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JUDGMENT: ***(Per VRS,J)***

The Revenue has come up with the above appeal under

Section 260A of the Income Tax Act, 1961 (for brevity 'the Act'), raising the following questions of law:

1) Whether, on the facts and in the circumstances of the case, the order of the Tribunal is not perverse? and

2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that notional interest on interest free loan of Rs.22 crores cannot be considered for computation of ALV, without appreciating the fact that there is no business transaction between the assessee and M/s. Quality Care India Limited other than rental transaction and, thus, the loan partakes the character of rental deposits?

2. Heard Mr. J. V. Prasad, learned senior standing counsel for Income Tax Department, appearing for the appellant.

3. The respondent-assessee filed a return of income on 12.11.2007 declaring a net loss of Rs.33,62,849/-. During scrutiny assessment proceedings, the Assessing Officer noted various things, including a Lease Agreement, dated 26.09.2001, effective from 01.04.2001, under which the assessee was to receive a licence fee of Rs.32,40,000/- for utilization of the leased premises and furniture and fittings. Out of the said amount, Rs.16,20,000/- was to be towards premises and the balance amount was to be towards furniture and fittings.

4. The Assessing Officer also noted, during the scrutiny assessment proceedings, that the total built up area of the licensed premises was 1,35,000/- square feet. The Lease Agreement provided for payment of a refundable deposit of Rs.2 crores to the assessee. Therefore, the Assessing Officer was of the view that the assessee, who derived benefit out of an interest free deposit, should also take a part of the same towards annual letting value (ALV) of the property. Working out the interest deemed to be received by the assessee at 12% per annum, amounting to Rs.24 lakhs, the Assessing Officer computed the ALV of the leased premises at Rs.40,20,000/- as against Rs.16,20,000/- declared by the

assessee.

5. After examining the assessment records, the Commissioner of Income Tax (CIT) initiated proceedings under Section 263 of the Act and passed an order, dated 11.01.2012, holding that the assessee also had another transaction with the lessor, under which the assessee received interest free security deposit of Rs.22 crores. Therefore, the CIT was of the view that notional interest on this security deposit should have been considered, while determining the ALV. The CIT also dealt with certain other issues, about which we are not concerned in this appeal.

6. As against the order of the CIT, dated 11.01.2012, the assessee filed an appeal in I.T.A.No.441/Hyd/2012 before the Income Tax Appellate Tribunal. The Tribunal allowed the appeal partly, by an order, dated 30.01.2015, in so far as the calculation of notional interest on the loan amount of Rs.22 crores, as part of the ALV. Therefore, the Revenue is before us.

7. Relying upon a decision of the Full Bench of the Delhi High Court in ***Commissioner of Income Tax Vs. Moni Kumar Subba***[1], it is contended by Mr. J.V.Prasad, learned senior standing counsel, that the statute uses the

expression “might” in Section 23(1)(a) and that, therefore, the Assessing Officer was bound to take into account the benefits that the assessee derived out of different transactions, if they were between the same lessor and the same lessee. In the case on hand, the lessee happened to be the same Company, which also lent an interest free loan amount of Rs.22 crores to the assessee. Therefore, it is his contention that the interest that is payable on the said amount, should also be included to the rent that was fixed under the Rental Agreement.

8. We have carefully considered the above submissions.

9. At the outset, it should be pointed out that the decision of the Full Bench of the Delhi High Court arose out of a case where there was a single arrangement or agreement between the assessee and another party. Under the lease agreement, the monthly rent was fixed at Rs.90,000/-. But, a security deposit, which was interest free, to the tune of Rs.8.58 crores, which represented almost about 100 times
the monthly rent, was fixed. Therefore, taking note of the huge variance between the monthly rent and the interest free security deposit, the Full Bench of the Delhi High

Court came to the conclusion that a proper interpretation to Section 23(1)(a) would be to calculate the ALV on the basis of what the property may reasonably fetch, if let out by a willing lessor to a willing lessee uninfluenced by any extraneous circumstances. As a matter of fact, the Full Bench of the Delhi High Court formulated certain principles to be followed in such cases, which can be usefully extracted as follows:

> *"(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."

But, in the case on hand, there are actually two transactions, both of which were not found by the Assessing Officer or by the CIT to have a direct nexus with each other. One transaction was not even found to be an integral part of another transaction.

10. As a matter of fact, the Lease Agreement, dated 26.09.2001, fixed the licence fee at Rs.32,40,000/- for utilization of the leased premises as well as furniture and fittings. The Lease Agreement also provided for payment of an interest free refundable deposit of Rs.2 crores. Therefore, in the scrutiny assessment proceedings, the Assessing Officer calculated interest at 12% per annum on the interest free refundable deposit of Rs.2 crores and added a sum of Rs.24 lakhs to the lease amount fixed under the Lease Agreement, dated 26.09.2001. If this had not been done in the scrutiny assessment proceedings, the decision of the Full Bench of the Delhi High Court would have squarely applied to the case on hand. Once this has been done, the question as to whether the notional interest payable

on the interest free loan granted, would also be taken into account for calculating the ALV, stands on a completely different footing.

11. As rightly observed by the Tribunal, no direct or indirect link has been established between the loan arrangement and the lease transactions. The Lease Agreement, as we have pointed out earlier, was dated 26.09.2001, effective from 01.04.2001. But, the loan arrangement was under an Agreement, dated 25.06.2002, which was almost a year after the Lease Agreement was entered into. The Tribunal noted in paragraph 9 of its order that this loan arrangement was actually for the purpose of clearing the debts of the assessee, under a One Time Settlement Scheme with the Bank. Therefore, there was not even a scope for the Assessing Officer to come to the conclusion that the loan arrangement had a direct nexus with the letting-out of the property. The loan arrangement was for the purpose of discharging the dues of the assessee to the Bank under a One Time Settlement Scheme. Even if there had been no Lease Agreement, the assessee would have been under an obligation to discharge the same.

12. Therefore, in the above circumstances, we do not

think that any substantial question of law arises for our consideration in the appeal. Hence, the Appeal is dismissed.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

26th July, 2016
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[1] (2011) 333 ITR 39 (Delhi) (FB)