IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 207 OF 2006

Shreyas K. Doshi ....Appellant
V/s.
Assistant Commissioner
of Income-Tax-16(3), Mumbai ....Respondent

* * * * *

Mr. Atul Jasani, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 21ST JUNE, 2018.

P.C. :-

1. This Appeal was admitted on 24th November, 2008 on the following substantial questions of law :

> *"I. Whether the order passed by the Tribunal is beyond and in excess of its jurisdiction and contrary to the principles of natural justice and perverse inasmuch as it :*
>
> *i)completely ignored the fact that the*

Department had nowhere challenged the finding of the Commissioner of Income-Tax (Appeals) that the municipal rateable value was the fair market value of the property in question ?

ii) that the limited issue raised before it by the Department was only whether for the purposes of section 23(1)(a) of the Act, the notional interest or interest free deposit could be considered for the purposes of section 23(1)(a) of the Act ?

II. *Whether on the facts and in the circumstances of the case the notional interest on interest free security deposit was a relevant factor for determining fair rent for the purposes of section 23(1)(a) of the Act even though there is no such legislative intent and the income, which may arise out of deployment of such funds, is separately taxable ?*

III. Whether in any event, the Tribunal *completely overlooked and failed to appreciate that the security deposit of Rs.1,50,00,000/- in respect of furniture had no connection whatsoever with the Annual Value of the flat ?*

IV. Whether the gross rent receivable as determined by municipality for arriving at the municipal valuable of the property for determination of property taxes payable ought not to be taken as annual value also for the purposes of section 23(1)(a) of the Act ?

V. Whether in any event, the appellant was entitled to a deduction for vacancy allowance under Section 23(1)(x) of the Act ?"

2. At the time of admission, the respondents had waived service. However, none appears today on its behalf.

3. Mr. Jasani, Learned Counsel appearing in support of the Appeal, on instructions states that he is not pressing Questions no.I, III and V.

4. We find that Questions no.II, and IV stand concluded against the Revenue and in favour of the appellant-assessee by the decision of this Court in **Commissioner of Income Tax v. Tip Top Typography, [2014] 368 ITR 330 (Bom)**.

5. Therefore, Questions no.II, and IV are answered in the negative i.e. in favour of the appellant-assessee and against the respondent-Revenue.

6. Appeal allowed in the above terms.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**