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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# O.O.C.J.

INCOME TAX APPEAL NO. 1314 OF 2016

Pr. Commissioner of Income Tax-2 ...Appellant
vs
Nathuram Ramnarayan Pvt. Ltd. ...Respondent.

.....

Mr Suresh Kumar for the Appellant.
Mr Jitendra Singh for the Respondent.

.....

**CORAM : AKIL KURESHI &**
**B.P.COLABAWALLA, JJ.**
**FEBRUARY 11, 2019.**

**P.C. :**

This appeal is filed by the Revenue challenging the Judgment of the Income Tax Appellate Tribunal raising the following questions of law for our consideration

"(a) "Whether, on the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of Rs.3 Crores on sale of tenancy right by Rani K Poddar ?

(b) Whether, on the facts and circumstances of the case and in law, the Hon'ble Tribunal is correct in restricting the ALV at Rs.1,55,239/- as against the 2,04,284 determined by the Assessing Officer ?

(c) Whether, on the facts and circumstances of the case and in law, the Hon'ble Tribunal is correct in restricting ALV at Rs.1,56,000/- as against the Rs. 11.70 lakh determined by the Assessing Officer?"

2 The appeal relates to the respondent - assessee's return for the Assessment Year 2007-08. The assessee is a private limited company and owned a building which was occupied by several tenants, including one Rani Poddar, who was one of the Directors of the assessee - company. Remaining directors were the family

members of Rani Poddar. Rani Poddar occupied a portion of the building in question. When the assessee sold the said immovable property, the tenants were paid certain compensation in lieu of the tenancy rights. Rani Poddar received Rs.3 Crores. Question No.1 arise out of the action of the A.O. to hold that such payment by the company to its director was a colourable device to avoid the tax. The Tribunal, however, examined the facts on record and came to the conclusion that Rani Poddar was paid at a rate not higher than other tenants. A.O. was, therefore, not justified in discarding the transaction as a colourable device merely because it was a transaction between the company and its director. More significantly the Tribunal recorded that the Director Rani Poddar had offered such consideration to Capital Gains and in fact paid the tax on such gain at a rate higher than the assessee company in the present case would have paid.

3 In facts of the present case we do not find that the Tribunal committed any error. Two significant factors noted above are that Rani Poddar received no amount higher than at the rate at which the other tenants were paid and more significantly offered the entire consideration to tax as their Capital Gain at the rate higher than the assessee company would have been asked to pay tax on the same

amount. No question of law arises.

4 Question No.2 relates to the action of the A.O. in revising the Annual Letting Value ("A.L.V." for short) of the property occupied by Rani Poddar from Rs.1,55,239 to Rs.2,04,284/-. The A.O. treated the case of Rani Poddar differently from other tenants and applied the inflation rate on A.L.V. of 4 % per annum. The Tribunal by the impugned judgment restricted the A.L.V. *inter alia* observing that the increase of 4 % could have been done only by the owner of the building and not by the A.O. and further that there is no occasion for differentiating case of Rani Poddar than the other tenants. No question of law, therefore, arises.

5 The third question stands on the same footing on that of the second question, and therefore, this question is not discussed further. No question of law, therefore, arises.

6 In these circumstances, the Income Tax Appeal is dismissed. No order as to costs.

**(B.P.COLABAWALLA, J.)** **(AKIL KURESHI, J.)**