IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**B**" KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.2186-2187/Kol/2014 Assessment Years:2010-11 & 2011-12

Income Tax Officer, Ward-36(1), Aayakaar Bhawan (Poorva), 8th Floor, 110, Shantipally, Kolkata-107	**V/s.**	Sri Raghu Nandan Modi 20, R.N. Mukherjee Road, Raasoi Court, Kolkata-700 002 [**PAN No.AEXPM 8474 P**]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

C.O. No. 03-04/Kol/2015 a/o ITA No.2186-2187/Kol/2014) Assessment Years: 2010-11 & 2011-12

Sri Raghu Nandan Modi 20, R.N. Mukherjee Road, Raasoi Court, Kolkata-700 002 [**PAN No.AEXPM 8474 P**]	**V/s.**	Income Tax Officer, Ward-36(1), Aayakaar Bhawan (Poorva), 8th Floor, 110, Shantipally, Kolkata-107
Co-objector	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri S.M. Surana Advocate & Shri P.R. Kothari, FCA
राजस्व की ओर से/By Revenue	Shri Pinaki Mukherjee, JCIT, SR-DR
सुनवाई की तारीख/Date of Hearing	24-05-2017
घोषणा की तारीख/Date of Pronouncement	02-06-2017

आदेश /O R D E R

PER BENCH:-

These two appeals by the Revenue and Cross Objection (CO) filed by the assessee are directed against the different orders of Commissioner of Income Tax (Appeals)-XX, Kolkata of even dated i.e. 10.09.2014. Assessments were framed by ITO Ward-36(1), Kolkata u/s 143(3)/147) of the

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Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his orders dated 17.03.2014 for assessment years 2010-11 & 2011-12 respectively.

Shri Pinaki Mukherjee, Ld. Departmental Representative represented on behalf of Revenue and Shri S.M. Surana & Shri P.R. Kothari, Ld. Advocate appeared on behalf of assessee.

2. Both the appeals and CO(s) of assessee are heard together and are being disposed of by way of consolidated order for the sake of convenience.

First we take up ITA No. 2186/Ko/2014 for A.Y. 10-11 of Revenue's appeal.

3. Solitary issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹96 lakh on account of rent free accommodation provided to the assessee which was valued u/s. 28(iv) of the Act.

4. Briefly stated facts are that assessee is an individual and has field his return of income declaring total income of ₹7,90,500/-. The AO in the assessment order has observed the business of the assessee as interest income. The assessee was also inter alia a part-time Director of M/s Prabhukripa Overseas Ltd. (POL for short). It was observed that POL is owner of a flat having 3551.12 sq. ft. area located at 11/12 Buckley Court, Nathalal Parekh Marg, next to Electric House, Colaba, Mumbai-400005. M/s POL has assigned the task to look after the export business of it. The assessee has not drawn any salary from the company during his tenure from 01.04.2005 to 31.05.2011 as evident from the audited report of POL. However, POL has provided rent free accommodation to assessee by giving its flat as discussed above. However, the AO was of the view the value of the rent fee accommodation is taxable in the hands of the assessee u/s 2(24)(iv) of the Act r.w.s. 17(2)/ 28(iv) of the Act. The fact that the assessee was not given salary was also verified by the AO form POL by issuing the notice u/s. 133(6) of the Act. The AO further observed as the assessee is not drawing any salary the value of the perquisites u/s. 17(2) r.w.s Rule 3 of the IT Rules, 1962 (hereinafter referred to as 'the IT Rules') will be nil. The AO also observed that

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the services rendered by the assessee fall under the category of professional/vocational activities and therefore the same is taxable in the hands of the assessee u/s. 28(iv) of the Act.

5. The AO also observed that the impugned flat was rented out by POL to a company in the financial year 2002-03 on annual rental value of ₹96 lakh. Therefore, the AO worked out the rental value of the impugned flat for ₹ 96 lakh which was added to the total income of assessee under the provision of Sec. 28(iv) of the Act.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that he was holding the post of part-time director in the company as well as the post of employee to look after the export business of POL. The assessee has received no salary from the company, therefore the perquisites value u/s. 17(2) r.w.s. Rule 3 of the Rules becomes nil.

7. Similarly, the provision of Sec. 28(iv) of the Act cannot be attracted in relation to the rent free accommodation provided by POL. It is because these exists employee and employer relationship between the assessee and the POL. Moreover, assessee was not engaged in any business activity as well as holding any professional qualification as envisaged under the provisions of Section 28(iv) of the Act.

8. POL has given its flat on rental basis for financial years 2001-02 & 2002-03 to its 100% holding company wherein rent of ₹ 96 lakh was received only for those particular years. There was no rental income in the earlier years and subsequent year. Therefore, the amount of ₹ 96 lakh cannot be valued as the perquisites in the hands of the assessee. The rent was received by the POL from its holding company for Rs. 96 lacs for the said years only and there can be several reasons/factors for the payment of the rent at such huge value e.g. to provide the liquidity to the subsidiary company. Therefore the rent by the holding company cannot be the guiding factor for determining the perquisite value in the hands of the assessee.

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The assessee further submitted the rental valuation as determined by Brinhan Mumbai Mahanagarpalika for the financial year 2009-10 which comes out to ₹1,21,500/- only. Similarly, the promoters of the building namely, Balkrishna Developer Pvt. Ltd. valued the apartment for ₹2,74,364/- under the municipal valuation for the purpose of municipal tax. The assessee also submitted that on the maximum side after taking all the location advantages the annual residential letting value determined by the Brinhan Mumbai Maha nagar palika was at ₹ 5.06 lakh only. The assessee also submitted that there was no rent fixed under the Rent Control Act. Thus, in the absence of Rent Control Act, the municipal valuation will be the guiding factors for the valuation of perquisites i.e. rent free accommodation. Therefore the value determined by the Brinhan Mumbai Mahanagarpalika should be taken as annual letting value at which the property might be expected to let on year-to-year basis. The Ld. CIT(A) after considering the submissions of the assessee has deleted the addition in part made by AO by observing as under:-

> *"After going through the facts and circumstances of the case, I find merit in the arguments of the appellant that being close relationship between the holding and subsidiary company and the annual rent was decided in consideration of so many other factors to give benefit to the subsidiary company, therefore, the same cannot be said to be a normal or market rent. Further, it is correct that when standard rent under Rent Control Act is not fixed then the only criteria to fix the annual letting out value of the property was the municipal valuation. Further, the AO has not brought any other material on record to ascertain the Annual value at Rs.96 lakh. Under these circumstances and also in view of the case laws cited by the appellant, is directed to take Rs.14,00,000/- as annual letting out value of the impugned flat, which is as follows: The maximum residential letting rate in Brihanmumbai Mahanagarpalika area for A.Y 2010-11 for per 10 sq. Mtrs. was Rs.2,670/- per month, therefore, 2,670/- x 12/107.64x 3551 sq.fts. + 20% of the prescribed letting rate towards car parking + 10% of the letting rate being 11th floor = Rs.13,74,081/- (in round figure it is Rs.14,00,000/-) and accordingly the balance addition is directed to be deleted. However, so far taxing the rental value is concerned, the AO was justified to invoke section 28(iv) of the IT Act because the sequence of events clearly suggest that the idea of apportioning as part time employee was afterthought to avoid tax liability. In this regard reliance is placed on the judgment of Sumati Dayal Vs. CIT reported in 214 ITR 801 (SC) in which the Hon'ble court has discussed the issue of human probability and surrounding circumstances. It has been held that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. In the present case, the surrounding circumstances and facts*

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clearly show that the appellant adopted a colourable device for taking the rent free accommodation under rule 3 of the IT Rules for calculating valuation of the rent free accommodation which is otherwise not applicable in this case. In view of the above, the AO had correctly charged the annual letting out value of the flat u/s 28(iv) of the IT Act."

The Revenue, being aggrieved, is in appeal before us.

9. Ld. DR vehemently relied on the order of AO whereas Ld. AR for the assessee filed paper book which is running pages from 1 to 31 and he reiterated the arguments that were made before the Ld. CIT(A).

10. We have heard rival contentions of the parties and perused the material available on record. The issue before us in the instant case relates to the taxability of rent free accommodation provided by POL to the assessee. The assessee is a part-time director in the company from 01.04.2005 and he was not given any salary by POL. Admittedly the assessee was given rent free accommodation by POL in the capacity of director. From the submission of Ld. AR, we find that assessee was acting as a part-time director as well as employee in the company as evident from the meeting of Board of Directors which is placed on pages 7 and 8 of the paper book filed along with CO No.3/Kol/2015. As the assessee was not drawing any salary from POL then in our considered view the perquisites cannot be determined in terms of the provision of Sec. 17(2) r.w.r. 3 of the Rules. The rule 3 requires the determination of the value of the perquisite in the instant case in the following manner.

[**Valuation of perquisites**.

3. For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reasons of his employment shall be determined in accordance with the following sub-rules, namely:-

(1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below:

TABLE I

Sl. No.	Circumstances	Where accommodation is unfurnished
(1)	(2)	(3)
(1)		
(2)	Where the accommodation is	(i) 15% of salary in cities having population

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	provided by any other employer and- (a) Where the accommodation is owned by the employer, or	exceeding 25 lakhs as per 2001 census; (ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; (iii) 7.5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.

As the non-furnished rent free accommodation provided to the assessee is owned by M/s POL, therefore 15% of the salary shall be taken as perquisites in the hands of the assessee. However we find that admittedly the assessee is not withdrawing any salary from the POL then in such situation it cannot be determined as per rule 3 of income tax rule. Thus it is clear that the provisions of section 17(2) are very much applicable to the instant facts of the case but the same cannot be determined under rule 3 of IT rules for the reasons as discussed above.

Similarly, the provisions of Sec. 28(iv) of the Act are attracted if the benefit of perquisites is arising to the assessee from the business or exercise of the profession. As there is no dispute that there was existing employees and employer relationship between assessee and POL then there is no question of attracting the benefit or perquisites as define u/s. 28(iv) of the Act. At this juncture, we would like to reproduce the aforesaid Section hereunder:-

28(iv) of the Act which reads as under:-
"Profits and gains of business or profession.
28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",-
(i) ... ...
(ii) ... ...
(i) ... ..
[(iv) the value of any benefit or perquisite, whether convertible to money or not, arising from business or the exercise of a profession;]

10.1 On perusal of the above provision of Sec. 28(iv) of the Act it is revealed that a value of benefit/perquisites can be brought to tax if it is arise from the business or from the exercise of the profession. In the case before us both the

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elements as mandated under the provision of Sec. 28(iv) of the Act are missing therefore, we are inclined not to tax the rent free accommodation provided by POL to the assessee under section 28(iv) of the Act.

However, as per the provision of Sec. 2(24)(iv) of the Act requires to bring the benefit of perquisites receive by a director under the net of taxes. The relevant extract of the provision of Sec. 2(24)(iv) reads as under:-

> **Definitions**
> 2. In this Act, unless the context otherwise requires,-
> (24) "income" includes-
> (i)….
> (ii)….
> (iii)
> (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payee by the director or other person aforesaid;

From the reading of the above provision, we find that the assessee is a director in the company and therefore benefit or perquisites derives by the assessee are taxable. Now the issue before us arises for the determination of value of the benefit/perquisites derived by the assessee on having the rent free accommodation. As we have already concluded that the perquisites value as define u/s. 17(2) r.w.s. Rule 3 of the Rules cannot be determined as the assessee is not drawing any salary from POL. Similarly, the aforesaid income cannot be taxed under the provision of Sec. 28(iv) of the Act on the ground that the condition as laid down in the said Section has not been met to the instant rent free accommodation. Now, the residual section where the perquisites value can be determined for the Sec. 23(1) of the Act for the purpose of taxation of rent free accommodation and relevant provision of Sec. 23(1) reads as under:-

> [**Annual value how determined**.
> *23.(1) For the purposes of section 22, the annual value of Anaya property shall be deemed to be-*

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(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 clause (a), the amount so received or receivable; or

10.2 Now the 2nd issue before us arises whether the value shall be determined as per clause (a) or clause (b) of section 23(1) of the Act. From the reading of the above provision, it is clear that that the clause (b) is applicable where the property is actually let out. In the case before us the property is not let out then applicability of clause (b) is ruled out. Now the clause (a) remains there to be applied for the determination of the annual value of the property which requires to determine the same as per municipal guidelines. In holding so we rely in the order of Hon'ble ITAT in case of *DCIT Vs Recalamation Realty Pvt. Ltd*. in **ITA No.1411/Mum/2007** for the AY 2004-05 vide order dated 26-11-2010. The relevant extract of the order is reproduced below:-

"17. We have considered the rival submissions. Originally provisions of section 23 of the Act provided for determination of annual value of house property only on the basis of sum for which, the property might reasonably be expected to be let from year to year. The actual receipt of rent was irrelevant. By the Taxation Laws (Amendment) Act, 1975 w.e.f. 1.4.1976, Section 23(1)(b) was introduced, whereby it was provided that if the actual rent received by an assessee is in excess of the sum for which, the property might reasonably be expected to let from year to year, annual value will be the rent received. While explaining the aforesaid amendment, CBDT in **Circular 204** dated 24.7.1976 in paragraph 9 has stated as follows :-

"Hitherto, the annual value of house property, chargeable to income tax under the head 'income from house property' was deemed to be the sum for which the property might reasonably be expected to let from year to year. In many cases, however, the actual rent received or receivable in a year exceeds the municipal valuation of the property. Sub section (1) of section 23 has been amended to provide that the where any property is in occupation of a tenant and the annual rent received or receivable by the owner is in excess of the sum for which the property might reasonably be expected to let from year to year, the annual rent received or receivable shall be taken as the annual value of the property".

18. From the aforesaid Circular, it is clear that the law prior to introduction of section 23(l)(b) was that annual value was equal to Municipal Valuation of the property. The above circular gives an indication as to how the expression "***the***

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sum for which, the property might reasonably be expected to let from year to year" used in section 23(l)(a) hast to be interpreted.

19. In the case of Diwan Daulat Kappor Vs. New Delhi Municipal Committee, 122 ITR 700 (SC), the question before the Hon'ble Supreme Court was as to what should be the basis of determining the annual value for the purpose of levy of property tax. The expression "***Annual Value***" as defined in the Delhi Municipal Corporation Act, 1957 and Punjab Municipal Act, 1911 was "***Gross annual rent at which such house of building may reasonably be expected to let from year to year***". The Hon'ble Supreme Court held that the annual value is always rent realizable by landlord and that actual rent is only an indicator what the landlord might reasonably expect to get from a hypothetical tenant. The Honourable Court further held that where tenancy is subject to rent control legislation, Standard rent would be a proper measure and in any event, annual value cannot exceed such standard rent. In the case of Mrs. Sheila Kaushish Vs. CIT, 131ITR 435 (Sc), the question arose in the context of provisions of section 23 of the LT. Act. The Hon'ble Supreme Court applying the decision of Hon'ble Supreme Court in the case of Dewan Daulat Rai Kapoor (supra) observed as follows :-

> "Now this was a definition given on the interpretation of the definition of "***Annual value***" in the Delhi Municipal Corporation Act, 1957, and the Punjab Municipal Act, 1911, for the purpose of levy of house tax, but it would be equally applicable in interpreting the definition of '***annual value***' in sub-section (1) of section 23 of the I.T. Act, 1961, because these definitions are in identical terms and it was impossible to distinguish the definition of '***annual value***' in sub-section (1) of section 23 of the IT. Act, 1961, from the definition of that term in the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911. We must, therefore, hold on an identical line of reasoning, that even if the standard rent of a building has not been fixed by the Controller under section 9 of the Rent Act and the period of limitation prescribed by section 12 of the Rent Act for making an application for fixation of the standard rent having expired, it is no longer competent to the tenant to have the standard rent of the building fixed, the annual value of the building according to the definition given in sub-section (1) of section 23 of the IT. Act, 1961, must be held to be the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant. This interpretation which we are placing on the language of sub-section (1) of Sec.23 of the IT Act,1961, may be regarded as having received legislative approval, for, we find that Sec.6 of the Taxation Laws (Amendment) Act, 1975 sub-section (1) has been amended and it has now been made clear by the introduction of clause(b) in that sub-section that where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum for which the property might reasonably be expected to let from year to year, the amount so received or receivable shall be deemed to the annual value of the property. The newly added cl.(b) clearly postulates that the sum for which a building might reasonably be expected to let from year to year may be less than

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> the actual amount received or receivable by the landlord from the tenant".

20. Hon'ble Calcutta High Court in the case of CIT Vs. Prabhabati Bansali, 141ITR 419 had to deal with a case of a property in Mumbai, where the dispute was with regard to determination of its annual value u/s. 23 of the Act. Hon'ble Calcutta High Court after making reference the decision of Hon'ble Supreme Court in the case of Dewan Daulat Rai Kapoor (supra) and Mrs. Sheila Kaushish (supra) held as follows :-

> "Therefore, in case where the actual rent received is higher than that for which the property might reasonably be expected to let from year to year in respect of an income accruing subsequent to the amendment different considerations might arise. But, we are not concerned with such situation in the instant case. Therefore, in view of that position and the municipal law and in view of the decision of the Supreme Court, it appears to us that the income from house property must be computed on the basis of the sum which might reasonably be expected to let from year to year and with the annual municipal value provided such a value is not above the standard rent receivable and that would be the safest guide for this purpose and the rent actually received would not be of any relevance".

21. The Court in the aforesaid decision also relied on the provisions of section 154 of the Bombay Municipal Corporation Act, wherein the manner of determination of rateable value has been laid down. The said provisions also speak of "***annual rent for which, the property might reasonably be expected to let from year to year***". Thus, the Court concluded that the Municipal valuation and the annual value u/s. 23(1)(a} are one of the same. The decision of Hon'ble Calcutta High Court has been followed by Hon'ble Bombay High Court in the case of M.V. Sonavala Vs. CIT, 177 ITR 246 (Born); wherein Hon'ble Bombay High Court has observed as follows :-

> "However, the questions posed to us are not whether the annual value of the property for the purpose of section 23(1)(a) should be taken at the actual compensation received or on the basis of standard rent. The question is whether the annual value should be taken at the amount which is actual compensation received or at the amount fixed as municipal rateable value. Obviously, Municipal rateable value cannot be equated to standard rent.

In this context, it may be desirable to refer to the Calcutta High Court's decision in the case of CIT Vs. Prabhabati Bansali, (1983) 1411TR 419. One of the questions involved in that case was whether the Tribunal was justified in directing the Income Tax Officer to re-determine the annual value of the property under section 23(1} afresh with reference to its rateable value as determined by the Municipal Corporation. The question was answered in the affirmative and the court held that the income from house property had to be computed on the basis of the sum for which the property might reasonably be let from year to year and the annual municipal value.

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Following the Calcutta High Court decision (1983) 1411TR 419, which we think, has taken the right view, we answer the questions in the negative and against the department with a direction that the annual value of different properties will now be determined by the Tribunal in accordance with the directions set out above.

No order as to costs".

22. The Hon'ble Bombay High Court in the case of Smitaben N. Ambani Vs. CWT 323 ITR 104 (Born) in the context of Rule IBB to the Wealth Tax Rules, which uses the same expression "***the sum for which the property might be reasonably expected to let from year to year***" as is found in Sec.23(1)(a) of the Act, held that rateable value as determined by the Municipal authorities shall be the yardstick. The Learned counsel for the assessee relied on several other judicial pronouncements in support of his contention that the Municipal value should be the basis of determining the annual value. We are not making reference to those decisions, since, in our opinion the aforesaid pronouncement of Hon'ble Bombay High Court considers the decisions of Hon'ble Calcutta High Court which in turn has considered the law laid down by the Hon'ble Apex Court on the issue. It is clear from the aforesaid exposition of law that charge u/s. 22 is not on the market rent; but is on the annual value and in the case of property which is not let out, municipal value would be a proper yardstick for determining the annual value. If the property is subject to rent control laws and the fair rent determined in accordance with such law is less than the municipal valuation then only that can be substituted by the municipal value. The decision in the case of Mrs. Sheila Kaushish (supra) mentions standard rent under the Rent Control Act as one of the yardsticks. We also find from the decision of Hon'ble Calcutta High Court in the case of Smt. Prabhabati Bansali (supra) that standard rent, if it does not exceed the municipal valuation alone can be adopted in place of municipal valuation.

23. As far as decisions relied upon by the learned D.R. in the case of Baker Technical Services (P) Ltd. (supra), we find that the same is based on the decision of the ITAT Mumbai bench in the case of ITO Vs. Makrupa Chemicals (P) Ltd. 108 ITO 95 (Mumbai). In the case of Makrupa Chemicals, in para-14 of the decision it has been clearly held that rateable value, if correctly determined under the municipal laws can be taken as ALV u/s.23(1}(a} of the Act and in this regard the decision of the Hon'ble Supreme Court in the case of Sheila Kaushish(supra} has been followed. It has further been observed that the rateable value is not binding on the AO, if the AO can show that rateable value under the municipal law does not represent the correct fair rent. In coming to the above conclusion, the Bench has followed the decision of the Patna High Court in the case of Kashi Prasad Katarvka Vs. CIT 101 ITR 810 (Patna). We find that the Bombay High Court which is the jurisdictional High Court has held that the rateable value under the municipal law has to be adopted as annual value u/s.23(1)(a) of the Act and therefore the decision in the case of Makrupa Chemicals (supra) to the contrary cannot be followed. Further In para-13 of its decision in the case of Makrupa Chemicals, the Tribunal has very categorically held that if ratable value is less than the standard rent (where the property is subject to rent control laws) then

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> only standard rent has to be taken. In coming to the above conclusion the Tribunal has followed the decision of the Hon'ble Supreme Court in the case of Dewan Daulat Rai kapoor (supra). Thus the decision in the case of Baker Technical Services (P) Ltd. (supra) being contrary to the decision of the Hon'ble Bombay High court in our view cannot be followed.
>
> 24. The decision relied upon by the learned D.R. in the case of Fizz Drinks Ltd.(supra), are distinguishable on facts. The facts in that case were that the agreed rent was Rs..1/- per month and interest free security deposit of Rs.1,62,36,000/- was taken by the owner. It was this factor which weighed in the mind of the Tribunal as is evident from the observations in para-8 of its order where they have held that any fair judicial administration would not allow such things to happen. The decision in the case of Tivoli Investment & Trading Co. (P) Ltd. (supra) is again distinguishable because it was a case where there was no rent and only a huge interest free security deposit was taken by the owner.
>
> 25. For the reasons given above, we hold that the annual value (also referred to as municipal valuation/ rateable value) adopted by the municipal authorities in respect of the property at Rs.27,50,835 should be the determining factor for applying the provisions of Sec.23(1)(a) of the Act. Since the rent received by the Assessee was more than the sum for which the property might reasonably be expected to let from year to year, the actual rent received should be the annual value of the property u/s.23(1)(b) of the Act. Notional interest on interest free security deposit/rent received in advance should not be added to the same in view of the decision of the Hon'ble Bombay High Court in the case of J.K.Investors (Bombay) Ltd. (supra). We hold accordingly. The appeal of the revenue is dismissed.

From the above, it is amply clear that the perquisites of rent free accommodation can be determined only in pursuance of the provisions of section 23(1)(a) of the Act which requires to determine the same as per the guidelines of Municipal Corporation in the above facts & circumstances. Thus, the value of rent free accommodation determined by the AO on the rent fetched by the property in the earlier years for Rs. 96 lacs cannot applied in the case before us. In view of above, we find no infirmity in the order of ld. CIT(A). Hence the ground of appeal of the Revenue is dismissed.

11. In the result, Revenue's appeal is dismissed.

Coming to ITA No.2187/Kol/2014 for A.Y. 11-12.

12. As stated earlier, the common issue in this year is same as that of the last year. Since the facts are exactly identical, both parties are agreed whatever view taken in the above appeal in **ITA No.2186/Kol/2014** of

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Revenue may be taken in this appeal (ITA No.2187/Kol/2014 of Revenue also, we hold accordingly.

Now coming to assessee's CO No.03-04/Kol/2014 for A.Y. 10-11 & 11-12.

13. At the time of hearing Ld. AR of the assessee has not pressed Ground. 1 of both CO, hence, both ground No.1 of assessee's COs are dismissed as not pressed.

14. In ground No. 2 & 3 of assessee's Cos has merely supported the impugned order of Ld. CIT(A), whereby he deleted the disallowance made by AO. Since we have already upheld the order of Ld. CIT(A) and giving relief to the assessee on this issue while dismissing the appeal of Revenue, the Cos filed by the assessee have become infructuous and the same are accordingly dismissed.

15. **In combine result, both appeals of Revenue stand dismissed and that of assessee's Cos are dismissed as infructuous.**

Order pronounced in the open court 02/06/2017

Sd/-	Sd/-
(न्यायिक सदस्य)	(लेखा सदस्य)
(N.V.Vasudevan)	(Waseem Ahmed)
(Judicial Member)	(Accountant Member)

Kolkata,
*Dkp, Sr.P.S
दिनांकः- 02/06/2017 **कोलकाता** ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

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3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।

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