

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH “G”, MUMBAI**

**Before Shri P.M.Jagtap, Accountant Member  
and Shri Vivek Varma, Judicial Member..**

I.T.A. No.4088/Mum/2010.  
Assessment Year :2006-07.

Gagan Trading Co. Ltd.,  
Jandal Mansion,  
5A, Dr. G. Deshmukh Marg,  
Mumbai – 400026.  
PAN AAACG1829Q

**Appellant.**

**Vs.**

Asstt. Commissioner of  
Income-tax- 5(2),  
Mumbai.

**Respondent.**

I.T.A. No. 4657/Mum/2010  
Assessment Year : 2006-07.

Asstt. Commissioner of Income-tax,  
5(2), Mumbai.

**Vs.**

M/s Gagan Trading Co.,  
Mumbai.

**Appellant.**

**Respondent.**

Assessee by : Shri Hiro Rai.  
Department by : Shri Naveen Gupta.

Date of hearing : 12-09-2012  
Date of pronouncement : 12 -10-2012.

**ORDER**

**Per P.M. Jagtap, A.M. :**

These two appeals, one filed by the assessee being I.T.A. No. 4088/Mum/2010 and other filed by the Revenue being I.T.A. No. 4657/Mum/2010 are cross appeals which are directed against the order of learned CIT(Appeals)-9, Mumbai dated 30-03-2010.

2. The main common issue involved in these appeals as raised in ground No.1 of the assessee's appeal and in the solitary ground raised in the Revenue's appeal relates to the computation of income chargeable to tax in the hands of the assessee under the head "Income from house property" which has been determined by the learned CIT(Appeals) at Rs.1,05,06,720/- as against Rs.9,84,58,080/- computed by the AO and Rs.7,42,833/- declared by the assessee.

3. The assessee in the present case is a Company which filed its return of income for the year under consideration on 04-11-2006 declaring total income of Rs.7,58,556/-. It is the owner of commercial premises known as Jindal Mansion, situated at Pedar Road in Mumbai. The said building is consisting of ground plus five floors which were let out by the assessee to other companies belonging to the same group. The area so let out in the year under consideration was 8700 sq.ft. to M/s Jinadal Iron and Steel Co. Ltd., 7500 sq.ft. to M/s Jindal Vijaynagar Steel Ltd. and 5000 sq.ft. to Jindal Thermal Power Co. Ltd. From the said tenants, security deposit of Rs.34 crores, 30 crores and 14 crores was collected by the assessee aggregating to Rs.78 crores free of interest. The rent payable as per the lease agreement from the said tenants was Rupee 1/- per sq.ft. per month. The total rent of Rs.2,54,400 thus was received for the year under consideration from the tenants in respect of Jindal Mansion and since the municipal ratable value of the said building at Rs.10,61,190 was higher than the actual rent received, income under the head "Income from house property" was declared by the assessee in its return of income by adopting the municipal ratable value. According to the AO, interest on security deposits taken by the assessee from the tenants was liable to be added on notional basis to the actual rent received by the assessee in order to determine the annual letting value of the building owned by the assessee. He, therefore, added a sum of Rs.14,04,00,000/- being interest at the rate of 18% on the security deposits

of Rs.78 crores to the total rent of Rs.2,54,400/- received by the assessee and after allowing deduction u/s 24(1) at 30%, the income of the assessee chargeable to tax under the head “Income from house property” was computed by him at Rs.9,84,58,080/- in the assessment completed u/s 143(3) vide an order dated 23-12-2008.

4. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the learned CIT(Appeals). During the course of appellate proceedings before the learned CIT(Appeals), it was submitted by the assessee that a large amount was spent on the renovation of the property in the previous year relevant to assessment year 1996-97 and for this purpose, security deposits were collected from the tenants occupying the said property. It was submitted that notional interest on such security deposits could not be taken into consideration for the purpose of determining the annual letting value of the property and similar additions made by the AO on account of notional interest to determine the annual letting value of the property in the earlier years were deleted by the learned CIT(Appeals) as well as by the Tribunal. It was contended that the addition made by the AO under the head “Income from house property” by taking into consideration the notional interest on security deposits, therefore, should be deleted and income declared by the assessee under the said head by adopting the municipal ratable value should be accepted. The submissions made by the assessee were not accepted by the learned CIT(Appeals) fully. According to him, although there was merit in the contentions of the assessee that notional interest on security deposits could not be taken into consideration for determining the annual letting value of the property, there was no merit in the contention of the assessee that ratable value as determined by the municipal authorities should be taken as the annual letting value of the property. According to him, if there are evidences to suggest that the

actual rent received by the assessee is suppressed due to extraneous factors including the receipt of huge amount of security deposits, it was open to the AO to determine the annual letting value of the property taking such factors into consideration as are relevant. He held that the AO was not bound by the value determined by the municipal authorities if there were other evidences on record to show that rate at which property could be let out was more than the value determined by the municipal authorities. He, therefore, directed the AO to collect the information regarding the rent fetched by properties located in the same vicinity and on the basis of information received by him from the AO in this regard, the learned CIT(Appeals) found that the rent for the similar properties in the adjacent area was in the range of Rs.57/- to Rs.59/- per sq.ft. during the relevant period. He, therefore, determined the annual letting value of the property at Rs.1,50,09,600/- by adopting the rate of rent at Rs.59/- per sq.ft. per month and after allowing deduction u/s 24(1), he determined the income of the assessee chargeable to tax under the head "Income from house property" at Rs.1,05,06,720/-. Aggrieved by the order of the learned CIT(Appeals), the assessee and the Revenue both have raised this issue in the present appeals filed before the Tribunal.

5. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. The learned DR has mainly relied on the decision of Full Bench of Hon'ble Delhi High Court in the case of CIT vs. Moni Kumar Subba reported in 333 ITR 38 in support of the Revenue's case on this issue. In the said decision, Hon'ble Delhi High Court has held that the operative words in section 23(1)(a) of the Act are "the rent for which the property might reasonably be expected to be let from year to year" and these words provide a specific direction to the Revenue for determining the fair rent. It was held that the AO having regard

to this provision is expected to make an enquiry as to what would be the possible rent that the property might fetch and if he finds that the actual rent received is less than the fair market rent because the assessee has received an abnormal high interest free security deposit and because of that, the actual rent received is less than the rent which the property might fetch, he can undertake necessary exercise in his behalf.

6. The learned counsel for the assessee, on the other hand, has relied on the decision of coordinate bench of this Tribunal in the case of Reclamation Reality India Ltd. passed in ITA Nos. 1411 to 1413, 1434 & 1733/Mum/2007 dated 26-06-2010 in support of the case on this issue. He has also placed on record a copy of the order passed by the Tribunal in the said case and a perusal of the same shows that as per the amended provisions of section 23(1)(b) made applicable from assessment year 1976-77, the actual rent received was treated to represent the annual value of the property provided it exists the sum for which the property might reasonably be expected to let from year to year. The legislative intention of the said amendment was explained by the CBDT in Circular No.204 dated 24-7-1976 and after taking note of the said circular and after reducing the relevant portion thereof in this order passed in the case of Reclamation Reality India P. Ltd. (supra), the Tribunal held that the position of law prior to introduction of section 23(1)(b) as clarified by the Board itself is that the annual value was equal to the municipal valuation of the property. The Tribunal held that this is how the Board sought to interpret the expression “the sum for which the property might reasonably be expected to let from year to year” used in section 23(1)(a).

7. The Tribunal also took note of the decision of Hon’ble Supreme Court in the case of Diwan Daulat Kapoor vs. New Delhi Municipal Committee 122 ITR 700 (SC) wherein the question that had arisen for consideration 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 might 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 Hon’ble Supreme 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.

8. The Tribunal in its order passed in the case of Reclamation Realty India P. Ltd. also took note of the decision of the Hon’ble Supreme Court in the case of Mrs. Sheila Kaushish vs. CIT 131 ITR 435 (SC), wherein the question arose in the context of provisions of section 23 of the Income Tax Act and it was held by the Hon’ble Supreme Court that the ratio of its decision in the case of Dewan Daulat Rai Kapoor (supra) would be equally applicable in interpreting the definition of ‘Annual Value’ given in section 23(1) of the Income Tax Act. It was held that these definitions are given in identical terms and it was impossible to distinguish the definition of ‘annual value’ given in section 23(1) of the Income Tax Act from the definition of that term given in the Delhi Municipal Corporation Act 1957 and the Punjab Municipal Act, 1911. It was therefore held adopting identical line of reasoning that even if the standard rent of a building has not been fixed by the Controller, the annual value of the building as per section 23(1) of the Income Tax Act must be held to be a standard rent determinable under the provisions of the Rent Control Act and not the actual rent received by the landlord from the tenant.

The Hon'ble Apex Court also observed that this interpretation which was being placed on the language of section 23(1) of the Income Tax Act can be said to have received legislative approval by the amendment made in the said provisions whereby it was provided in section 23(1)(b) 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 be the annual value of the property.

9. The Tribunal in its order passed in the case of Reclamation Realty India P. Ltd. (supra) then went on to refer to the decision of Hon'ble Calcutta High Court in the case of CIT vs. Prabhabati Bansali, 141 ITR 419 wherein it was held that relying on the decision of the Hon'ble Supreme Court in the case of Dewan Daulat Rai Kapoor (supra) and Mrs. Sheila Kaushish (supra) while deciding the issue relating to determination of actual value of the assessee's property in Mumbai 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 the same could be adopted as the safest guide for this purpose. As mentioned by the Tribunal in its order passed in the case of Reclamation Realty India P. Ltd. (supra), the said decision was rendered by the Hon'ble Calcutta High Court after taking into consideration the provisions of section 154 of the Bombay Municipal Corporation Act wherein the manner of determination of ratable value was laid down which was based on the annual rent for which the property might reasonably be expected to let from year to year. The Hon'ble Calcutta High Court held that the Municipal valuation and annual value u/s 23(1)(a) of the income Tax Act thus are one and same. As noted by the Tribunal in its order passed in the case

of Reclamation Realty India P. Ltd. (supra) the said decision of the Hon'ble Calcutta High Court in the case of Prabhabati Bansali (supra) has been subsequently followed by the Hon'ble Bombay High Court in the case of M.V. Sonavala vs. CIT 177 ITR 246 (Bom) wherein the question posed to Their Lordships was whether the actual compensation received could be taken as annual value of the property as against the Municipal Ratable Value and the same was answered by the Hon'ble Bombay High Court in the negative that is against the Department and in favour of the assessee.

10. In our opinion, the similar issue as involved in the present case thus has been decided by the coordinate bench of this Tribunal in favour of the assessee in the case of Reclamation Reality India P. Ltd. (supra) and since the said decision has been rendered by the Tribunal relying on and following the judgments of Hon'ble Apex Court and the Hon'ble jurisdictional High Court, we are of the view that the judicial propriety and judicial discipline require us to follow the same. Accordingly, respectfully following the said judicial pronouncement, we modify the impugned order of the learned CIT(Appeals) on this issue and direct the AO to accept the income from house property declared by the assessee adopting the municipal ratable value as annual letting value of its property. Ground No.1 of the assessee's appeal is accordingly allowed whereas the solitary ground raised in the Revenue's appeal is dismissed.

11. The remaining ground No.2 raised by the assessee in its appeal involving the issue of disallowance of Rs.6,95,527/- made by the AO u/s 14A and confirmed by the learned CIT(Appeals) has not been pressed by the learned counsel for the assessee at the time of hearing before us. The same is accordingly dismissed as not pressed.



12. In the result, the appeal of the assessee is partly allowed whereas the appeal of the Revenue is dismissed.

Order pronounced on this 12<sup>th</sup> day of Oct. , 2012.

Sd/-  
(Vivek Varma)  
Judicial Member

Sd/-  
(P.M. Jagtap)  
Accountant Member

Mumbai,  
Dated: 12<sup>th</sup> Oct., 2012.

Copy to :

1. Appellant
  2. Respondent
  3. C.I.T.
  4. CIT(A)
  5. DR, G-Bench.
- (True copy)

By Order

Asstt. Registrar,  
ITAT, Mumbai Benches,  
Mumbai.

Wakode.