* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA Nos.1370 /2006 to 1378/2006

John Tinson & Company
! (P) Ltd. & Ors. ...Appellant through Mr.P.N.Monga, Advocate with Mr.Manu Monga, Advocate.

Versus

$ The Commissioner of Income Tax, Delhi, New Delhi & Ors.
^ ...Respondent through Mr.R.D.Jolly, Advocate.

Date of Hearing: 10th October, 2006

% Date of Decision: 19th October, 2006

CORAM:
* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

: VIKRAMAJIT SEN, J.

1. The following substantial questions of law arise in this batch of Appeals:-

1. Whether the AO is duty bound to compute the `annual value of property' or `the sum for which the property might reasonably be expected to be let' as contemplated by Sections 22 and 23 of the Income Tax Act, 1961 only on `standard rent' basis if he disbelieves the rent stated to be receivable by the assessee.

2. Whether computation under Section 22 and 23 of the Income Tax Act, 1961 must be on standard rent basis irrespective of whether this exercise has been carried out by the Rent Controller.

2. Succinctly stated, the Assessing Officer (AO) has not accepted the version of the Assessee/landlord/owner that it is receiving a rental of Rs.50 per month from its tenant Messrs Venkatraman & Co. and Rs.75 per month from the Bhagat Group of Companies. The AO was of the opinion that the Assessee had failed to prove that these sums reflected the `actual rent' received by it in the relevant Assessment Years. The concurrent findings are to the effect that the Assessee had not produced its Books of Accounts or other cogent evidence nor has furnished any proper explanation in regard to the quantum of these rental incomes. The AO had computed the total rental income from

these two tenants by taking into consideration the rents that the Assessee was receiving from some of its other tenants, namely, Bank of India and United India Insurance Company, and rentals in the area of Janpath and Connaught Place which according to his information were not less than Rs.80 to Rs.100 per sq.foot. The AO fixed the rate at Rs.40/- per sq.foot. after "giving benefit of doubts and any adverse circumstances." Mr.Jolly, learned Counsel for the Revenue has vehemently emphasized the fact that this valuation has not been challenged by the Assessee, but this position is equally strongly controverted. We do not consider it necessary to delve into this controversy because of the conclusion that we have arrived at.

3. Section 23 stipulates the method by which the annual value of any property should be assessed to tax under Section 22. Section 23 (a) states that the annual value of property shall be deemed to be the sum for which it may reasonably be expected to let from year to year. The AO would invariably have to carry out and complete this computation. This is for the reason that Section 23 (b) envisages that even where the property is let out and the AO accepts the veracity of the sum stated by the owner to be receivable by it as rent, this actual rent if it is higher than the

`sum for which the property might reasonably be expected to let' (viz. standard rent) the actual rent would constitute the basis of computation of taxation. The difference is that where the property has not been rented out or where the rent stated by the assessee/owner is found by the AO not to be the actual rent, the latter would have to meticulously calculate the `sum for which the property might reasonably be expected to let' whereas in other instances he would have to arrive at a rough and ready computation so as to ensure that the tax basis is the actual rent if it is higher than the `reasonable' rent. In other words, the Section leaves no room for the assessee to contend that it is only the `reasonable' rent and not the `actual' rent which should be taken into account by the AO. This is the conclusion articulated by the High Court of Calcutta in *CIT vs. Satya Co. Ltd.* [1997] 140 CTR (Cal) 569. This is exactly the opinion of the High Court of Madras as is evident from a reading of *CIT vs. Parasmal Choradia,* (1998) 145 CTR (Mad) 468, in which it has been opined that the provisions of Section 23(1)(a) apply to both owner occupied property and property which is let out and that the measure of valuation to determine the said annual value must be the same for both the cases, viz., the standard or fair rent.

4. The next question is whether it is permissible or reasonable for the AO to conduct an enquiry into market rents prevailing in the contiguous areas for the purposes of computing the sum for which the property might reasonably be expected to let. There is a plethora of precedents on this issue, all enunciating that `reasonable' rent can only be the `standard' rent. After analyzing the decisions of the Apex Court in *Amolak Ram Khosla vs. Commissioner of Income-Tax, Delhi-II,* [1981] 131 ITR 589, *Dewan Daulat Rai Kapoor vs. New Delhi Municipal Committee,* [1980] 122 ITR 700 and *Sheila Kaushish vs. Commissioner of Income-Tax, Delhi,* [1981] 131 ITR 435, this Court has laid down in *Commissioner of Income-Tax vs.* ***Raghubir Saran Charitable Trust,*** [1990] 183 ITR 297, that the ITAT was justified in holding that the market rent of the property could not be more than the standard rent. In ***Raghubir Saran Charitable Trust*** the AO had incorrectly computed the market rent of the house and had added the difference between the market rent so calculated and rent which was being actually paid. The same result was reached in *L. Bansidhar and Sons vs. Commissioner of Income Tax,* [1993] 201 ITR 655 where however it was clarified that the position stood changed with effect from the 1976 amendment, after which the actual rent would be

relevant only if it is higher than the standard rent. Once again the decision of this Court in *Commissioner of Income-Tax vs. Vinay Bharatram and Sons,* [2003] 261 ITR 633 is topical. The Department had assailed the following Remand Order of the Commissioner of Income-tax (Appeals) - "The Assessing Officer is directed to redetermine the annual value of the property in accordance with my findings, he will limit the same to the higher of the following (a) the municipal valuation, (b) the fair rent determinable under the Rent Control Act, and (c) the actual rent paid by the assessee (?) This direction I feel fairly and reasonably gives effect to the pronouncements of the Supreme Court on the subject from time to time." The Income-Tax Appellate Tribunal (ITAT) had affirmed the Remand Order. The Division Bench of this Court was of the view that no substantial question of law had arisen, and the Appeal of the Department was dismissed. We may only add and clarify that the words "municipal valuation" would in the syntax of the present IT Act and of municipal taxation statutes be synonymous and interchangeable with "standard rent."

5. It will be relevant to mention that this Court had in CW 14-16 of 1982 titled *John Tinson & Co. (P) Ltd. vs. NDMC*

directed the latter to assess the Assessee's property afresh in the light of *Dr.Balbir Singh vs. MCD* by its judgment dated September 9, 1995. Whilst this direction was indubitably with regard to municipal taxes the situation would be identical for income tax also. The Restatement of the law pertaining to the manner in which the rateable value of buildings is to be calculated for purposes of municipal taxation is available in the decision of the Supreme Court titled *Municipal Corporation of Greater Mumbai vs.* ***Kamla Mills Ltd.,*** AIR 2003 Supreme Court 2998. The Court laid down that the determination of "Rateable Value" is limited by the measure of standard rent under Rent Acts. It was noted that the Bombay Municipal Corporation Act does not contain a statutory definition of rateable value. The Court opined that it would not be `reasonable', while determining what would be the amount of annual rent for which land or building might reasonably be let from year to year to expect the hypothetical tenant to pay rent in excess of standard rents. It it true that ***Kamla Mills*** deals with municipal taxes whereas in the present Appeals we are dealing with Income-tax. In our view there is no reason whatsoever to adopt different yardstick while dealing with these two statutes. This is manifest for the reason that Section 154 of the Bombay Municipal Corporation Act, 1888 which deals

with how rateable value is to be determined, also contains the words "the annual rent for which such land or building might reasonably be expected to let from year to year" which are also to be found in Section 23 of the IT Act.

6. In this analysis it appears to us that the AO is duty bound to calculate the standard rent of a property under Section 23 of the Income-Tax Act. For this purpose it is incumbent on the Assessee to provide all necessary information and material to the AO so that he can discharge this obligation as has been observed in ***Kamla Mills.*** However the AO must calculate the standard rent. If the Assessee has been remiss in furnishing requisite information the standard rent so fixed may become impervious to an assault by the Assessee. The AO must be guided by the principles and methodology laid down in Rent laws. This is an essential duty in all cases where the AO arrives at the conclusion that the rent stated to have been received by the assessee is not the true or actual rent. The standard rent is synonymous to `the sum for which the property might reasonably be expected to let from year to year.' The first question is answered accordingly.

7. In the present Appeals the AO has proceeded to obtain information of rent obtaining in the market and has made a computation under Section 23(1) of the Act on this basis instead the AO ought to have calculated the standard rent. Section 23(1) is a deeming provision and if the legislature intended that it would be reasonable that income-tax must be paid on limited rent basis it should have expressly and unequivocally stated so. A healthy balance has been introduced by the amendments carried out in 1975 since prior thereto it was possible for an assessee to insist that the standard rent should be calculated for the purpose of accessibility to income-tax and actual rent/income should be ignored. It appears to us that this equilibrium should not be disturbed by interpreting provisions of Income-tax Act in a manner such as would permit a person to be subjected to tax much beyond the `income' which has actually been received by him.

8. In regard to the second question we are of the view that it is not necessary that the standard rent should be fixed by the Rent Controller under the Rent Act for it to be taken into reckoning for the purposes of Section 23(1) of the Income-Tax Act.

9. Since the AO has not correctly computed the sum for which the property might reasonably be expected to let from year to year we consider it appropriate to remand these matters to the AO for a fresh determination under Section 23(1) of the IT Act in accordance with the exposition of the law delineated by us above.

10. Accordingly the impugned order dated 17.3.2006 passed by the Income Tax Appellant Tribunal is set aside. The matters are remanded to the AO as indicated in para 9 hereinabove. Appeals are accordingly allowed with no Order as to costs.

(VIKRAMAJIT SEN)
JUDGE

(S. MURALIDHAR)
JUDGE

October 19, 2006
'ac'