* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: November 23, 2011

\+ **ITA 412/2005**

THE COMMISSIONER OF INCOME TAX ..... Appellant

versus

M/S FIZZ DRINKS LTD .... Respondent

+ ITA 638/2005

THE COMMISSIONER OF INCOME TAX ..... Appellant

versus

M/S FIZZ DRINKS LTD .... Respondent

Advocates who appeared in this case:-
For the Appellant : Ms Suruchi Aggarwal, Advocate
For the Respondent : Mr Prakash Kumar, Advocate

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MS JUSTICE VEENA BIRBAL

1. Whether reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. These two appeals under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the said Act) arise out of the common judgment

of the Income Tax Appellate Tribunal dated 15.09.2004 passed in ITA No 1242/Del/1997 and ITA No 5266/Del/1998 pertaining to the Assessment Years 1993-1994 and 1995-1996 respectively. The question which arises for consideration in these appeals is as under:-

> "Whether in the cases where the premises are not regulated by the Delhi Rent Control Act, the reasonable annual letting value of the property for purposes of Section 23 of the Income Tax Act, 1961 can be determined with reference to the standard rent determinable under the Rent Control Act?"

2. The facts in brief are that the assessee had entered into a lease agreement on 31.01.1990 for letting out 19 flats having a covered area of 16,236 sq. ft. to Usha India Ltd. The assessee charged rent at the rate of rupee 1 per sq. ft. The same came to ₹ 1,94,832/- per annum. The lessee was also required to make an interest free security deposit which was calculated @ ₹1,000/- per sq. ft. and on this account the assessee received a sum of ₹ 1,62,36,000/-. The Assessing Officer in the course of the assessment for the assessment year 1993-1994 added the notional interest calculated @ 16% of the security deposit amount while computing the annual letting value of the property. According to the Assessing Officer the annual letting value was ₹ 27,92,592/- and, after giving the allowable deductions, the Assessing Officer assessed the income from the house property at ₹ 22,34,073/-. The Commissioner of Income Tax (Appeals) rejected the assessee's appeal and accepted the view taken by the Assessing Officer.

3. A similar view was taken by the Assessing Officer for the assessment year 1995-1996. However, the Commissioner of Income Tax (Appeals) followed the order of his predecessor in respect of the assessment

year 1991-1992 wherein the annual letting value was computed on the basis of the rateable value fixed by the Municipal Corporation of Delhi for the purposes of property tax/house tax. Consequently, the Commissioner of Income Tax (Appeals) directed that the annual letting value should be taken at ₹ 4,88,465/- as against the ALV computed by the Assessing Officer. Consequently, the Commissioner of Income Tax (Appeals) had deleted the addition of ₹ 22,97,760/- and substituted the ALV by the sum of ₹ 4,88,465/-.

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals) for the assessment year 1993-1994, the assessee filed an appeal before the Income Tax Appellate Tribunal whereas in respect of the assessment year 1995-1996, the Revenue filed an appeal before the Tribunal. Both these appeals, as mentioned above, were decided by the Tribunal by virtue of its common order dated 15.09.2004.

5. We have heard the learned counsel for the parties and we find that the question that has been formulated for our decision stands answered by the Full Bench decision of this Court in the case of ***Commissioner of Income Tax v. Moni Kumar Subba (2011)*: *333 ITR 38 (Delhi) (FB)***. In paragraph 4 of the said decision it is held:-

> "In a case like this, the standard rent which could be arrived at applying the formula laid down in the Delhi Rent Control Act is not applicable, as property in question is not covered by the Delhi Rent Control Act."

6. It is, therefore, clear that the Full Bench was of the view that once the property is outside the purview of the Delhi Rent Control Act, 1958, the annual letting value of the property for the purposes of Section 23 of the Income Tax Act, 1961 cannot be determined with reference to the standard rent determinable under the Delhi Rent Control Act. This however, leaves

the question as to how the annual letting value is to be determined and an indication is given in the Full Bench decision itself in paragraph 17 thereof which reads as under:-

> "Thus the rateable value, if correctly, determined, under the municipal law can be taken as ALV under Section 23(1)(a) of the Act. To that extent we agree with the contention of the learned counsel for the assessee. However, we make it clear that rateable value is not binding on the Assessing Officer. If the Assessing Officer can show that rateable value under municipal laws does not represent the correct fair rent, then he may determine the same on the basis of material/evidence placed on record. This view is fortified by the decision of the Patna High Court in the case of *Kashi Prasad Kataruka v. CIT (1975) 101 ITR 810."*

7. In view of this decision of the Full Bench in the case of ***CIT v. Moni Kumar Subba*** (supra), in the present case, the standard rent cannot be taken as a point of reference for determining the annual letting value of the property in question inasmuch as the same is outside the purview of the Delhi Rent Control Act, 1958. We find that in so far as the assessment year 1995-1996 is concerned, the Commissioner of Income tax (Appeals) has taken the rateable value for determining the annual letting value for the purposes of Section 23 of the said Act. However, in so far as the assessment year 1993-1994 is concerned, this exercise has not been done. Since the position in 1993-1994 and in 1995-1996 would not be very different, it would be appropriate if we remit the matter to the Assessing Officer, in respect of both these appeals, for computing the annual letting value on the basis of the rateable value, as directed by the Full Bench in paragraph 17 of the said decision, which has been extracted above.

8. We may also point out that the Full Bench categorically decided that the notional interest on interest free security cannot be taken as

determinable factor to arrive at fair rent inasmuch the provisions of Section 23(1)(a) do not mandate this.

9. Consequently, the question has been answered in the negative and the appeals stand disposed of as directed above.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

NOVEMBER 23, 2011
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