IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI J. SUDHAKAR REDDY, A.M. AND SHRI V. DURGA RAO, J.M.

ITA No. 2362/Mum/2010
Assessment Year: 2005-06

Reclamation Realty (I) Pvt. Ltd., ***... Appellant***
1103, Stock Exhange Towers,
Dalal Street, Mumbai – 400 001
(PAN – AAAC15643Q)

Vs.

Dy. Commissioner of Income-tax-10(1), ***... Respondent***
Aayakar Bhavan, Mumbai – 400 020.

ITA No. 2363/Mum/2010
Assessment Year: 2005-06

Reclamation Property (I) Pvt. Ltd., ***... Appellant***
1103, Stock Exhange Towers,
Dalal Street, Mumbai – 400 001
(PAN – AAAC15644Q)

Vs.

Dy. Commissioner of Income-tax-10(1), ***... Respondent***
Aayakar Bhavan, Mumbai – 400 020.

Appellant by : Mrs. Arati Vissanji
Respondent by : Mr. C.G.K. Nair

Date of Hearing : 12/12/2011
Date of Pronouncement : 16/12/2011

ORDER

PER V. DURGA RAO, J.M.:

These two appeals pertaining to Reclamation Group of companies and the same are directed against the orders of CIT(A)-21, Mumbai, passed on 09/12/2009 and 08/12/2009 respectively for the assessment year 2005-06. Since common issues involved in these two appeals, the same were heard together and, therefore, a common order is passed for the sake of convenience.

2. To dispose of these appeals, we refer to the facts from ITA No. 2362/M/10. Ground No. 1 is common in both the appeals, which is against the action of the CIT(A) in upholding the AO's action of adopting annual value/fair rent determined in the case of associate concern as against actually received by the assessee.

3. The facts in brief are that the asesssee is in real estate business. It owned a property admeasuring about 15,645/- sq.ft. on 11th floor, Mafatlal Centre, Nariman Point, Mumbai. This property was let out by the assessee at annual rent of Rs. 1,12,64,400/-. The asesssee filed its return of income on 27/10/05, treating the rental income as business income, on the ground that the company was in real estate business. The said return was subjected to scrutiny. During the course of assessment proceedings in the case of appellant's associate concern M/s Reclamation Real Estate Company (I) Pvt. Ltd., it was noticed by the AO that the said company was the owner of the ninth floor at Mafatlal centre, admeasuring 15,645 sq.ft. and six parking spaces and the said company had let out the property to JP Morgan and received annual rent of Rs. 2,87,87,660/- up to Nov. 2004 and from Nov. 2004, for annual rent of Rs. 2,54,40,710/-. The AO noted that in the case of associate concern the annual value of the property was fixed at Rs. 2,90,65,922/- but the assessee company owning the property situated at 11th floor on the same building with same area and parking spaces had let out the property for Rs. 1,12,64,400/- to ICICI Bank Ltd. The AO noted that as according to section 23, the annual value of the assessee's property shall be deemed to be (a) the sum for which property might reason ably be expected to let out year to year or (b) the rent received or receivable if the same is in excess of the sum mentioned at (a). As per the AO, the reasonable fair rent, as per section 23(1)(a), of assessee's

property should have been at Rs. 2,90,65,922/- since same property in the same building was let out for that rent. The AO finally completed the assessment by taking the annual letting value/fair rental value for the assessee rented out property at Rs. 2,90,65,922/- on the basis of provisions of section 23(1)(a) of the Act. Aggrieved, the assessee carried the matter in appeal before the CIT(A).

4. Before the CIT(A), the assessee filed written submissions wherein the assessee stated that as against the rental income shown by the assessee at Rs. 1,12,64,400/- the AO assessed the income from house property treating the fair rental/annual value of the property at Rs. 2,90,65,922/- u/s 23(1)(a) of the Act. After considering the submissions of the assessee, the CIT(A) following his earlier orders in AY 2000-01, 2001-02, 2002-03 and 2003-04 confirmed the action of the AO. Still aggrieved, the assessee is in appeal before us.

5. Before us, the learned counsel for the assessee submitted that the issue under consideration is squarely covered by the decisions of ITAT Mumbai Benches in the group cases of assessee for assessment years 2001 to 2004-05. The learned DR, on the other hand, has not controverted the submissions made by the asesssee.

6. After considering the submissions of the parties and perusing the record, we find that the issue in dispute is squarely covered by the decisions of the ITAT, Mumbai Benches in earlier years. In the case of M/s ICICI Realty Ltd., (Now known M/s Reclamation Realty (I) P. Ltd.) in ITA Nos. 2193 to 2196/Mum/10 order dated 30th June, 2010, the coordinate bench held as under:-

> *"7. As regards, the second issue, i.e. whether or not the impugned additions can be sustained on merits, we find that the issue is now covered in favour of the assessee, by Tribunal's decisions in the case of Reclamation Realty India Pvt. Ltd. Vs. DCIT (ITA No.1734/Mum/2007, A.Y. 2004-05 order dated 26.11.2010), wherein the Tribunal has observed as follows:-*

"30. The Assessee is a company. It is engaged in the business of undertaking in one or more activities involving purchase, sale, letting out, investment and dealing in land, preparation of building sites for construction etc. This Assessee is a group company of M/S. Reclamation Real Estate Company India Pvt. Ltd., the Assessee in ITA No.1413/Mum/2007, which we have decided in the earlier paragraphs.

31. The facts as far as this Assessee is concerned are that the Assessee owned the entire 10th floor of the premises, Maftalal Centre Nariman Point, admeasuring about 15645 Sq.ft. together with 6 car parking space (hereinafter referred to as "the property"). It had let out the property to ICICI Ltd., on an annual rent of Rs.1,12,64,400/-. It is not in dispute that income fromletting out of the property has to be assessed under the head "Income from House Property". The annual value (also referred to as municipal valuation) adopted by the municipal authorities in respect of the property was Rs.27,50,835/-. The Assessee determined "Income from House Property" by adopting the annual value at Rs.1,12,64,400/- which is the actual rent received which is higher than the Municipal valuation. The Assessee had claimed that the annual value has to be determined in accordance with Sec.23(1)(b).

32. The AO after making a reference to the fact that the property owned by this Assessee was located in the same building and is of the same size as that of the Assessee M/S. Reclamation Real Estate Company India Pvt.Ltd.,(the Assessee in ITA No.1413/Mum/2007, which we have decided in the earlier paragraphs) which was a group of this Assessee, was of the view that the annual value determined in the case of M/S. Reclamation Real Estate company India (P) Ltd. would be the "the sum for which the property might reasonably be expected to let from year to year", viz., Rs.3,42,23,856/-. He therefore adopted the annual value at the said figure applying the provisions of Sec.23(1)(a) of the Act. On appeal by the Assessee, the CIT(A) following the decision in the case of M/S. Reclamation Real Estate company India (P) Ltd., held that Municipal valuation alone will be relevant while determining annual value u/s.23(1)(a) of the Act. He however was of the view that the rent received by this Assessee should be atleast equal to the rent declared as received by M/S.Reclamation Real Estate company India (P) Ltd., from J.P. Morgan Chase Bank. He therefore substituted the actual rent received by this Assessee by the rent actually received by M/S.Reclamation Real Estate company India (P) Ltd., from J.P. Morgan Chase Bank, at Rs.2,87,87,600/- as against actual rent received by this Assessee of Rs.1,12,64,400/-. Aggrieved by the relief granted to the Assessee the revenue is in appeal before the Tribunal. Aggrieved by the action of CIT(A) in substituting the actual rent received by it by the rent received by M/S.Reclamation Real Estate company India (P) Ltd., from J.P. Morgan Chase Bank, the Assessee is in appeal before the Tribunal.

33. We have heard the rival submissions, which are the same as was put forth in the case of M/S. Reclamation Real Estate Company India Pvt.Ltd.,(the Assessee in ITA No.1413/Mum/2007. For the details reasons given in that *case, we hold that the annual 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). The revenues appeal is therefore dismissed.*

34. As far as Assessee's appeal is concerned, the question is whether the revenue authorities are justified in substituting the actual rent received by this Assessee by the rent actually received by M/S.Reclamation Real Estate company India (P) Ltd., from J.P. Morgan Chase Bank, at Rs.2,87,87,600/- as against actual rent received by this Assessee of Rs.1,12,64,400/-. The argument of the learned D.R. was that since the property is located in the same building and the area leased out are also identical, there was no reason for this Assessee to receive a lesser rent. The learned counsel for the Assessee besides reiterating the arguments as were made in the earlier case for adding notional interest on interest free security deposit further relied on the decision of the Hon'ble Bombay High Court in the case of Akshay Textiles (supra). It was also submitted that the quantum of rent is purely decided on the basis of mutual agreement between the parties. When the annual value is determined u/s.23(1)(b) of the Act, the actual rent received alone should be considered.

35. We have considered the rival submissions. In the case of Akshay Textiles (supra), the facts before the Hon'ble Bombay High Court was that A owner of the property let out the same to B. B sub-let the property to C. While determining the annual value of the property in the case of A, the AO substituted the rent paid by C to B because the rent paid by B to A was less compared to the rent paid by C to B. The Hon'ble Bombay high Court held that annual value is the actual rent received or receivable by the owner from the tenant irrespective whether tenant on such letting has received higher rent. We are also of the view that the expression used in Sec. 23(1)(b) is the rent received or receivable. The expression receivable cannot mean anything more than what is actually received. The CIT(A) in our view has overlooked this aspect in substituting the actual rent received by this Assessee by the rent actually received by M/S.Reclamation Real Estate company India (P) Ltd., from J.P. Morgan Chase Bank. We therefore hold that the annual value has to be adopted at the annual rent actually received by the Assessee from ICICI Ltd., viz., Rs.1,12,64,400/-."

8. The Learned Departmental Representative fairly accepts that the issue is covered, as such, in favour of the assessee though he vehemently relied upon the orders of the authorities below and justifies the same.

9. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench.

10. For the reasons set out, we uphold the grievance of the assessee on merit as well. The impugned additions cannot thus be sustained on the merits either. This grievance is also upheld."

7. Since the issue under consideration is materially identical to that of the said case decided by the Co-ordinate Bench, we respectfully follow the same and in the light of that we set aside the order of the CIT(A) and hold that the annual value has to be adopted at the annual rent actually received by the Assessee from ICICI Ltd., viz., Rs.1,12,64,400/-. We order accordingly. Thus, the ground No. 1 raised in both the appeals are allowed.

8. Ground No. 2 in both the appeals is pertaining to charging of interest u/s 234B. Charging of interest u/s 234B is consequential in nature, therefore, the AO is directed accordingly.

9. In the result, both the appeals of the assessee are allowed.

Pronounced in the open court on this 16th day of December, 2011.

Sd/-	**Sd/-**
(J. SUDHAKAR REDDY)	**(V. DURGA RAO)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 16th December, 2011

kv

Copy to:-

1) *The Appellant.*
2) *The Respondent.*
3) *The CIT (A) concerned.*
4) *The CIT concerned.*
5) *The Departmental Representative, "D" Bench, I.T.A.T., Mumbai.*

By Order

//true copy//

Asst. Registrar,
I.T.A.T., Mumbai.