

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF OCTOBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

I.T.A.No.164/2017 C/w.

I.T.A.No.166/2017

IN ITA NO.164/2017:

BETWEEN :

M/S SOBHA INTERIORS (P) LTD
E-106, SUNRISE CHAMBERS, 322,
ULSOOR ROAD, BANGALORE - 560 022.
PAN: AA ECS62751560022.

...APPELLANT

(BY SRI ANNAMALAI, ADV. FOR SRI M.LAVA, ADV.)

AND :

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE - 12(3)
PRESENTLY CIRCLE- 6(1)(2)
BMTC BUILDING, 80 FEET ROAD, KORAMANAGALA
BANGALORE - 560 095.

2. THE INCOME TAX OFFICER
WARD - 12(2)
PRESENTLY WARD - 6(1)(1)
BMTC BUILDING, 80 FEET ROAD,
KORAMANGALA,
BANGALORE - 560 095.

...RESPONDENTS

(BY SRI M.DILIP, ADV. FOR SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 23/11/2016 PASSED IN ITA NO.1607 & 1692/BANG/2012, FOR THE ASSESSMENT YEAR 2007-08 & 2009-10, PRAYING TO A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND THE ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT WHICH IS AGAINST THE APPELLANT IN THE COMMON ORDER PASSED BY THE ITAT IN ITA NOS. 1607 & 1692/BANG/2012 DATED 23/11/2016 FOR THE ASSESSMENT YEARS 2007-08 & 2009-10. C) TO PASS SUCH OTHER ORDERS, AS THIS HON'BLE COURT DEEMS FIT AND PROPER TO MEET THE ENDS OF JUSTICE.

IN ITA NO.166/2017:

BETWEEN :

M/S SOBHA GLAZING & METAL WORKS (P) LTD.,
NO.10, BOMMASANDRA JIGANI LINK ROAD,
ANEKAL TALUK, BOMMASANDRA INDL. AREA
BANGALORE - 562 158.
PAN: AAACR8801M.

...APPELLANT

(BY SRI ANNAMALAI, ADV. FOR SRI M.LAVA, ADV.)

AND :

THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-12(3)
PRESENTLY CIRCLE - 6(1)(2)
BMTc BUILDING, 80 FEET ROAD,
KORAMANGALA
BANGALORE - 560 095.

...RESPONDENT

(BY SRI M.DILIP, ADV. FOR SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER 23/11/2016 PASSED IN ITA NO.1630/BANG/2012, FOR THE ASSESSMENT YEAR 2007-2008 PRAYING TO A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND THE ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE

EXTENT WHICH IS AGAINST THE APPELLANT IN THE COMMON ORDER PASSED BY THE ITAT IN ITA N.1630/BANG/2012 DATED 23/11/2016 FOR THE ASSESSMENT YEAR 2007-08. C) TO PASS SUCH OTHER ORDERS, AS THIS HON'BLE COURT DEEMS FIT AND PROPER TO MEET THE ENDS OF JUSTICE.

THESE APPEALS COMING ON FOR ORDERS, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Since common and akin issues are involved in these matters, they are taken up together and disposed of by this common judgment.

2. These appeals are filed under Section 260A of the Income Tax Act, 1961 ['Act' for short] assailing the common order dated 23.11.2016 passed by the Income Tax Appellate Tribunal "A" Bench, Bangalore ['Tribunal' for short] in ITA Nos.1607 and 1692/Bang/2012 relating to the assessment years 2007-08 and 2009-10 by the assessee M/s. Sobha Interiors [P] Ltd., and ITA No.1630/Bang/2012 relating to the assessment year 2007-08 by the assessee M/s. Sobha Glazing & Metal Works [P] Ltd.

3. The appeals were admitted by this Court to consider the following substantial questions of law:

IN ITA No.164/2017:

1. *Whether the Tribunal is justified in law in holding that the annual value to be adopted at Rs.54,88,793/- being Rs.7/- per square feet without appreciating the various factors and consequently passed a perverse order on the facts and circumstances of the case?*
2. *Without prejudice whether the Tribunal was justified in law in not holding that for the purposes of computing annual value under section 23 of the Income-tax Act, the certificate issued of 'Jigani Gram Panchayat' Rs.1.60/- per square feet has to be adopted consequently passed a perverse order on the facts and circumstances of the case?*

IN ITA No.166/2017:

1. *Whether the Tribunal is justified in law in holding that the annual value to be adopted at Rs.24,12,039/- being Rs.7/- per square feet without appreciating the various factors*

and consequently passed a perverse order on the facts and circumstances of the case?

2. *Without prejudice whether the Tribunal was justified in law in not holding that for the purposes of computing annual value under section 23 of the Income-tax Act, the certificate issued of 'Jigani Gram Panchayat' Rs.1.60/- per square feet has to be adopted consequently passed a perverse order on the facts and circumstances of the case?*

4. The appellant-assessee is a Private Limited Company engaged in the business of manufacture and sale of wooden doors, interiors, partitions and job work of wooden carving. The returns of income filed by the assessee for the assessment years under consideration declaring the total income were processed under Section 143[1] of the Act and orders under Section 143[3] of the Act were passed by making certain additions under the head income from house property by adopting the market rent of the property leased by the assessee to its

sister concern i.e., M/s. Shobha Developers [P] Ltd., at Rs.7/- per square feet for a total land leased out by the appellant of 7,84,114 square feet [M/s. Sobha Interiors [P] Ltd.,] and 3,44,577 square feet [M/s. Sobha Glazing & Metal Works [P] Ltd.,] and thus determined the income of the house property. Being aggrieved, the assessee had preferred respective appeals before the Commissioner of Income Tax [Appeals]. The Commissioner of Income Tax [Appeals] confirmed the findings of the Assessing Officer and sustained the additions relating to the determination of the income from house property by partly allowing the appeals as regards the deduction of 30% under Section 24[a] of the Act. Being aggrieved by the same, the assessee preferred appeals before the Tribunal which came to be dismissed, confirming the findings of the Assessing Officer as well as the Commissioner of Income Tax [Appeals] by a common order dated 23.09.2016.

Aggrieved by the said order, the assessee has preferred these appeals.

6. Learned counsel for the appellants-assessee submitted that the appellant - M/s. Sobha Interiors [P] Ltd., had entered into a lease agreement with its sister concern, M/s. Sobha Developers [P] Ltd., to lease the factory building vide agreement dated 01.04.2006 for rental agreement of Rs.5,00,000/-. Subsequently on 29.03.2007, executed a supplementary agreement wherein the terms as regards the payment of rent was reduced to Rs.25,000/- p.m., as against the originally agreed rental of Rs.5,00,000/- p.m., and the lessee agreed to pay a sum of Rs.25 Crores as interest free security deposit towards the lease of the factory building. The assessee had shown a sum of Rs.25 Crores as lease deposit as on 31.03.2006 under the head, current liabilities in its financial statements. Similarly, the assessee - M/s. Sobha

Glazing & Metal Works [P] Ltd., had entered into a lease agreement with M/s. Sobha Developers [P] Ltd., vide agreement dated 01.04.2006, for a monthly rent of Rs.5,00,000/-. Vide subsequent agreement dated 30.03.2007, the payment of rent was reduced to Rs.25,000/- per month with interest free security deposit of Rs.11 Crores the said amount was shown at the current liability in the financial statements of the assessee. Learned counsel submitted that the assessee instead of taking loan from outside at a higher rate of interest had availed loan from its sister concern and hence was put to advantage and thus the rent was reduced from Rs.5,00,000/- p.m., to Rs.25,000/- p.m. The Assessing Officer has determined the annual letting value of the property in question comparing the lease between M/s. MTR Distributors [P] Ltd., and M/s. MTR Foods Ltd., without providing an opportunity to the appellant to rebut the same, non-furnishing of the copy of the said lease deed is against the principles of natural

justice. Learned counsel argued that the comparable method adopted by the Assessing Officer to arrive at an annual letting value is not tenable considering various factors such as location of the property, size of the property and the commercial terms entered into by the parties and thus if at all, the Tribunal ought to have held that as per the certificate issued by the Jigani Gram Panchayath, Rs.1.60/- per square feet ought to have been adopted for arriving and computing of annual letting value of the property in terms of Section 23[1][a] of the Act. Commissioner of Income Tax [Appeals] has confirmed the same blindly. The Tribunal without appreciating these vital aspects proceeded to confirm the order passed by the Assessing Authority and the Commissioner of Income Tax [Appeals]. Relevant judgments cited by the learned counsel for the assessee are:

1. *Commissioner of Income-tax V/s. Shastha Pharma Laboratories [P.] Ltd., [(2013) 34 taxmann.com 167 (Karnataka)]*
2. *Commissioner of Income-tax V/s. Smt.Prabhabati Bansali [(1982) 9 Taxman 244 (Calcutta)]*
3. *Dhakeswari Cotton Mills Ltd., V/s. Commissioner of Income-tax [(1954) 26 ITR 775 (SC)]*
4. *Union of India and Another V/s. Azadi Bachao Andolan and Another [(2003) 263 ITR 706 (SC)]*
7. Learned counsel for the Revenue argued that the original agreements entered into between the appellant-assessee and its sister concern agreeing to pay the rental would alone be suffice to consider the annual letting value of the property. Indeed no actual payments were made by the assessee, but were only journal entries made in terms of the subsequent agreements executed at the fag end of the assessment

year i.e., on 29/30.03.2007 which is nothing but a fraudulent device designed by the assessee to avoid the payment of tax. The Authorities as well as the Tribunal have decided the issue based on the material evidence on record and no perversity is found in the orders impugned.

8. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

9. The several inconsistencies and the glaring discrepancies found in the claim made by the assessee as recorded by the Assessing Officer confirmed by the Commissioner of Income Tax [Appeals] would indicate that the current liabilities in the balance sheet does not disclose that the advances from the customers representing trade advances grouped under current liabilities were used for building the factory. The assessee being a regular supplier of interior materials,

the entry in respect of current liability cannot *per se* be said to relate to a loan given out for construction activities. The shift from advances to loans was not satisfactory, no property tax documents were produced despite given several opportunities. The assessee had made arrangements in the context of the intending public issue in the case of the parent company. As such, the amount towards security deposit shown in the balance sheet of the assessee as on 31.03.2007 cannot represent a rent deposit as claimed. Thus, the Revenue has been completely subverted within this arrangement entered into by the appellant on the so called "commercial expediency" claimed by it. Having considered these findings, the Tribunal has analyzed the matter in the light of the judgments cited by the learned counsel for both the parties and confirmed the finding of the Commissioner of Income Tax [Appeals] in both the cases.

10. In the case of ***Azadi Bachao Andolan and Another*** supra, the Hon'ble Apex Court has held that the judgment of the Hon'ble Madras High Court in ***M.V.Valliapan V/s. ITO, [(1988) 170 ITR 238]*** has been rightly concluded. Learned counsel for the appellant, referring to the decision in ***McDowell and Co. Ltd., V/s. Commercial Tax Officer [(1985) 154 ITR 148]***, made an endeavor to submit that the agreements entered into between the assessee and its sister concern for fixing the rental value cannot be said to be a sham document or a colourable device to avoid the payment of tax.

11. In the case of ***Shastha Pharma Laboratories [P.] Ltd.***, supra, the Co-ordinate Bench of this Court has held that the addition of notional interest on the interest free security deposit to the rent agreed upon is not permissible in law. It is open to the Assessing Authority to take note of the amount of

advance paid which gives an indication of the fair rent of the property that fetches in the market with interest accrued on the interest. Such interest cannot be added to the agreed rent, so as to make a fair rent or market rent. The department has not added interest that would be accrued on the interest free security deposit to the agreed rent in the present case.

12. In the case of **Smt.Prabhabati Bansali** supra, the Hon'ble High Court of Calcutta while adjudicating upon the determination of annual letting value where the rent received exceeds the Municipal Valuation, has observed that 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 the income accruing subsequent to the amendment different consideration might arise. It has been held that the income from the 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.

13. in the case of ***Dhakeswari Cotton Mills Ltd.***, supra, the Hon'ble Apex Court while dealing with the principles of natural justice where the departmental representative had produced certain material, no opportunity having provided to rebut such material and in the context of material produced by the assessee was not considered by the Tribunal, opined that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. It did not disclose to the assessee what information had been supplied to it by the departmental representative. Nextly, it did not give any opportunity to the company to rebut the material furnished to it by him and it declined to take all the material that the assessee wanted to produce in support of its case. Placing reliance on this judgment, though

the learned counsel for the assessee argued that the documents/lease agreements relied upon by the department with respect to M/s. MTR Products was not made available to the assessee would not be fatal for the determination of Annual Letting Value [ALV] of the property since the assessee had leased out the building for a monthly rent of Rs.5,00,000/- as per the lease deed dated 01.04.2006 and 31.03.2006, by supplementary lease deed, entered on 29.03.2007, the monthly rent was reduced to Rs.25,000/- per month with interest free security deposit of Rs.25 Crores relating to ITA Nos.1607 and 1692/2012. Similarly, supplementary lease deed was entered on 30.03.2007 whereby the monthly rent was reduced to Rs.25,000/- p.m., from Rs.5,00,000/- p.m., with interest free security deposit of Rs.11 Crores relating to ITA No.1630/2012. The interest free security deposit would certainly indicate the ALV of the property though interest accrued on the security deposit would not be

added to the rent. The contention of the assessee that Municipal Authority has determined the ALV at Rs.1.60/- per square feet and the same would be binding on the department is hard to accept since the same is not the standard rate but has been issued by the Secretary of Jigani Gram Panchayath at the request of the assessee to furnish the annual letting value of the property in question during the assessment year 2006-07. No basis for availing the said ALV is forthcoming in the said letter of the Village Gram Panchayath.

14. Relevant portion of Section 23[1][a] of the Act reads thus:

“Annual value how determined.

“23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

(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

(c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.”

15. In terms of Section 23[1][b], the actual value agreed between the parties would have prominence than the municipal value which has to be supported by any guidelines or comparable statistical value. Merely on the assumptions and presumptions, the value certified by the local authority cannot be given primacy. Having regard to these facts, the Tribunal has recorded a finding that while computing the ALV, all surrounding factors should be considered. The amount determined by the Assessing Officer is less than the monthly rental agreed between the parties for the property in question originally. Moreover, these are the journal entries, no actual payments have been made by the assessee. The loan liability converted into interest free security deposit as contended by the assessee cannot be acceded to. On the other hand, the interest free security deposit disproportionate to the monthly rent is nothing but a device to circumvent the liability to tax.

16. For the reasons aforesaid, we find no infirmity or perversity in the order impugned. Hence, the substantial questions of law are answered in favour of the Revenue and against the assessee.

In the result, both the appeals stand dismissed.

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JUDGE**

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