2022 LiveLaw (Del) 149

IN THE HIGH COURT OF DELHI AT NEW DELHI
MANMOHAN; NAVIN CHAWLA, JJ.
Date of Decision: 16.02.2022
ITA 142/2021; ITA 144/2021 & CM APPL. 32406/2021; ITA 115/2021; ITA 15/2022

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI
versus
HAMDARD NATIONAL FOUNDATION (INDIA)

Appellant Through: Mr.Abhishek Maratha, Sr. Standing Counsel.

Respondent Through: Mr.Salil Aggarwal, Sr. Adv. with Mr.Madhur Aggarwal, Adv

NAVIN CHAWLA, J.

1. This batch of appeals is directed against the common order dated 01.11.2019 passed by the learned Income Tax Appellate Tribunal, Delhi Bench „C", New Delhi (hereinafter referred to as the „learned ITAT") in ITA No. 1640/Del/2019 (AY 2007-08); ITA No. 4789/Del/2012 (AY 2008-09); ITA No. 5411/Del/2012 (AY 2009-10); and ITA No. 3403/Del/14 (AY 2010-11), *inter alia* holding therein that there was no justification for the addition made by the Assessing Officer by invoking the provisions of Section 13(2)(b) read with Section 13(3) of the Income Tax Act, 1961 (hereinafter referred to as the „Act") and consequently, directing deletion thereof.

2. In the present batch of appeals, the appellant/revenue has proposed the following questions of law for consideration of this Court:

"*(1) Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of law, in passing the impugned order, in the facts and circumstances of the present case, ignoring the fact that assessee offered substantial concession in rent to Hamdard Dawakhana in lieu of voluntary and corpus donations in return which is a clear violation of Section 13(2)(b) r.w.s. 13(3) (b) of the Act and hence assessee is not eligible for exemption u/s 11/12 of the Act?*

(2) Whether Hon'ble Income Tax Appellate Tribunal, in the facts and circumstances of the case was correct in allowing exemption u/s 11 & 12 of the Income Tax Act, 1961 to the Assessee/Respondent herein?

(3) Whether the impugned order passed by Hon'ble Income Tax Appellate Tribunal is perverse both on law and facts?"

3. The Assessing Officer, for the Assessment Year 2007-08, had noted that the respondent/assessee had received donation from Hamdard Dawakhana (Wakf) amounting to ₹9,43,81,000/- (Rupees nine crore, forty-three lakh, eighty-one thousand) and rental income of ₹46,41,028/- (Rupees forty-six lakh, forty-one thousand and twenty-eight). In addition, the respondent/assessee had also received ₹20,00,00,000/- (Rupees twenty crore) as corpus donation from Hamdard Dawakhana (Wakf) during the said Assessment Year. Relying upon the enquiry made from one M/s CB Richard Ellis South Asia Private Limited and from the various websites, namely, makan.com; 99acres.com; magicbricks.com, the Assessing Officer held that the property at Asaf Ali Road, New Delhi and Rajdoot Marg, Chanakyapuri, New Delhi, had been let out by the respondent/assessee to Hamdard Dawakhana (Wakf) at a much lower rate as compared to the market rate of rent and therefore, invoked the provisions of Section 13(2)(b) read

with Section 13(3) of the Act.

4. In the first round of litigation between the parties for the Assessment Year 2007-08, the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as the „learned CIT(A)"] allowed the appeal of the respondent/assessee, however, the same was remanded by the learned ITAT on the ground that the said Order did not contain reasons. On such remand, the appeal preferred by the assessee was dismissed by the learned CIT(A) vide its Order dated 27.12.2018, which was challenged by the respondent/assessee before the learned ITAT by way of an appeal, being ITA No.1640/Del/2019.

5. Similarly, the learned CIT(A) dismissed the appeal of the respondent/assessee for the Assessment Year 2009-10 against which the respondent/assessee preferred an appeal before the learned ITAT, being ITA No. 5411/Del/2012. The learned CIT(A), however, accepted the appeals of the respondent/assessee for the Assessment Year 2008-09 and 2010-11. The appellant/revenue challenged these Orders in appeal(s), before the learned ITAT in the form of ITA No. 4789/Del/2012 and ITA No. 3403/Del/2014 respectively.

6. As noted hereinabove, the learned ITAT, by its common Order dated 01.11.2019, allowed the appeal(s) in favour of the respondent/assessee, holding that the Assessing Officer, in the facts of the case, could not have invoked Section 13(2)(b) read with Section 13(3) of the Act and directed deletion of the additions made by the Assessing Officer relying upon the said provisions.

7. The learned counsel for the appellant/revenue submits that the learned ITAT has erred in placing reliance on the Order of the learned CIT(A) for the Assessment Year 2008-09 while deciding the appeal of the respondent/assessee for the Assessment Year 2007-08. He submits that the learned ITAT has acted in total disregard of the law that each assessment year is a separate assessment year and that the principle of *res judicata* is not applicable to the tax proceedings. In this regard, he places reliance on the following judgments:

i. ***M.M. Ipoh & Ors.* v. *Commissioner of Income Tax, Madras***, AIR 1968 SC 317;

ii. ***The Commissioner of Income Tax, West Bengal* v. *Brijlal Lohia & Mahabir Prasad Kemka, Executors of Late Kanailal Lohia***, (1972) 4 SCC 432;

iii. ***Income Tax Officer, A Ward, Sitapur* v. *Murlidhar Bhagwan Das***, (1964) 52 ITR 335 (SC); and

iv. ***Distributors (Baroda) Pvt. Ltd.* v. *Union of India & Ors.***, (1986) 1 SCC 43.

8. The learned counsel for the appellant/revenue further submits that in the present case, the „market rent", as found by the Assessing Officer, had been confronted to the respondent/assessee, however, the respondent/assessee never asked for the source of information nor asked for an opportunity to controvert the same during the assessment proceedings. He submits that in terms of Section 13(1)(c)(ii) of the Act, it was imperative on the Assessing Officer to examine whether any part of the income or any property of the charitable trust is used for the benefit of a specified person referred to in Section 13(3)(b) of the Act. Having found so, the Assessing Officer was entitled to make the

additions in the Return of Income of the respondent-assessee. In this regard, he places reliance on the judgment of this Court in ***Director of Income Tax (Exemption)*** **v.** ***Charanjiv Charitable Trust***, 2014 SCC OnLine Del 1182.

9. The learned counsel for the appellant submits that as against the information gathered by the Assessing Officer from property dealers, such as M/s. CB Richard Ellis South Asia Private Limited and HSN Reality Services, as also from the websites like makan.com, 99acres.com and magicbricks.com, showing that the rental rate for the properties in the Assessment Year 2007-08 were ten times higher than the rent charged by the respondent/assessee from Hamdard Dawakhana (Wakf), no material was placed on record by the respondent/assessee to show the reasonableness of the rent. It was also not shown if the respondent/assessee had made any efforts to give the buildings on rent to any party other than Hamdard Dawakhana (Wakf). He further submits that, in fact, the respondent/assessee had not even taken any security deposit from Hamdard Dawakhana (Wakf) while renting out the said property.

10. The learned counsel for the appellant/revenue submits that the learned ITAT has also erred in holding that the rent received by the respondent/assessee from Hamdard Dawakhana (Wakf) is more than the standard rent under the Delhi Rent Control Act, 1958. He submits that the learned ITAT has not disclosed the source and the basis/calculation for reaching the figure of standard rent. The learned counsel for the appellant/revenue further submits that the learned ITAT, instead of setting aside the additions made by the Assessing Officer, should have remanded the matter to the Assessing Officer to decide the issue afresh by granting an opportunity to the respondent/assessee to confront the evidence on record. In this regard, he places reliance on the Order of the Supreme Court in ***Income Tax Officer*** **v.** ***M. Pirai Choodi,*** (2010) 15 SCC 283.

11. On the other hand, the learned senior counsel for the respondent/assessee submits that the learned ITAT has noted that as per the Lease Agreement between the assessee and the Hamdard Laboratories (India), the property at Asaf Ali Road had been let out to Hamdard Laboratories (India) right since 1981-82 with a periodical increase in the rent. The said Lease Agreement had been accepted by the revenue till the Assessment Year 2007-08. He submits that the property at Chanakyapuri, New Delhi, was not even prepared during the Assessment Year 2008-09 and was lying vacant.

12. The learned senior counsel for the respondent further submits that the enquiries conducted by the Assessing Officer were behind the back of the assessee. He submits that M/s CB Richard Ellis South Asia Private Limited, whose opinion was relied upon by the Assessing Officer, had categorically mentioned in its letter that there is no verified market referral rate and requested the Assessing Officer to conduct an independent enquiry to verify the rates, however, the Assessing Officer did not conduct any such enquiry and simply relied upon the information gathered from websites and such letters.

13. The learned senior counsel for the respondent/assessee further submits that no fault can be found with the learned ITAT placing reliance on the Order of the CIT(A) for the Assessment Year 2008-09, as it was in agreement with the reasons given by the CIT(A) in the said Order. The learned ITAT was dealing with a batch of seven appeals wherein

the learned CIT(A) had taken contrary view and therefore, it was open to the learned ITAT to adopt reasoning from any of these orders of the learned CIT(A) with which it concurred.

14. The learned senior counsel for the respondent/assessee further submits that the learned ITAT has rightly recorded that the rent received by the respondent/assessee is more than the standard rent. He submits that this is an important circumstance for determining the applicability of Section 13(2)(b) of the Act. In this regard, he places reliance on the following judgments:

i. ***Commissioner of Income Tax, Delhi Central III* v. *Moni Kumar Subba***, 2011 SCC OnLine Del 1608;

ii. ***DIT (Exemption)* v. *Span Foundation***, (2009) 178 Taxman 436 (Del); and

iii. ***Commissioner of Income Tax* v. *Raghubir Saran Charitable Trust***, 1990 SCC OnLine Del 411.

15. The learned senior counsel for the respondent/assessee submits that the assessee cannot be expected to undergo litigation due to lack of enquiry on the part of the Assessing Officer. In support, he places reliance on the following judgments:

i. ***Commissioner of Income Tax* v. *F.C.S. International Marketing P. Ltd.***, 2005 SCC OnLine P&H 1317

ii. ***Commissioner of Income Tax* v. *Nova Promoters & Finlease (P) Ltd.***, 2012 SCC OnLine Del 969:(2012) 342 ITR 169 (Del); and

iii. ***Commissioner of Income Tax* v. *Gangeshwari Metal Pvt. Ltd.***, 2013 SCC OnLine Del 270.

16. Lastly, the learned senior counsel for the respondent submits that the revenue has been accepting the Lease Agreement for the Asaf Ali Road property right since 1981 and has not invoked the provisions of Section 13(2)(b) read with Section 13(3) of the Act. The revenue cannot be allowed to flip-flop on the issue and it ought to let the matter rest rather than spend the taxpayers‟ money pursuing the litigation for the sake of it and should abide by the principle of consistency. In support, he places reliance on the following judgments:

i. ***Commissioner of Income Tax* v. *Excel Industries Ltd.***, (2014) 13 SCC 459;

ii. ***M/s Radhasoami Satsang, Saomi Bagh, Agra* v. *Commissioner of Income Tax***, (1992) 1 SCC 659; and

iii. ***Berger Paints India Ltd.* v. *Commissioner of Income Tax, Calcutta***, (2004) 12 SCC 42.

17. We have considered the submissions made by the learned counsels for the parties.

18. As noted hereinabove, the questions of law raised by the appellant/revenue in the appeal is on the invocation of Section 13(2)(b) read with Section 13(3)(b) of the Act in the facts of the present case. The said Sections are quoted herein below:

“***13. Section 11 not to apply in certain cases.—***

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(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to

in sub-section (3),—

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(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

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(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:––

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(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;"

19. At the outset, it is noted that the revenue has not denied that the respondent/assessee has let out the property at Asaf Ali Road, New Delhi, since 1981 to Hamdard Laboratories (India) and/or Hamdard Dawakhana (Wakf), which is stated to be a partner on the business of Hamdard Laboratories (India). It is also not denied that the respondent/assessee enjoyed the benefit of Section(s) 11 and 12 of the Act till the Assessment Year 2007-08.

20. In view of the above-admitted facts, the following principles of law become applicable:

20.1 That though strictly speaking *res judicata* does not apply to income tax proceedings as each assessment year is a separate unit, in the absence of any material change justifying the revenue to take a different view of the matter, the position of fact accepted by the revenue over a period of time should not be allowed to be re-opened unless the revenue is able to establish compelling reasons for a departure from the settled position. In ***Excel Industries Limited*** (supra), the Supreme Court explained this principle as under:

"***24. Secondly****, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with Assessment Year 1992-1993, that the benefits under the advance licences or under the duty entitlement passbook do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.*

25. *In Radhasoami Satsang v. CIT*[1]*this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect"permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from Hoystead v. Taxation Commr.*[2]*, wherein it was said: (Radhasoami Satsang case*[3]*, SCC pp. 665-66, para 14)*

[1] (1992) 1 SCC 659 : (1992) 193 ITR 321 [2] 1926 AC 155 : 1925 All ER Rep 56 (PC) [3] (1992) 1 SCC 659 : (1992) 193 ITR 321 [4] 1926 AC 155 : 1925 All ER Rep 56 (PC) [5] (1977) 1 SCC 408 : 1977 SCC (Tax) 179 : (1977) 106 ITR 1 [6] (1992) 1 SCC 659 : (1992) 193 ITR 321

"14. … Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the

case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken.' (Hoystead case[4], AC pp. 165-66)"

***26.** Reference was also made to Parashuram Pottery Works Co. Ltd. v. ITO[5] and then it was held: (Radhasoami Satsang case[6], SCC p. 666, paras 16-17)*

"16. We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

17. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

20.2 Under Section 13(2)(b), the burden of showing that the rent charged by the respondent/assessee was not „adequate" is on the revenue. Unless the price/rent was such as to shock the conscience of the Court and to hold that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise bereft of adequate consideration. It is necessary for the Assessing Officer to show that the property has been made available for the use of any person referred to in Sub-section (3) of Section 13 otherwise than for adequate consideration. In order to determine the same, the context of the facts of the particular case needs to be appreciated. For determining "Adequate" consideration/rent, however, market rent or rate is not the sole yardstick; other circumstances of the case also need to be considered.

20.2.1. In ***Reva Investment Pvt. Ltd.* v. *Commissioner of Gift Tax*, *Gujarat II***, (2001) 9 SCC 111, while considering Section 4(1) of the Gift Tax Act, 1958, the Supreme Court held that "it is necessary for the Assessing Officer to show that the property has been transferred otherwise than for adequate consideration. The finding as to the inadequacy of the consideration is an essential *sine qua non* for application of the provisions of "deemed gift". The provision is to be construed in a broad commercial sense and not in a narrow sense. In order to hold that a particular transfer is not for adequate consideration, the difference between the true value of the property transferred and the consideration that passed for the same must be appreciated in the context of the facts of the particular case."

20.2.2. In ***Commissioner of Gift Tax, Tamil Nadu – I* v. *Indo Traders & Agencies (Madras) P. Ltd.***, (1981) 131 ITR 313 (Madras), again while considering the provision of Section 4(1)(a) of the Gift Tax Act, 1958, the High Court of Madras observed as under:

"*In order to apply this provision, it is necessary for the GTO to show that the property is transferred otherwise than for adequate consideration…*

… In considering this provision a Full Bench of the Patna High Court in H. P. Banerjee v. CIT [1941] 9 ITR 137 examined the earlier cases regarding the interpretation of the expression "adequate consideration". The distinction between "good consideration" and "adequate consideration" was pointed out and in the judgment of Manohar Lall J., reference was made to some of the earlier authorities on the point. In Tennent v. Tennent [1870] LR 2 Scotch and Divorce Appeal Cases 6, Lord Westbury observed:

"But the transaction having been clearly a real one, it is impugned by the appellant on the ground that he parted with the valuable property for a most inadequate consideration. My Lords, it is true that there is an equity which may be founded upon gross inadequacy of consideration. But it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition. It is impossible to say that the inadequacy of consideration in this case amounts to anything like proof to warrant either of those conclusions".

The same conclusion was reached by the other members, who decided the case in the House of Lords.

In Administrator-General of Bengal v. Juggeswar Roy [1877] ILR 3 Cal 192 (PC), the case arose out of a suit instituted by the Administrator-General to set aside the conveyance executed by one Jackson on the ground that he was a minor at the time of the execution and that he was fraudulently induced to part with his property, without fully understanding the nature of the transaction and for an inadequate price. The matter reached the Privy Council and their Lordships were unable to come to the conclusion that the evidence of inadequacy of price was such as to lead them to the conclusion that the plaintiff did not know what he was about or was the victim of some imposition, or that the son at the relevant dates was altogether in the position of a minor without any one to advise him. At p. 197 of the report, Sir Montague Smith, in delivering the judgment of the Board, made these observations (p. 197):

"Independently, however, of this consideration, it cannot, their Lordships think, be said that the purchase money was so grossly inadequate that its inadequacy amounts to proof of an imposition upon the plaintiff".

In Coles v. Trecothick [1804] 9 Ves. J 234, Lord Chancellor Elden held with regard to the facts of the case before him that inadequacy of price was out of the question and made the following observation at p. 246:

"Inadequacy of price does not depend upon a person giving pretium affectionis, from any peculiar motive, beyond what any other man would give, the reasonable price. But, further, unless the inadequacy of price is such as shocks the conscience, and amounts in itself to conclusive and decisive evidence of fraud in the transaction, it is not itself a sufficient ground for refusing a specific performance‖.

The considerations which weighed with the courts in examining the adequacy of the consideration in respect of the sale by a minor or in respect of a relief for specific performance would also apply in the examination of a transaction under s. 4(1)(a). Unless the price was such as to shock the conscience of the court that it cannot be the reasonable consideration at all, it would not be possible to hold that the transaction is otherwise than for adequate consideration. In fact, in the Full Bench judgment of the Patna High Court, it is mentioned by Chief Justice Harries, that the adequacy of consideration is a matter for the parties. (See [1941] 9 ITR 137, 148). The judgment of the Patna High Court has been approved by the Supreme Court in a later decision, Tulsidas Kilachand v. CIT [1961] 42 ITR 1 (sic). Of course it is not enough if a transfer is for "good consideration‖. It should also be for adequate consideration. Adequate consideration is not necessarily what is ultimately determined by someone else as market value.

Learned standing counsel for the Commissioner stressed that the adequacy of the price has to be judged only in the light of the market value of the property transferred and according to him, there is no other yardstick which could be applied to a situation like this. We are unable to agree. We may explain why we disagree with him by taking an example. Supposing an old lady who owns a neighbouring property, wants to part with it to a medical practitioner, so that the medical practitioner would be of immediate assistance to her as and when she needs it and she parts with the property at what the parties conceive to be a reasonable price, could it be said that there was a gift of the property to the extent of the difference between what is later taken to be the market value and what was conceived to be the reasonable price for the property. It has also to be remembered that the computation of market value is in most cases a matter of estimate, which may also vary. Such a variable concept would not have been made the yardstick.

The investigation to be made in the case of such a transaction could only be to see whether there is any attempt at evasion of tax or whether it is a bona fide transaction. If there is any attempt at evasion of tax,

then s. 4(1)(a) of the G.T. Act can be applied on the ground that the consideration stipulated in the document is inadequate. If, however, the consideration that passed between the parties can be considered to be reasonable or fair, it cannot be considered to be inadequate.

It is this aspect which has been pointed out by the Bombay High Court in CGT v. Cawasji Jehangir Co. (P.) Ltd. [1977] 106 ITR 390.

…Vimadalal J., in his judgment at p. 398, made the following observations:

"In my opinion, the expression, 'adequate consideration' has to be construed in a broad sense, and merely because there may be some difference between the consideration for a transfer, and the true value of the property transferred, the same would not attract the applicability of section 4(a) of the Act. In order that the court may hold that a particular transfer is not for adequate consideration, the difference between the true value of the property transferred, and the consideration that passed for the same, must be appreciable in the context of the facts and figures of the particular case. It may be that in a given case a few hundred rupees would lead to the conclusion of inadequacy of consideration, whereas, in another case, a few lakhs of rupees may not lead to such conclusion. The expression 'adequate consideration' cannot be construed with precision but, as already stated above, it must be construed in relation to the facts and figures of each particular case.

… If the Legislature had contemplated as a universal rule that the market value should alone be the criterion for testing the adequacy of consideration, the provision would have been differently worded. The wording would then have been, "where the property is transferred for less than its market value, then the difference between the market value and the consideration stipulated, shall be deemed to be the gift made by the transferor. Parliament not having made any such provision, it would not be for us to take the market value of the property for determining the adequacy of consideration in all events."

21. In the present case, the learned ITAT has observed that the revenue had failed to bring on record any cogent evidence to show that the rent received by the respondent/assessee, in the facts of the case, was inadequate. It has held that the material collected from the internet as well as the estate agents cannot be termed as a corroborative piece of evidence in this regard. It has further held that the rent received by the respondent/assessee exceeds the valuation adopted by the Municipal Corporation of Delhi for the purpose of levying house tax. The relevant finding of the learned ITAT is reproduced hereinbelow:

"*12. It could be seen from the letters issued by HSA reality services and CB Richard Ellis South Asia private limited, they have given information available with them and to the best of their knowledge and belief whereas CB Richard Ellis South Asia Private limited is clear in their observation that there is no verified market referral rate and the information furnished by them and make no guarantee, warranty or representation about it, requested the learned Assessing Officer to independently verify and confirm its accuracy and completeness. They are also specific in their statement that the information furnished by them does not represent the current or future performance of the market. Even on the face of the caveat mentioned above, it does not seen from the record that the Assessing Officer did any independent exercise to verify the correctness or applicability of the information furnished by those two persons vis-à-vis the extent location and suitability of the property in dispute for its comparison to the market rates provided by those persons and also the information gathered from the website.*

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15. On consideration of the entire material before us and in the light of the submissions made on either side which are conclusive that the law requires the Revenue to bring on record cogent evidence to justify the invocation of section 13 of the Act and the material collected by the learned Assessing Officer from the Internet as well as the estate agents cannot be termed as the collaborative piece of evidence to any facts which is established substantively first; that the actual rent received by the assessee from HLI far exceeds the valuation adopted by the MCD for the purpose of levying house tax as could be seen from

the information furnished by the assessee and also that unless and until the learned Assessing Officer brings on record some credible information, the burden to rebut does not shift to the assessee.

16. We are, therefore, convinced with the reasoning given by the Ld. CIT(A) in his order for the Assessment Year 2008-09 wherein while dealing with this issue in detail, the Ld. CIT(A) reached a conclusion that on the date of the observations of the learned Assessing Officer that there is no mechanism with the Department to determine "valuation of rents"imperative the adjudicatory authorities to look further corroborative evidence in the absence of which it is not desirable to disturb the consistent view taken over a period of more than two decades. We are in agreement with the Ld. CIT(A) that not only on the basis of the rule of consistency but also on the basis of the facts relating to the rent received by the assessee from HLI vis-à-vis the rent under the Delhi Rent Control Act. Without vouchsafing the correctness of the information received from the website and without correlating the information furnished by the property dealers without realities on ground with a specific reference to the property in dispute, it is not open for the Assessing Officer to proceed to make addition, that disturbing the accepted position for about more than two decades. No change of facts and circumstances are brought on record and no independent evidence with a specific relation to the property in dispute is available on record. Merely because the other charitable trust guilty property for accommodation of the person covered under section 13(3) of the Act, such a fact ipso facto does not lead to the addition in the hands of the assessee without first clinching the issue with corroborative piece of evidence. We therefore, hold that there is no justification for addition made by the learned Assessing Officer by invoking the provisions under section 13(2)(b) of the Act read with section 13(3) of the Act and we direct him to delete the same."

22. The above are the findings of fact by the learned ITAT, which is the final fact-finding authority. We do not find any perversity in the findings of the learned ITAT.

23. The Supreme Court, in the case of ***Ram Kumar Aggarwal & Anr.* v. *Thawar Das (Dead) through LRs***, (1999) 7 SCC 303, has reiterated that under Section 100 of the Code of Civil Procedure, 1908, the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on the substantial question of law and interference with the finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court, in ***State of Haryana & Ors.* v. *Khalsa Motors Limited & Ors.***, (1990) 4 SCC 659, has held that the High Court was not justified in law in reversing, in the second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in ***Hero Vinoth (Minor)* v. *Seshammal,*** (2006) 5 SCC 545, has also held that „*in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in the second appeal. Adopting any other approach is not permissible*". It has also been held that there is a difference between a question of law and a „*substantial question of law*". Recently, while considering a similar provision in the Electricity Act, 2003, the Supreme Court in ***Maharashtra State Electricity Distribution Company Limited* v. *Maharashtra Electricity Regulatory Commission & Ors.***, 2021 SCC OnLine SC 913, observed that the word "substantial question of law" means not only a substantial question of law of general importance, but also any substantial question of law arising in a case between the parties on which the decision in the *lis* depends. A question of law that arises accidentally or collaterally and has no bearing on the final outcome, will not be a substantial question of law. Whether the question raised is a question of law and, if so, whether the question is a substantial question of law is also not determined by the enormity of the stakes involved in the same. To be „substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the

decision of the case and/or rights of the parties before it, if answered either way. Findings of fact recorded by the courts below, which would imply the CIT(A) and the learned ITAT in these appeals, cannot be reopened. Sufficiency or adequacy of the evidence to support a finding is a matter for the decision of the court of facts.

24. The submission of the learned counsel for the appellant/revenue that the learned ITAT has erred in placing reliance on the Order of the learned CIT(A) passed in the Assessment Year 2008-09 while considering the appeal for AY 2007-2008, also cannot be accepted. As noted hereinabove, the learned ITAT was considering a batch of appeals for various assessment years, with some assessment years being decided in favour of the respondent/assessee while some against it, by the learned CIT(A). The learned ITAT agreed with the view taken by the learned CIT(A) for the Assessment Year 2008-09 and, therefore, placed reliance on the said Order of the learned CIT(A) taking reasoning therefrom. The learned ITAT cannot be held to have erred in adopting the said approach.

25. Similarly, the submission of the learned counsel for the appellant that the learned ITAT has failed to disclose the basis on which it arrived at the quantum of the standard rent also cannot be accepted in the absence of any determination to the contrary being even pleaded by the appellant/revenue.

26. The submission of the learned counsel for the appellant that the respondent had not taken any security deposit from Hamdard Dawakhana (Wakf) and thereby violated Section 13(2)(b) of the Act, has also been stated only to be rejected. Security Deposit may be one of the factors to be taken into consideration by the Assessing Officer for coming to a conclusion if the rent was „adequate", however, it cannot be a sole determinative factor. In the present case, the Assessing Officer, apart from relying upon some opinion of rent from property broker firms and websites, does not appear to have made any independent inquiry on the adequacy of the rent being charged by the respondent/assessee from Hamdard Dawakhana (Wakf). It is not shown that the Assessing Officer made any independent inquiry on the age and condition of the building of the assessee situated at Asaf Ali Road, New Delhi. In fact, as contended by the learned senior counsel for the respondent/assessee and taken note of by the learned ITAT and not denied by the appellant/revenue, the property at Rajdoot Marg was not even ready during Assessment Year 2008-09 and was lying vacant. In the absence of any such inquiry by the Assessing Officer, the invocation of Section 13(2)(b) of the Act was clearly flawed and rightly rejected by the learned ITAT.

27. In view of the above, we find no infirmity in the Order passed by the learned ITAT and no substantial question of law arises in the present set of appeals. The same are accordingly dismissed. There shall be no order as to costs.