INDIA AUTOMOBILES (1960) LTD. A

*v.*

CALCUTTA MUNICIPAL CORPORATION AND ANR.

FEBRUARY 13, 2002

[G.B. PATTANAIK, R.P. SETHI AND BISHESHWAR PRASAD SINGH, JJ.] B

*Calcutta Municipal Corporation Act, 1980:*

*Section 174—Land or building—Annual Valuation—Determination of—* C *Basis—Gross annual rent actually paid by tenant or rent paid by sub-tenants to tenants—Held, the basis of annual valuation is the standard rent where the Rent Control Act is applicable –In all other cases the basis of annual valuation is the actual rent received by the owner, the hypothetical standard rent, the rent being received by tenant from his sub-tenant and the prevalent rate of rent in the vicinity of the property being assessed—Where standard or fair rent has been fixed the municipal authorities should generally accept the same as the basis of valuation notwithstanding the non-applicability of the Rent Acts.*

*Words and Phrases:*

*"Reasonably"—Meaning of—In the context of s.174(1) of the Calcutta Municipal Corporation Act, 1980.*

**The appellant leased out the suit property to its tenant and the respondent-Corporation fixed the annual value of the suit property under Section 174 of the Calcutta Municipal Corporation Act, 1980 by taking in to consideration the rent paid by the sub-tenants to the tenant. But the Municipal Assessment Tribunal fixed the annual value of the suit property on the basis of the rent actually received by the Appellant-owner from its tenant. However, the High Court held that the annual valuation would be fixed notwithstanding anything contained in the West Bengal Premises Rent Control Act, 1956 and set aside the order of the Tribunal and directed it to hear the appeal on merits keeping the mind the total amount paid by the sub-tenants to the tenant of the appellant. Hence this appeal.**

**On behalf of the appellant it was contended that while assessing the value**

A of the suit property the amount taken by the tenant from a sub-tenant could not be taken into consideration and that the valuation had to be based on the basis of the actual rent received by the appellant from its tenant.

Disposing of the appeal, the Court

B **HELD : 1.1.** In cases where the municipal laws exclude the applicability of the Rent Acts by incorporating non-obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in *Padma Debis's* case. i.e. the criterion for fixing the annual value was the rent realisable by the landlord and not the value of the holding in the hands of the tenant and the value of the property to the owner C was the standard rent in making the assessment. [984-H]

*Corporation of Calcutta* v. *Smt. Padma Debi,* [1962] 3 SCR 49, referred to.

D **1.2.** In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as the rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the Rent Act because such a view would be a reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, E be reasonably expected to be let from year to year. The rent which the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year from year to year. Such a consideration is also justified on the principles of reasonableness. [985-A-B]

F **1.3.** It is not possible to agree that in all cases, notwithstanding the non-obstante clause, the annual rental value cannot be fixed beyond the standard rent determined or determinable under the Rent statute. It is also difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption G that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of rent if let from year to year. The argument that the rent actually received by the owner should always be deemed to be reasonable rent in the absence of fraud, collusion and other extraneous considerations is too general and a broad proposition of law which cannot be accepted for the purposes of determining the annual value of the H property for the purposes of Section 174 of the Calcutta Municipal

Corporation Act, 1980. In the light of clear and unambiguous provisions of Section 174 of the Act, it cannot be held that the amount realised by a tenant from a sub-tenant cannot at all be taken into consideration for the proposes of determining the gross annual rent in the absence of extraneous considerations. [985-C-E] A

2.1. Allowing the Municipal Corporations to assess the annual rateable value on the basis of the income of a tenant from the property would not be grossly unfair and would not have the effect of rendering the rate provisions of the Act unreasonable, arbitrary and unconstitutional. The Act itself has taken care by making sufficient provision in Sections 193 and 194 regarding the liability to pay the rent and apportionment of such liability when the premises are assessed, let or sub-let. On proof of creation of sub-tenancy, the owners of the building may also be entitled to seek eviction of their tenants under the relevant provisions of the Rent Acts applicable in the State where the land or property is located. [985-F-G] B C

2.2. The Calcutta Municipal Corporation Act, 1980 requires the application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, the hypothetical Standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the Corporations from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal, and disposal of solid waste, fire prevention and fire safety maintenance of street and public places, etc. in the Municipal area where such land or building is situate. [986-B-C] D E F

3. The basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as already indicated, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. G H

**The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, and also keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to be let from year to year in terms of Section 174 of the Act. [986-E-G]**

*Smt. Padma Debi* **v.** *Corporation of Calcutta,* **[1962] 3 SCR 49;** *Corporation of Calcutta* **v.** *Life Insurance Corporation of India,* **[1970] 2 SCC 44; v.** *Guntur Municipal Council* **v.** *Guntur Town Rate Payers' Association,* **[1971] 2 SCC 423;** *Municipal Corporation* **v.** *Smt. Ratnaprabha,* **[1976] 4 SCC 622;** *Diwan Daulat Rai Kapoor* **v.** *New Delhi Municipal Committee,* **[1986] 1 SCC 685;** *Balbir Singh* **v.** *MCD,* **[1985] 1 SCC 167;** *Srikant Kashinath Jituri* **v.** *Corporation of the City of Belgaum,* **[1994]] 6 SCC 572;** *Indian Oil Corporation Ltd.* **v.** *Municipal Corporation,* **[1995] 4 SCC 96;** *Asstt. General Manager, Central Bank of India* **v.** *Commissioner Municipal Corporation for the City of Ahmedabad,* **[1995] 4 SCC 696;** *East India Commercial Co. Pvt. Ltd.* **v.** *Corporation of Calcutta,* **[1998] 4 SCC 368 and** *Government Servant Cooperative House Building Society Ltd.* **v.** *Union of India,* **[1996] 6 SCC 381, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5109 of 2000.

From the Judgment and Order dated 4.1.2000 of the Kolkatta High Court in C.O. No. 2468 of 1999.

Jaideep Gupta, Anil Agarwal and K.V. Vijaykumar for the Appellant.

Tapash C. Ray, Gaurav Jain and Abha Jain for the Respondents.

The Judgment of the Court was delivered by

**SETHI, J.** Aggrieved by the determination of annual valuation made in terms of Section 174 of the Calcutta Municipal Corporation Act, 1980 (hereinafter called "the 1980 Act"), the appellant-owner of a nine storeyed building, admittedly, used for commercial purposes, filed an appeal before the Municipal Assessment Tribunal who vide its order dated 26th February, 1999 allowed the appeal and fixed the annual value on the basis of rent actually received by the appellant-owner. Feeling aggrieved, the respondent-corporation approached the High Court under Article 227 of the Constitution

of India who, vide the order impugned in this appeal, set aside the order of the Tribunal and directed it to hear the appeals on merits keeping in mind that total amount paid by the sub-tenants to the tenant of the appellant should also be taken into consideration in assessing the annual valuation.

It is not disputed that the property in question was leased out by the appellants to their tenant, named Banwarilal Pasari at a rental of Rs. 75,000 per month vide a duly executed lease deed (Annexure P-1). There is also no dispute that the building is a nine storeyed building and is used for commercial purposes. The respondent-Corporation carried out the general revision of the annual valuation of the premises effective from fourth quarter of 1984-85 and also for the period from fourth quarter of 1990-91. Proposed valuation was communicated to the owners vide two notices issued under the 1980 Act directing them to attend the hearing before the Hearing Officer of the Corporation on the date specified in the notice. The appellant submitted objections to the notices and objected to the same challenging the proposed valuation and the basis thereof. The Hearing Officer vide his two orders dated 15.4.1996 fixed annual valuation from fourth quarter of 1984-85 at Rs. 18,80,600 and from fourth quarter of 1990-91 at Rs. 21,63,560. The annual valuation assessment was made under Section 174 of the 1980 Act by taking into consideration the rent paid by the sub-tenants. The Municipal Assessment Tribunal accepted the appeal of the owners by relying upon the judgment of this Court in *Corporation of Calcutta* v. *Life Insurance Corporation of India,* [1970] 2 SCC 44. Not satisfied with the judgment of the Tribunal, Municipal Corporation moved the High Court by way of a petition under Article 227 of the Constitution of India, which was allowed by setting aside the order of the Tribunal vide judgment impugned in this appeal. The High Court held that the aforesaid decision of this Court had no application to an assessment made under Section 174 of the 1980 Act which was found to be materially different from Section 168 of the Calcutta Municipal Act, 1951 under which the assessment had been made in *Life Insurance Corporation's* case (supra). The High Court further held that under 1951 Act the annual valuation in no case could exceed the standard rent fixed by the West Bengal Premises Rent Control (Temporary Provision) Act, 1950 but under the 1980 Act which had a non-obstante clause, the annual valuation can be fixed notwithstanding anything contained in the West Bengal Tenancy Act, 1956 or any other law for the time being in force. It has been further held that under the 1980 Act, the consolidated rate is primarily leviable, if the land and building is let upon lessor and if the land and building is sub-let, still upon the superior lessor under Section 193 of the Act, and for that reason Section 194 of the Act has

A conferred a right upon the lessor, lessee or the sub-lessee to recover the excess amount from their respective tenants for the excess payable by them due to creation of tenancy or sub-tenancy. It was further held that the Municipal Corporation is in no way bound by the fixation of standard rent or fair rent by the Rent Controller and the rent realised by a tenant from the sub-tenant or by a sub-tenant from his tenant is required to be taken into consideration B and such amount to be treated as gross rent of the land or building for the purposes of Section 174 of the 1980 Act. Finding that the Appellate Tribunal had acted illegally and with material irregularity in holding that in assessing annual valuation of the building the amount realised from the sub-tenants cannot be taken into consideration, the matter was remanded to the Tribunal C to hear the appeal afresh on merits and decide the same in the light of the observations made by the High Court. Not satisfied with the Judgment of the High Court, the owners of the building have preferred this appeal. When this appeal was listed in the Court on 10th November, 2001, the Judges constituting the Bench felt that following observations of this Court in the case of LIC required reconsideration:

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> "But under the Act the quantum of the consolidated rate depends upon the annual value of land or building on the gross rent for which the land or building might reasonably be expected to let and not the gross rent at which the subordinate interest of a tenant may be expected to sublet"

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The Bench directed the Registry to place the matter before the Hon'ble Chief Justice for listing this matter before a Bench of three Judges. In such circumstances this appeal has come before us.

It is contended on behalf of the appellant that the order passed by the F Municipal Assessment Tribunal was strictly according to law and did not suffer from any infirmity with which the High Court could have interfered. It is submitted that while assessing the valuation of the property, the amount taken by the tenant from a sub-tenant cannot be taken into consideration in view of the judgment of this Court in *LIC's* case (supra). According to the G appellant, the annual value of the land and building has to be deemed to be gross annual rent including service charges as contemplated under Section 174 of the 1980 Act which does not include the rent received by a tenant from the sub-tenant. According to the appellant annual value has to be determined on the basis of the actual rent received by the owner unless it is established that such rent is not bonafide paid and that the same is shown H fraudulently only for the purposes of depriving the authorities from assessing

the annual rental value. It is argued on behalf of the appellant that despite the changes made in the 1980 Act, the law laid down in *Padma Debi's* case is still valid for the purpose of determining the gross annual rent of a building under the Calcutta Municipal Corporation Act. As in the present case the assessment made by the Tribunal proceeds on the basis of the actual rent received by the appellant and in the absence of any allegations of extraneous circumstances, the order of the Tribunal has to be upheld by setting aside the impugned judgment. It is also stated that in the present case there is no difference between the standard rent and the actual rent realized by the landlord from the tenant because of application of Section 2 and Section 9 of the West Bengal Premises Tenancy Act. The issue as to whether the standard rent is the upper limit of the reasonable rent does not fall for decision, under the circumstances of the present case.

A B C

It is contended on behalf of the respondent-Corporation that the High Court has correctly interpreted Section 174 of 1980 Act which is in accordance with the various judgments of this Court. It is submitted that in *The Corporation of Calcutta* v. *Smt. Padma Debi and Ors.*, [1962] 3 SCR 49, this Court had divided the municipal laws into two distinct groups. One such group, referred to municipal laws of certain States which did not expressly exclude application of Rent Restriction Acts in the matter of determination of annual value of a building for the purposes of levying property taxes and the other group of such municipal laws which expressly exclude application of Rent Restriction Acts in the matter of such determination. It is submitted that unlike Calcutta Municipal Act, 1923 and Calcutta Municipal Act, 1951, the new 1980 Act contains specific provision in Section 174 providing a non obstante clause specifically excluding the operation and effect of the West Bengal Premises Tenancy Act, 1956 and any such other law in force, which would fall in the second group of cases as referred to in Padma Debi's case (supra). To appreciate the rival contentions of the parties, it is necessary to make reference to some statutory provisions relevant for the purposes of resolving the controversy. The 1980 Act was enacted to amend and consolidate the law relating to the municipal affairs of Calcutta. Chapter XII deals with the power of taxation at consolidated rates. Section 170 authorises the Corporation to levy certain taxes enumerated therein. Section 174, dealing with the determination of annual valuation of the property within the municipal corporation provides:

D E F G

> "174. Determination of annual valutation - (1) Notwithstanding anything contained in the West Bengal premises Tenancy Act, 1956 H

A or in any other law for the time being in force, for the purpose of assessment to the consolidated rate, the annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might at the time of assessment be reasonably expected to let from year to year, less an allowance of ten per cent, for the cost of repairs and other expenses B necessary to maintain such land or building in a state to command such gross rent:

Provided that where there is a transfer, *inter vivos*, of ownership of any land or building since the last preceding periodical assessment C under Section 179, the annual value of such land or building shall be fixed at seven and a half per cent of the amount stated in the deed of transfer as consideration for such transfer or, if no consideration is stated in such deed of transfer, at seven and a half per cent of the estimated market value thereof:

D Provided further that while determining the annual value in the case of any land or building or portion thereof exclusively used by the owner for his residential purpose, the gross annual rent of such land or building or portion, as the case may be, shall be reduced, —

(a) where the gross annual rent does not exceed six hundred rupees, E by thirty per cent;

(b) where the gross annual rent exceeds six hundred rupees but does not exceed eighteen thousand rupees, by such percentage of the gross annual rent as is worked out by dividing the gross annual rent by six hundred and subtracting the quotient from thirty-one, F the difference being rounded off to the nearest place of decimal:

Provided also that no such reduction in gross annual rent shall be made—

(a) in case the total covered area in any land or building under occupation for residential purpose by the owner exceeds one G hundred and fifty square metres, or

(b) where a person owns or occupies for residential purposes more than one plot of land or building or portions thereof within the municipal limit of Calcutta.

H (2) The annual value of any land which is not built upon shall be

fixed at seven per cent of the estimated market value of the land. A

(3 )If the gross annual rent of any class or classes of land or buildings used exclusively for hospital or educational purposes or for the purposes of sports or as a place of worship or as a place for disposal of the dead cannot be easily estimated, the gross annual rent of such building shall be deemed to be five per cent of the value of the B building obtained by adding the estimated cost of erecting the building at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land valued with the building as part of the same premises.

(4) In the case of any land or building or part thereof used for public C cinema shows or theatrical performances or as a place of similar public recreation, amusement or entertainment, the gross annual rent of such land or building or part thereof, as the case may be, shall be deemed to be seven and a half per cent of the gross annual receipts in respect of such cinema shows or theatrical performances or place D of public recreation, amusement or entertainment, including receipts from rent and advertisements and sale of admission tickets but excluding taxes on the same of such tickets:

Provided that the provisions of this sub-section shall not apply in the case of temporary fairs, circuses, and casual shows or performances. E

(4A) If the gross annual rent of any land or building or part thereof cannot be easily estimated, the gross annual rent of such land or building for the purposes of sub-section (1) shall be deemed to be seven and half per cent of the value of the building obtained by adding the estimated present cost of erecting the building at the time F of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land:

Provided that the estimated present cost shall not include the cost of any plant or machinery, excepting those enumerated in Schedule VIII, on the G land or the building as aforesaid.

(5) The annual value as determined under this Chapter shall be rounded off to the nearest ten rupees."

Section 180 deals with the revision of assessment and Section 181 provides H

A for settlement of returns and inspection of lands and buildings for the purposes of assessment. Section 186 provides that subject to provisions of Section 181 or Section 182 any objection to the annual value of the land and building as entered in the assessment list shall be made by the owner or the person liable to pay the consolidated rate, in writing, to the Municipal Commissioner before the date fixed in the notice under Section 194 or Section 195 and shall state B in what respect the annual value is disputed. Section 188 deals with the hearing of objections and Section 189 provides an appeal before the Municipal Assessment Tribunal. Section 193 catalogues the incidence of consolidated rate on lands and buildings and provides:

C "193(1) The consolidated rate on lands and buildings shall be primarily leviable, -

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sublet, upon the superior lessor;

D

(c) if the land and building is unlet, upon the person in whom the right to let such land or building vests.

(2) The consolidated rate on any land or building, which is the property of the Corporation and the possession of which has been delivered E under any agreement or licensing arrangement, shall be leviable upon the transferee or the licensee as the case may be.

(3) The liability of the several owners of any land or building constituting a single unit of assessment, which is of purports to be severally owned in part or flats or rooms, for payment of consolidated F rates or any instalment thereof payable during the period of such ownership shall be joint and several:

Provided that the Municipal Commissioner may apportion the amount of consolidated rate on which land or building among the co-owners.

G (4) Notwithstanding the vesting of any land in the State under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, in the case of any land comprised in a thika tenancy, the consolidated rate assessed in respect of such land and any hut or building made thereon shall be primarily leviable upon then thika tenant.

H Section 194 provides:

"194. Apportionment of liability for consolidated rate on land or building when the premises assessed are let or sublet — (1) If the annual valuation of any land or building exceeds the amount calculated on the basis of the rent of such land or building payable to the person upon whom the consolidated rate on such land or building is leviable under Section 193, such person shall be entitled to receive from his tenant and difference between the amount of the consolidated rate on such land or building and the amount which would be leviable if the consolidated rate on such land or building were calculated on the basis of the rent payable to him.

(2) If the annual valuation of any land or building which is sublet exceeds the amount calculated on the basis of rent of such land or building payable to the tenant by his sub-tenant or to the sub-tenant by the person holding under him, the tenant or the sub-tenant shall be entitled to receive from his sub-tenant or the person holding under him, as the case may be, the difference between any sum recovered under this Act from such tenant or sub-tenant and the amount of consolidated rate on such land or building which would be leviable if the annual valuation of such land or building were calculated on the basis of rent payable to the tenant by him sub-tenant or the sub-tenant by the person holding under him."

It may be noticed at this stage that before the incorporation of Section 174 of 1980 Act, Section 168 of the Calcutta Municipal Act, 1951 dealt with the assessment of lands and buildings to the consolidated rate. Sub-section (1) of Section 168 provided:

"168 (1) For the purposes of assessment to the consolidated rate the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be reasonably expected to let from year to year, less, in the case of a building, an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent:

Provided that in respect of any land or building the rent of which has been fixed under the provisions of West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 or the West Bengal Premises Tenancy Act, 1956, the annual value thereof shall not exceed the annual amount of the rent so fixed."

A Similarly, Section 127 of the Calcutta Municipal Act, 1923 provided: "127.For the purpose of assessing land and buildings to the consolidated rate,—

(a) the annual value of land, and the annual value of any building erected for letting purpose or ordinarily let, shall be deemed to be the gross annual rent at which the land or building might at the B time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent; and

(b) the annual value of any building not erected for letting purposes C and not ordinarily let shall be deemed to be five per cent on the sum obtained by adding the estimated present cost of erecting the building, less a reasonable amount to be deducted on account of depreciation (if any), to the estimated present value of the land valued with the building as part of the same premises.

D Provided as follows:-

(i) the annual value of the bustee shall be deemed to be the gross annual rent at which the land contained within it, excluding the lands which have been left vacant for the purposes of any bustee street prescribed in or under a standard plan approved by the E Corporation under Chapter XXII, might reasonably be expected to let from year to year, plus the gross annual rent at which the huts erected thereon might reasonably be expected to let from year to year, after deducting therefrom the rent of the land and an allowance of ten per cent, for the cost of repairs and for all expenses necessary to maintain such huts in a state to command F such gross rent;

(ii) in calculating the value of any land or building under this section, the value of any machinery on such land or in such building shall be excluded, but all fixtures including lifts and electric and other fittings which add to the convenience of the building shall be G valued, subject in the case of a lift to such deduction from the valuation, as the Executive Officer may think proper, on account of the cost of repairs to, maintenance of, and attendance on, such lift;

(iii) if in the case of a building valued under clause (b), the annual H value of which does not exceed five hundred rupees, any

exceptional circumstances exist which render a valuation of five per cent, on the cost of erecting the building less depreciation, excessive, a lower percentage may be taken; A

(iv) when any building has been valued at a special percentage taken under proviso (iii), it may be re-valued at any time after the exception circumstances referred to in that proviso have ceased to exist." B

The words "notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 or any other law for the time being in force" appearing in Section 174 of 1980 Act were non existent in Section 168 of 1951 Act and Section 123 of 1923 Act. In support of their view points, learned counsel for the parties have relied upon various judgments of this Court reported in *Smt. Padma Debi's* case (supra); *LIC's* case (supra); *Guntur Municipal Council* v. *Guntur Town Rate Payers' Association,* [1971] 2 SCC 423; *Municipal Corporation, Indore and Ors.* v. *Smt. Ratnaprabha and Ors.,* [1976] 4 SCC 622; *Diwan Daulat Rai Kapoor and Ors.* v. *New Delhi Municipal Committee and Ors.,* [1980] 1 SCC 685; *Balbir Singh and Ors.* v. *MCD and Ors.,* [1985] 1 SCC 167; *Srikant Kashinath Jituri and Ors.* v. *Corporation of the City of Belgaum,* [1994] 6 SCC 572; *Indian Oil Corporation Ltd.* v. *Municipal Corporation and Anr.* [1995] 4 SCC 96; *Asstt. General Manager, Central Bank of India and Ors.* v. *Commissioner Municipal Corporation for the City of Ahmedabad and Ors.,* [1995] 4 SCC 696; *East India Commercial Co. Pvt. Ltd.* v. *Corporation of Calcutta,* [1998] 4 SCC 368 and *Government Servant Cooperative House Building Society Ltd. and Ors.* v. *Union of India and Ors.,* [1998] 6 SCC 381. C D E

*In Padma Debi's* case (supra) this Court dealt with the law relating to annual valuation under Section 127 of Bengal Act No. 3 of 1923 and held that the words "gross annual rent" at which the land or building might, at the time of assessment, reasonably be expected to let from year to year implies that the rent which the landlord might realise if the house was let is the basis for fixing the annual value of the building. The criterion was the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The value of the property to the owner is the standard rent in making the assessment. The word "reasonably" appearing in the section was held to be not capable of precise definition as in ultimate analysis the same was the question of fact. Whether a particular act was reasonable or not depended upon the circumstances in a given case. A bargain between a willing lessor F G H

A and willing lessee uninfluenced by any extraneous circumstances can afford a guiding test of reasonableness. The phrase "at the time of assessment" was held to mean the assessment commenced with the making of the valuation under Section 131 of the Act and ended with the determination of the objection under Section 140 thereof. As in that case the Rent Control Act of 1950 was found to be in existence before determination of the assessment, the corporation B was held to have no power to fix the annual value of the premises higher than the standard rent.

In *LIC's* case (supra) this Court dealt with Section 168 of the Calcutta Municipal Corporation Act for the purposes of determination of annual value C of the premises. The facts of that case were that M/s. A. Firpo Ltd. were the tenants of the building belonging to Asiatic Assurance Company Ltd. under a lease at a monthly rent of Rs. 2,000 which was increased by mutual agreement to Rs. 2800 per month. M/s. A. Firpo Ltd., the lessee had sub-let a major part of the premises to five different tenants and the aggregate rent received from the sub-tenants amounted to Rs. 4520. The corporation assessed D the annual value of the premises at Rs. 32076 for six years. The objection raised by the owner against the determination of the annual value was rejected by the Special Officer of the Corporation and in appeal filed by the LIC, which had statutorily acquired the right of the owner of the building, the court of Small Causes assessed Rs. 30240 as the annual value. The said order E was confirmed in appeal to the High Court under Section 183(3) of the Calcutta Municipal Corporation Act, 1951. In appeal filed in this Court, the corporation claimed that in determining the annual value of the premises the assessing authority was entitled to take into consideration the rental received by M/s.A. Firpo Ltd. from its sub-tenant. Reliance was placed upon *Padma Debi's* case. This Court approved the judgment in *Padma Debi's* case, but F finding that as the standard rent stood determined by the definition in Section 2(10)(b) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, held that the High Court was right in assessing the annual value on the basis of the standard rent as statutorily determined. It was further held that under the Act the quantum of consolidated rate depends upon the value G of the land or building or the gross rent for which the land or building might reasonably be expected to let and not the gross rent at which the subordinate interest of a tenant may be expected to sub-let. In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant may receive from his sub-tenant. It is the gross rent which the owner may realise by letting the land or building under a bargain uninfluenced H by extraneous considerations which determines the annual value.

In *Guntur Town Rate Payers' Association's* case (supra) it was held that the test for determining the rent at which the building may reasonably be expected to be let is essentially what rent premises can lawfully fetch, if let out to a hypothetical tenant. The municipality is not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Control Act in force during the year of assessment. Such findings were returned on the basis of the judgment of this Court in *Padma Debi's* case.

In *Smt. Ratnaprabha's* case (supra) this Court for the first time considered the effect of non obstante clause appearing in Madhya Pradesh Municipal Corporation Act, 1956 for determining the gross annual rent for which the building might reasonably be expected to be let. Clause (b) of Section 138 of the said Act provided:

> "(b) The annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent."

Interpreting the section, the Court held:

> "As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall 'notwithstanding anything contained in any other law for the time being in force' be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year". While therefore the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so 'notwithstanding anything contained in any other law for the time being in force'. It appears to us that it would be a proper interpretation of the provisions of clause (b) of section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building

A has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non-obstante clause in clause (b) with due regard to its other provision that the letting value B should be 'reasonable'."

After referring to *Padma Debi's* case, *LIC's* case and *Guntur Town Rate Payer's* case (supra), it was held in that case that the High Court had not properly appreciated the difference between the wording of Section 127 of C the Calcutta Municipal Corporation Act, 1923 and Section 138(c) of the Madhya Pradesh Municipal Corporation Act, 1956 and thus committed an error in thinking that the case was virtually similar to *Padma Debi's* case.

In *Diwan Daulat Rai's* case (supra) this Court held that the facts of the case were covered by the decisions of this Court in *LIC' case* and *Guntur* D *Town Rate Payer's* case (supra). The landlord cannot, reasonably, expect to get more rent than the standard rent payable in accordance with the principles laid down in the Rent Control Act. In a case where the standard rent of the building has not been fixed by the Controller, the assessing authority has to arrive at its own figures of standard rent by applying the principles laid down E in the Rent Act. Such a task has to be performed by the assessing authority as a part of process of assessment and in doing so it does not usurp the functions of the Rent Controller because it does not fix the standard rent which would be binding between the landlord and tenant but merely arrives at an estimate of standard rent for the purposes of determining the annual value of the building. The Court referred to Section 2(k) of the Delhi Rent F Control Act, 1958 which defines the standard rent. Sub-section (1) of Section 4 of the Delhi Rent Control Act provided that, "no tenant shall, notwithstanding any agreement to the contrary, be liable to pay to his landlord for the occupation of any premises any amount in excess of the standard rent of the premises" and sub-section (2) of Section 4 declares that "subject to provisions G of sub-section (1) any agreement for the payment of rent in excess of the standard rent shall be construed as if it were an agreement for the payment of the standard rent only". Section 5, sub-section (1) enacted a prohibition injuncting that "no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary". Section 6 proceeded to set out different formulae for determination of standard rent in H different classes of cases. Section 9, Sub-section (1) provided that the

Controller shall, on an application made to him, either by the landlord or by the tenant, fix in respect of any premises the standard rent referred to in section 6 and sub-section (2) of section 9 laid down that in fixing the standard rent of any premises the Controller shall fix an amount which appears to him to be reasonable having regard to the provisions of Section 6 and the circumstances of the case. It appears that in this case the court did not directly deal with the effect of a non-obstante clause in the taxing municipal law. The case was found to be nearer to the law settled in *LIC's* case and *Guntur Town Rate Payee's* case (supra). Dealing with the case for the determination of the annual value where no standard rent has been fixed, the Court observed:

> "The problem can also be looked at from a slightly different angle. When the Rent Control legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the landlord. Any rent which exceeds this norm of reasonableness is regarded by the legislature as unreasonable or excessive. When the legislature has laid down this standard of reasonableness, would it be right for the court to say that the landlord may reasonably expect to receive rent exceeding the measure provided by this standard? Would it be reasonable on the part of the landlord to expect to receive any rent in excess of the standard or norm of reasonableness laid down by the legislature and would such expectation be countenanced by the court as reasonable? The legislature obviously regards recovery of rent in excess of the standard rent as exploitative of the tenant and would it be proper for the court to say that it would be reasonable on the part of the landlord to recover such exploitative rent from the tenant? We are, therefore, of the view that, even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent."

A In *Balbir Singh's* case (supra) the Court dealt with four different categories of properties, namely, (i) where the properties are self-occupied, that is, occupied by the owners; (ii) where the properties are partly self-occupied and partly tenanted; (iii) where the land on which the property is constructed is leasehold land with a restriction that the leasehold interest shall not be transferable without the approval of the lessor and (iv) where the B property has been constructed in stages, and to provide a criteria how rateable value can be determined in respect of those four categories of properties. Relying upon Dewan Daulat Rai Kapoor's case it was held that criteria for determining the rateable value of a building is the annual rent which the owner might reasonably expect to get from a hypothetical tenant, if the C building were to let from year to year less certain deductions. What is "reasonable" is a question of fact which depended on the facts and circumstances of a given situation. Ordinarily "a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of "reasonableness" and in normal circumstances the actual rent payable by a tenant to the landlord would afford reliable evidence D of what the landlord may reasonably expect to get from the hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit, etc. But in case of a building subject to Rent Control legislation this approximation between may and often does get displaced, because under Rent Control E legislation the landlord cannot claim to recover from the tenant anything more than the standard rent and his reasonable expectation must, therefore, be limited to the measure of the standard rent lawfully recoverable by him. There was no dispute that the area where the property sought to be taxed was situated, the provisions of Rent Restriction Acts were applicable and there was non obstante clause in the municipal law under which the annual value F had been assessed.

*In Srikant Kashinath Jituri's* case (supra), this court observed:

G "... we feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. Fair rent very often means the rent prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local H bodies to levy and collect the property tax on the basis of fair rent

alone, while asking them at the same time to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining and laying roads, drains and other amenities, the salaries of staff and wages of employees - in short, all types of expenditure have gone up steeply over the last more than forty years. In such a situation, insistence upon levy of property tax on the basis of fair rent alone - disregarding the actual rent received- is neither justified nor practicable. None of the enactments says so expressly. The said principle has been evolved by courts by a process of interpretation. Probably a time has come when the said principle may have to be reviewed."

In *Indian Oil Corporation's* case (supra) this Court approved the view taken in *Ratnaprabha's* case and in the interest of public good declined to reconsider the aforesaid decision. It was observed that the decision of this Court in Ratnaprabha's case, on the construction of Section 138(b) of M.P. Act, has all along been understood and justified on the basis of the presence of non obstante clause and the later decisions have distinguished it on that ground. The existence of non obstante clause in M.P. Act was held to be the basis on which the decision in *Padma Debi's* case was distinguished in *Ratnaprabha's* case itself.

*In Assistant General Manager, Central Bank of India's* case (supra) it was contended on behalf of the appellant that even where the standard rent was not fixed and the Rent Act not applicable, it must be presumed that the annual rent for such buildings or lands or premises would be the standard rent alone and not the actual rent received. In that case Section 129(c) of the Municipal Corporation Act provided that the general taxes not less than 12% and not more than 13% of the rateable value of the buildings/lands may be levied if the corporation so determines on a graduated scale. The expression "rateable value" was defined in clause (54) of Section 2 to mean, "the value of any building or land fixed whether with reference to any given premises or otherwise in accordance with the provisions of this Act and the rules for the purpose of assessment of property taxes". Rule 7 of the Taxation Rules provided that in order to fix the rateable value of any building, land or premises, there shall be deducted from the amount of the Annual Letting Value of such building a sum equal to ten per cent of the Annual Letting Value and the said deduction shall be in lieu of all allowances for repairs or any other account whatsoever. Sub-clause (ii) of the definition provided that "in relation to any other period, the annual rent for which any building or

A land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use and shall include all payments made or agreed to be made to the owners by a person other than the owner occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto". The proviso added to sub-clause (ii) was to the following B effect:

> "(a) (I) n respect of any building or land or premises the standard rent of which has been fixed under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the annual rent C thereof shall not exceed the annual amount of the standard rent so fixed;
>
> (aa) in respect of any building or land, or premises, the standard rent of which is not fixed under Section 11 of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, the annual rent received D by the owner in respect of such building or land or premises shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use."

E Dealing with the points in controversy, the arguments urged and the issues involved, the Court held:

> "It is true that the Bombay Rent Act defines what standard rent is, provides for fixation of standard rent by the Court and further provides that no landlord shall claim or receive any amount over and above F the standard rent, making the same punishable with imprisonment and fine. Yet, the fact remains that Municipal Corporations Act says expressly that notwithstanding anything contained in any other law for the time being in force, the "annual rent received" -- which means the actual rent received - in respect of building etc., for which G standard rent is not fixed under Section 11 of the Bombay Rent Act shall be deemed to be the annual rent for which such building etc. might reasonably be expected to be let from year to year with reference to its use. The validity of proviso (aa), though raised in the grounds of appeal in the special leave petition, has not been urged before us, probably advisedly. Being a taxing enactment and also because the H proviso does no more than to treat the actual rent received as the

annual rent, the reasonableness of the said provision can hardly be questioned. Be that as it may, we see no reason why the express language and command of proviso (aa) is not respected. Both the enactments, *viz.*, Bombay Rent Act and Bombay Provincial Municipal Corporations Act are State enactments. Indeed, the Municipal Corporations Act is a later enactment. In view of the express provision in proviso (aa), it must be held that for the purpose of the Municipal Corporation Act, the actual rent received is the annual rent for the purposes of determining the annual letting value. The counsel for the appellants say that it cannot be. They say that one State enactment cannot be read so as to defeat and nullify the provisions of another State enactment. The submission is that both must be read harmoniously. The said argument, in our opinion, would have been perfectly justified if the non obstante clause were not there in proviso (aa). In its presence, acceptance of the said argument means that we ignore the non obstante clause in proviso(aa) altogether. Such a course is not permissible to us. The Court cannot treat any provision in an enactment as superfluous much less can it ignore its existence. The learned counsel, however, rely upon certain decisions in support of their submissions to which a brief reference would now be in order."

Accordingly, we hold that proviso (aa) means what it says and has to be applied and followed in the cases covered by it. So far as the Municipal Corporations Act is concerned, the annual rent is the actual rent received where the standard rent is not fixed under Section 11 of the Bombay Rent Act and it constitutes the basis for determining the annual letting value, rateable value and property taxes. That is the plain effect and meaning of proviso (aa). So far proviso (aaa) is concerned, an apprehension was expressed that it would enable the Commissioner to question the actual rent received in every case and it would be an endless enquiry. In our opinion, however, the said provision is conceived to meet situations where the rent put forward as the actual rent received is not a genuine plea., i.e., where it is a false plea. A landlord may let out a building at less than market rent for many a reason, e.g., the tenant is a close friend or a close relative or because the tenant is a charitable or religious organisation. Proviso (aaa) does not enable the Commissioner to ignore such situations for, in such cases, the rent actually received is genuinely stipulated one. This power is reserved to the Commissioner only with a view to ensure that by merely putting forward a figure which is not true,

A persons do not escape the correct levy."

In *East India Commercial Co. Pvt. Ltd's* case (supra) this Court considered the determination of annual value under Section 168 of the Calcutta Municipal Corporation Act, 1951 in respect of buildings which were actually let out to tenants on rent agreed but not fixed by the Controller under the B Rent Restriction Act for the purposes of assessment of property tax. After referring to the relevant provisions of law and the judgments of this Court, it was held:

> "From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the d[illegible]mination of the annual C value, that Act has to be read along with [illegible] Restriction Act which provides for the determination of fair rent [illegible] standard rent. Reading the two Acts together the rateable value can[illegible] be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself D provides the modes of determination of the annual letting value like the *Central Bank of India* case [1995] 4 SCC 696 relating to Ahmedabad or contains a non obstante clause as in Ratnaprabha case 1976 (4) SCC 622 then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act does not contain any non E obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinable under Section 8(1)(d) which alone can be the annual value for the purposes of property F tax."

Dealing with the M.P. Municipal Corporation Act, 1956 the Court held that the existence of non obstante clause was crucial in determining the annual value. The court observed:

> G "In Section 168 of the Municipal Act with which we are concerned in the present case the non obstante clause is not there. The Municipal Act is different from the M.P. Municipal Act, 1956. Section 168 of the Municipal Act is similar to the corresponding provisions in Delhi and in Andhra Pradesh and therefore, it is the ratio of the decisions of *Padma Debi,* [1962] 3 SCR 49, *Dewan Daulat Rai,* [1980] 1 SCC H 685 and *Guntur Municipal Council,* [1970] 2 SCC 803 which should

apply." A

In *Government Servant Cooperative's* case (supra) this Court dealt with Section 116 of the Delhi Municipal Corporation Act providing for determination of rateable value of land or building assessable to property taxes and held that where there is a legislation fixing the standard rent of the premises, the rent at which premises could be reasonable expected to be let B cannot exceed the statutory ceiling. But where there is no statutory control on rent which is charged, the annual rent actually received by the landlord shall be the basis for determining the rateable value of the property. It held:

> "Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to C decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing lessor. Hence, actual annual D rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, therefore, entitled to revise the rateable value of the properties which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations which have affected E the quantum of rent."

A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various F Statutes relating to the determination of the annual value for the purposes of Municipal Acts, this Court has devised two distinct groups. One such group deals with the municipal laws of some States which do not expressly exclude application of Rent Restrictions Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other G group deals with the municipal laws which expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the Rent Acts has been excluded, the H

A determination of annual value of building on rental method is referable to the method provided under the relevant Municipal Act. Whereas the *Padma Debi's* case, LIC's case, *Guntur Town Rate Pay e's* case, *Dewan Daulat Rai's* case (supra) deal with the first group of municipal laws, the cases in *Ratanprabha's* case, *AGM, Central Bank of India's* case, *East India Commercial Company's* case, *Balbir Singh's* case, *Indian Oil Corporation's* case and *Srikant's* case
B (supra) deal with the second group As already noticed, this Court in *LIC's* case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non-obstante clause. The observations of the Bench of this Court which dealt with the case on 10th October, 2001 cannot be taken in isolation. Justice Shah, J. in *LIC's* case referring to the
C proviso to Section '68(1) of the Calcutta Municipal Corporation Act which dealt with the land and building, the standard rent of which had been fixed under Section 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 observed:

> "By the addition of the proviso, in our judgment, the meaning of the
> D expression "gross rent at which the land or building might reasonably be expected to let" is not altered. In the present case, there is no order of the Controller fixing standard rent under Section 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, but the standard rent stands determined by the definition of that expression
> E in Section 2(1) (b) of that Act, which provides (omitting paras not relevant):
>
> "Standard rent" in relation to any premises means---
>
> (a) xxx xxx xxx
>
> F (b) where the rent has been fixed under Section 9, the rent so fixed, or at which it would have been fixed if application were made under the said section."

As already noticed even without specific determination, the standard rent was held to have been statutorily determined under Section 2(10)(b) of
G the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws excludes the applicability of the Rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in *Padma Debi's* case and followed in that group of cases. In cases where the fair rent payable by the tenant has
H been determined and there is no justification for refusing to accept that fair

rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non applicability of the Rent Acts because such a view would be reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rental value cannot be fixed beyond the standard rent determined or determinable under the Rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of rent if let from year to year. The argument that the rent actually received by the owner should always be deemed to be reasonable rent in the absence of fraud, collusion and other extraneous considerations is too general and broad proposition of law which cannot be accepted for the purposes of determining the annual value of the property for the purposes of Section 174 of the 1980 Act. In the light of clear and unambiguous provisions of Section 174 of the 1980 Act, it cannot be held that the amount realised by a tenant from a sub-tenant cannot, at all be taken into consideration for the purposes of determining the gross annual rent in the absence of extraneous considerations. There is no substance in the submission of the learned counsel appearing for the appellant that allowing the Municipal Corporations to assess the annual rateable value on the basis of the income of a tenant from the property would be grossly unfair and would have the effect of rendering the rate provisions of the Act unreasonable, arbitrary and unconstitutional. The Act itself has taken care by making sufficient provision in Sections 193 and 194 regarding the liability to pay the rent and apportionment of such liability when the premises are assessed, let or sub-let. On proof of creation of sub-tenancy, the owner of the building may also be entitled to seek eviction of their tenants under the relevant provisions of the Rent Acts applicable in the State where the land or property is located. We find some substance in the submission of the learned counsel for the appellant that permitting the Municipal Authorities to assess the annual value only on the basis of the rent paid by the sub-tenant to the tenant and fixing its liability on the owner may adversely affect the owners of the buildings who have let their premises at a time when rents were meagre and who under the Rent Control Statutes are

A deprived of getting possession back of the lands and buildings from their tenants. The 1980 Act, therefore, requires the application of mind by the municipal authorities to determine the rent on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, hypothetical Standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as
B prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the Corporations from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be
C against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places, etc., in the Municipal area when such land or building is situate. We do not find any conflict in the judgments of this Court so far as the determination of annual value of the property under the municipal laws
D is concerned. Distinction, if any, is based upon the relevant provision of the statute of a State with which this Court was dealing, particularly with respect to such Statutes which contained a non obstante clause. We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable
E determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal
F authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the
G time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act.

Keeping in view the facts of the present appeal we are of the opinion that the High Court was right in remanding the appeals to the Appellate Tribunal for deciding on merits but was not justified to restrict the consideration
H only on the basis of rent being paid by the sub-tenant to the tenant for the

purposes of determining the gross annual value. The Appellate Tribunal shall consider the appeals in the light of our Judgment by keeping in mind all the circumstances including the rent actually received by the owner of the building and the rent being paid to the tenant by his sub-tenant. The Appellate Tribunal shall also keep in mind the peculiar circumstances of the case, if any, for determining the gross annual rent at which the building in controversy, at the time of assessment, is reasonably expected to let from year to year, less the allowances and other considerations referred to in Section 174 of the 1980 Act. If the annual valuation determined is more than the gross annual rent which the appellant is actually receiving from his tenant, the appellant shall be at liberty to recover the excess amount paid in terms of Section 194 of the 1980 Act.

With these observations the appeal is disposed of. Costs to abide by the ultimate result.

V.S.S. Appeal disposed of.