

# Renting of Immovable Properties

---

Notional interest on interest free security deposit cannot be added  
to Rent for levy of Service Tax

Udyog Software (India) Ltd.

18/09/2014

**Notional interest on interest free security deposit cannot be added to the rent for levy of service tax on renting of immovable properties.**

**Case Reference:**

Murli Realtors Pvt. Ltd. and Others

Vs.

Commissioner of Central Excise Pune-II  
[2014-TIOL-1 728-CESTAT-MUM]

**Case Details:**

Murli Realtors Pvt. Ltd. and others (“the Appellants”) are lessors of immovable property who have leased out their premises on long time lease ranging from 5 to 10 years in consideration of lease rentals on a monthly basis. In addition to these rentals, they are also taking interest free security deposits from the lessees which vary from six months’ rent to one year’s rent (“security deposits”) to secure default in payment of rentals, default in payment of utility charges, if any, and damage caused to the property other than the usual wear and tear. These deposits are returned to the lessee at the end of the lease period.

The Department contended that the interest free security deposit has suppressed the lease rentals and, therefore, notional interest at the rate of 18% of the deposit should be added to the rent agreed upon between the parties for the purpose of levy of service tax on renting of immovable property.

The Hon’ble CESTAT, Mumbai relied upon the following judgments:

- *Moriroku UT India (P) Ltd. Vs. State of UP [2008 (224) ELT 365 (SC)];*
- *Commissioner of Income Tax Vs. J.K. Investors (Bombay) Ltd. [248 ITR 723 (Bom.)];*
- *Central Excise, Mumbai -III Vs. ISPL Industries Ltd. [2003 (154) ELT 3 (SC)];*
- *Intercontinental Consultants and Technocrafts Pvt. Ltd. Vs. Union of India & Anr. [2012-TIOL-966-HC-DEL-ST]*

**Held:**

In the absence of specific provision in law and in the absence of any evidence led by Revenue to show that the security deposit taken has suppressed the rent, the impugned demands are not sustainable. Further, the Hon’ble Tribunal do not find any reason for adopting a rate of 18% per annum as rate of interest, which is neither the bank rate of interest for deposits or loans or the market rate of interest. Adoption of such an arbitrary rate militates against the concept of valuation.

**Conclusion:**

In view of the foregoing, notional interest on interest free security deposit cannot be added to the rent agreed upon between the parties for the purpose of levy of service tax on renting of immovable property.