आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री डी.टी.गरासिया, न्यायिक सदस्य तथा

श्री ओ.पी.मीना, लेखा सदस्य के समक्ष

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

| **आ.अ.सं./ I.T.A. Nos. 24 to 26/Ind/2015 and I.T.A.Nos. 352 to 354/Ind/2016** |
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| **निर्धारण वर्ष /A.Ys.: 2005-06 to 2010-11** |

| **M/s. Sheetu Educational Service Pvt. Ltd., Khandwa Road, Indore PAN NO. AAGCS3911B** | **Vs.** | **Dy. CIT, 5(1), Indore.** |
|---|---|---|
| **अपीलार्थी /Appellant** | | **प्रत्यर्थी /Respondent** |

| **अपीलार्थी की ओर से/**Appellant by | Shri S.N. Agrawal, FCA |
|---|---|
| **प्रत्यर्थी की ओर से/**Respondent by | Shri A.R.Verma, DR |

| **सुनवाई की तारीख Date of hearing** | **12.01.2017** |
|---|---|
| **उद्घोषणा की तारीख Date of pronouncement** | **28.02.2017** |

**आदेश /O R D E R**

**PER O.P. MEENA, ACCOUTANT MEMEBR.**

These appeals are filed by the assessee against the separate orders of ld. Commissioner of Income tax (Appeals)-II, Indore [hereinafter referred to as the CIT (A)] dated 31.10.2014, pertaining to assessment years 2005-06 to 2007-08 and separate orders of CIT(A)-II, Indore dated 29.01.2016, pertaining to assessment years 2008-09 to 2010-11.

2. The assessee has taken following grounds of appeal:-

**ITA No.24/Ind/2015/ Assessment Year 2005-06 :**

1.1) That on the facts and in the circumstances of the Ld. CIT (A) erred in approving the stand of the assessing officer in issuance of notice u/s 147 of the Act merely for the reason that assessment as set-aside by the Ld CIT in the case of the assessee for the Asst Year 2007-08 was not challenged by the assessee before the Hon'ble ITAT.

1.2) That on the facts and in the circumstances of the case. The Ld CIT(A) erred in approving the issuance of the notice u/s 147 of the Act as valid without properly

appreciating the submission made before him and absence of any new tangible material in possession of the assessing officer.

2.1) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining notional addition made by the Assessing officer under the head of Income from House property of Rs 19,83,732/- without properly appreciating the facts of the present case and submission made before him.

2.2) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society in the hand of the assessee even when no deduction on account of rent was claimed by that society. Hence, following the same principle as applied by the Ld CIT(A) for interest, the rental income is not requires to be taxed as income of the assessee.

2.3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

2.4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not making any comments on calculation of notional rent of 19,83,732/-which is arbitrary without any basis.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of interest equal to the amount of rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement /understanding as executed between the assessee with M/s. Jasleen Educational Services society.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 3,35,652/- against its

coaching income without properly appreciating the fact of the case and submission made before him.

5) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 5,72,905/-even when the said building was used by the assessee for coaching and also used by the society for running of the school.

6) The Ld CIT(A) was also erred in deciding the charging of interest as consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

**ITA No.25/Ind/2015/ Assessment Year 2006-07 :**

1.1) That on the facts and in the circumstances of the Ld CIT (A) erred in approving the stand of the assessing officer in issuance of notice U/S 147 of the Act merely for the reason that assessment as set-aside by the Ld CIT in the case of the assessee for the Asst Year 2007-08 was not challenged by the assessee before the Hon'ble ITAT.

1.2) That on the facts and in the circumstances of the case. The Ld CIT(A) erred in approving the issuance of the notice U/S 147 of the Act as valid without properly appreciating the submission made before him and absence of any new tangible material in possession of the assessing officer.

2.1) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining notional addition made by the Assessing officer by taxing the annual letting value of the building under the head of Income from House property of Rs 20,53,990/- without properly appreciating the facts of the present case and submission made before him.

2.2) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society in the hand of the assessee even when no deduction on account of rent was claimed by that society

Hence, following the same principle as applied by the Ld CIT(A) for interest, the rental income is not requires to be taxed as income of the assessee.

2.3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

2.4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not making any comments on calculation of notional rent of 20,53,990/-which is arbitrary without any basis.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of Interest equal to the amount of rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement /understanding as executed between the assessee with M/s. Jasleen Educational Services Society.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 4,45,470/- against its coaching income without properly appreciating the fact of the case and submission made before him.

5) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 6,22,197/-even when the said building was used by the assessee for coaching and also used by the society for running of the school.

6) The Ld CIT (A) was also erred in deciding the charging of in interest as consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

**ITA No.26/Ind/2015/ Assessment Year 2007-08 :**

1.1) That on the facts and in the circumstances of the Ld CIT (A) erred in maintaining notional addition made by the assessing officer by taxing the annual letting value of the property under the head of Income from House property

of Rs. 21,44,910/-without properly appreciating the facts of the present case and submission made before him.

1.2) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society in the hand of the assessee even when no deduction on account of rent was claimed by that society. Hence, following the same principle as applied by the ld. CIT(A) for interest, the rental income is not requires to be taxed as income of the assessee.

1.3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

1.4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in making any comments on

calculation of notional rent of Rs. 21,44,910/- which is arbitrary without any basis.

2) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of Interest equal to the amount of Rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement /understanding as executed between the assessee with M/s Jasleen Educational Services society.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 4,90,583/- against its coaching income without properly appreciating the fact of the case and submission made before him.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 5,06,445/-even when the said building was used by the assessee for coaching and also used by the society for running of the school.

5) The Ld CIT (A) was also erred in deciding the charging of interest is consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

**ITA No.352/Ind/2016 : Assessment Year 2008-09:**

1.1) That on the facts and in the circumstances of the Ld CIT (A) erred in approving the stand of the assessing officer in issuance of notice U/S 147 of the Act merely for the reason that assessment as set-aside by the Ld CIT in the case of the assessee for the Asst Year 2007-08 was not challenged by the assessee before the Hon'ble ITAT.

1.2) That on the facts and in the circumstances of the case. The Ld CIT(A) erred in approving the issuance of the notice U/S 147 of the Act as valid without properly appreciating the submission made before him and absence of any

new tangible material in possession of the assessing officer.

2.1) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining notional addition made by the Assessing officer under the head of Income from House properly of Rs 22,77,160 /- without properly appreciating the facts of the present case and submission made before him.

2.2) That on the facts and in the circumstances of the case, the Ld CIT (A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society In the hand of the assessee even when no deduction on account of rent was claimed by that society Hence, following the same principle as applied by the Ld CIT(A) for interest, the rental income is not requires to be taxed as income of the assessee.

2.3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition

of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

2.4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not making any comments on calculation of notional rent of 22,77,160/-which is arbitrary without any basis.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of interest equal to the amount of Rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement /understanding as executed between the assessee with M/s Jasleen Educational Services society.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 34,640/-without properly appreciating the facts of the case and submission made before him.

5) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 5,29,073/- even when the said building was used by the assessee and also by the society for running of the school.

6) The Ld CIT(A) was also erred in deciding the charging of interest is consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

**<u>ITA No.353/Ind/2016 : Assessment Year 2009-10 :</u>**

1.1 That on the facts and in the circumstances of the Ld CIT (A) erred in approving the stand of the assessing officer in issuance of notice U/S 147 of the Act merely for the reason that assessment as set-aside by the Ld CIT in the case of the assessee for the Asst Year 2007-08 was not challenged by the assessee before the Hon'ble ITAT.

1.2 That on the facts and in the circumstances of the case. The Ld CIT(A) erred in approving the issuance of the notice U/S 147 of the Act as valid without

properly appreciating the submission made before him and absence of any new tangible material in possession of the assessing officer.

2.1 That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining notional addition made by the Assessing officer under the head of Income from House properly of Rs 24,05,275/-without properly appreciating the facts of the present case and submission made before him.

2.2 That on the facts and in the circumstances of the case, the Ld CIT (A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society In the hand of the assessee even when no deduction on account of rent was claimed by that society Hence, following the same principle as applied by the Ld CIT(A) for

interest, the rental income is not requires to be taxed as income of the assessee.

2.3 That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

2.4 That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not making any comments on calculation of notional rent of 24,05,275/-which is arbitrary without any basis.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of interest equal to the amount of Rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement/understanding as executed between the assessee with M/s. Jasleen Educational Services society.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 4,729/-without properly appreciating the facts of the case and submission made before him.

5) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 4,93,017/- even when the said building was used by the assessee and also by the society for running of the school.

6) The Ld CIT(A) was also erred in deciding the charging of interest is consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

**ITA No.354/Ind/2015/ Assessment Year 2010-11**

1.1) That on the facts and in the circumstances of the Ld CIT (A) erred in approving the stand of the assessing officer in issuance of notice U/S 147 of the Act merely for the reason that assessment as set-aside by the Ld CIT in the

case of the assessee for the Asst Year 2007-08 was not challenged by the assessee before the Hon'ble ITAT.

1.2) That on the facts and in the circumstances of the case. The Ld CIT(A) erred in approving the issuance of the notice U/S 147 of the Act as valid without properly appreciating the submission made before him and absence of any new tangible material in possession of the assessing officer.

2.1) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining notional addition made by the Assessing officer under the head of Income from House properly of Rs 26,11,915/- without properly appreciating the facts of the present case and submission made before him.

2.2) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the taxing of notional income on account of Building used for the purpose of running of the school by M/s. Jasleen Educational Society in the hand of the assessee even when no

deduction on account of rent was claimed by that society Hence, following the same principle as applied by the Ld CIT(A) for interest, the rental income is not requires to be taxed as income of the assessee.

2.3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining the notional addition of rental income in the hand of the assessee even when building was leased out for long terms period and therefore deemed ownership of the building as per section 27(iiib) belonging to the lessee.

2.4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not making any comments on calculation of notional rent of 26,11,915/-which is arbitrary without any basis.

3) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in not allowing the deduction on account of interest equal to the amount of rental income as taxed by the assessing officer even when the same was expressly mentioned in the agreement /understanding as

executed between the assessee with M/s Jasleen Educational Services Society.

4) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of entire expenses as claimed by the assessee of Rs 22,012 /- against its coaching income without properly appreciating the fact of the case and submission made before him.

5) That on the facts and in the circumstances of the case, the Ld CIT(A) erred in maintaining disallowance of depreciation of Rs 4,61,523/-even when the said building was used by the assessee for coaching and also used by the society for running of the school.

6) The Ld CIT(A) was also erred in deciding the charging of interest is consequential in nature even when in the case of re-assessment interest is chargeable under sub-section (3) of section 234B of the income Tax Act.

3. Common grounds have been taken by the ld. Authorized Representative of the assessee except the figures. Since the facts are common, we are deciding for the sake of brevity

I.T.A.No. 24/Ind/2015 for the assessment year 2005-06, the decision of which will be binding on all the appeals.

4. Ground Nos. 1.1 to 1.2 for the assessment years 2005-06, 2006-07 and assessment year 2008-09 to 2010-11 relate to approving the reopening of assessment based on findings given in set aside orders u/s 263 of the Income-tax Act, 1961.

5. Briefly stated, the facts of the case are that the assessee had filed his original return of total income on 31-10-2005 declaring total loss of Rs 6,65,769/-. The notice u/s 148 of the Act dated 29-03-2012 was issued and served upon the assessee on 30.03.2012. Copy of reasons were recorded prior to the issuance of the notice U/s 148 of the Act. The assessee vide letter dated 08-04-2012 has stated that original return as filed on 31-10-2005 may be treated as filed in response to the notice issued U/s 148 of the Act. The assessee has taken land on lease from Luthra Family for Lease premium and Annual lease rent. For construction of the School building amounts were received from M/s Jasleen Education Service Society and the said building was given to M/s Jasleen Education Service

Society for running of school. The assessee also runs coaching on this building itself. It was understood between the assessee and M/s Jasleen Educational Service Society, that no interest was paid by the assessee nor rent was charged from the society. Since, the building was used by the assessee for the purpose of his business, the depreciation on the same was claimed by the assessee. In the re-opened assessment order as passed by the assessing officer, following amount was added to the total income of the assessee:-

| S.No | Nature of addition | Amount [Rs] |
|---|---|---|
| 1 | Income from House Property | 13,88,612 |
| 2 | Disallowance out of Expenses | 3,35,652 |
| 3 | Disallowance of Depreciation of Building | 5,72,905 |
| | | 22,97,169 |

6. The Ld. CIT[A] vide his order dated 31-10-2014 has dismissed the appeal as filed by the assessee against the order as passed U/s 143[3]/147 of the Act dated 18-03-2013.

7. The assesse in this appeal has challenged the re-opening of the assessment U/s 147 of the Act. The assesse had filed its return of total income on 30.10.2005 declaring total loss of Rs 6,65,769/-. The said return was accepted summarily by the department as filed by the assesse. The assessing officer issued notice U/s 148 of the Act on 29-03-2012. The assessee vide his letter dt 08-04-2012 has requested to treat the return as originally filed on 30-10-2005 vide Ack no 0025107068 in response to the notice as issued u/s 148 of the Act. Since, copy of the said letter was not acknowledged. Hence, same copy of the letter was acknowledged on 16-08-2012. That assesse vide its letter dt 09-04-2012 requested to provide the copy of reasons as recorded for re-opening of the case which was not provided to the assesse. Hence, the assesse vide its letter dated 16-08-2012 has again requested to provide the copy of reason recorded for re-opening of the completed assessment. The assessing officer has provided the reasons as recorded for re-opening of the assessment, which reads as under :-

"The assessee filed its return on 30-10-2005 declaring loss of Rs 6,65,769/- and claiming carry forward the same for set off in next year's. This loss includes Rs 6,65,769/- for depreciation on building, which was rented to M/s Jasleen Education Service Society, without consideration. The assessee has claimed depreciation, which is not allowable as the building has not been utilized for the business purpose of the assessee. Further the assessee has also not declared income from house property, income of which is taxable under the head of house properties, however no income has been declared by the assessee.

In view of the above facts, I have reason to believe that income chargeable to tax more than Rs 2,00,000/- has escaped assessment in term of explanation 2 of section 147 of the Income Tax Act. Accordingly, notice under section 148 of Income Tax Act, 1961 is to be issued. Therefore necessary approval may kindly be accorded. "

That on the basis of reason for re-opening of the assessment as communicated to the assessee. The completed assessment was re-opened for the following reasons:-

(a) Depreciation on the building which was rented to M/s Jasleen Education Service Society was claimed by the assessee.

(b) Depreciation on building was claimed even when no rent was charged for the said building.

(c) Depreciation is not allowable. Since, the building is not used for the purpose of business of the assessee.

(d) The assessee has not declared any income under the head of Income from House Property even when rental income requires to be taxed under this head.

8. The ld. Authorized Representative of the assessee has filed detailed written submissions relying upon the various judicial pronouncements, which are mentioned as under :-

(i) CIT vs. Kelvinator of India Limited, 320 ITR 561 ( S. C. ).

(ii) Shah Unmesh Indravadan vs. ITO, 6 DTR 318. (Ahm. I.T.A.T. )

(iii) K. G. Hotel (P) Ltd vs. ACIT, 113 ITR 99 (I.T.A.T. Agra Bench)

(iv) CIT vs. Orient Craft Limited, I.T.A.No. 555/2012 dated 12.12.2012 (Del)

(v) A.N.Lakshman Shenoy v. ITO,(1958) 34 ITR 275 (S.C.)

(vi) Sheo Nath Singh vs. AAC, (1971) 82 ITR 147 ( S. C.).

(vii) CIT vs. Sheri Atul Kumar Swami, 362 ITR 693 (Del)

(viii) Tara Chand Jain, I.T.A.No. 2282/Kol/2014 ( I.T.A.T. Kol.)

(ix) Gas & Power Investment Co., (Appeal No. I.T.A.No. 1118/Mum/2014 dated 5.2.2016 ( I.T.A.T. Mum.)

9. The ld. Authorized Representative of the assessee further contended that the above reasons were recorded by the AO on the basis of Balance Sheet of the assessee and no new tangible material came into the notice of the AO as to justify the reopening of the completed assessment. The ld. CIT(A) was not right in approving the re-opening of the assessment even when it is proved that the same was reopened in absence of any new material in possession of the AO. The assessment as re-

,opened is, therefore, not valid and the same now requires to be quashed as invalid.

10. On the other hand the ld. Departmental Representative supported the orders of the lower authorities.

11. We have considered the facts, rival submissions and perused the material available on record. We have also perused the case laws relied upon by the ld. Authorized Representative of the assessee. We find that the assessee has challenged the re-opening of the assessment by issuing notice U/s 148 of the Act. The main ground of dispute was that no fresh material came into the notice of the assessee. The assessee has disclosed entire facts with the return of total income and in its audited final account. The case for this year was re-opened on the basis of finding as noted by the CIT while passing the assessment order U/s 263 in the Assessment Year 2007-08. The assessee has leased out the building to M/s Jasleen Educational Service Society was not properly disclosed in the return of total income and also not reflected in the audited final account. Hence, the prima facie

the AO has reason to believe for issuance of the notice U/s 148 of the Act. Further the assessee has also not challenged the order u/s 263 for assessment year 2007-08 passed by the CIT by setting-aside the assessment. This means that there was valid reason and fresh material available with the AO to reopen the assessment. Thus, the ground no 1 of this appeal challenging the issuance of the notice U/s 148 of the Act has no force and this ground of appeal is rejected.

12. Ground nos. 2.1, 2.2, 2.3 & 2.4 for assessment years 2005-06, 2006-07 and ground nos. 1.1 to 1.4 for assessment year 2007-08 and Ground nos. 2.1 to 2.4 for assessment year 2008-09 to 2010-11 relate to maintaining notional addition on account of house property income of Rs. 19,83,732/- & Rs. 20,53,990/-, Rs. 21,44,910/-, Rs. 22,77,160/-, Rs. 24,05,275/- and Rs. 26,11,915/- respectively. However, the facts and figures relating to assessment year 2005-06 are discussed only, as facts are identical for all assessment years.

13. Ground no. 3 for assessment year 2005-06, 2006-07 and Ground no.2 for assessment year 2007-08 and ground no. 3

for assessment year 2008-09 to 2010-11 relate to not allowing deduction of interest out of notional income from house property. These grounds relate to assessing the income from house property, hence, the same are being considered together.

14. The assessee in the present grounds of appeal have challenged the taxability of income under the head "Income from House property" on notional basis. The assessee company is running coaching classes in its building and the said building constructed on its leasehold plot was also used by Jasleen Educational Service Society for running of school in the name of Auckland Academy. That in the year under consideration coaching income was very less but in last three to four years, the assessee company earned substantial amount on account of coaching income. It is also not correct to say that the said building is not used for the purpose of business of the assessee. In this respect, it is clarified that the leasing out of the building to M/s Jasleen Educational Service Society is the business of the assessee. Copy of Memorandum & Articles of Association of the company is

enclosed. The said building is also used for the running of the school AUCKLAND ACADEMY, one of the schools run by the society. In addition to the letting out of the property for running of school, the assessee was also using the said property for running of its professional coaching classes till the Assessment Year 2007-08. On perusal of the Audited final account, it was found that the assessee was having coaching income till the Asst Year 2007-08, but in turn no separate rent was paid for it. Thus, the said building was also used by the assessee for running of its coaching classes. In view of the above, when the building constructed by the assessee which is on the lease hold land owned by the Individual family members of Luthra and building was used by the assessee for the purpose of its professional coaching classes till the Asst Year 2007-08 and also leasing out the constructed building to M/s Jasleen Educational Service Society for running of its school in the name of AUCKLAND ACADEMY. The assessee had not charged rental income from the society and in turn also not paid interest on the amount of loan taken from that society for construction of the building. Thus, the assessing officer was not

justified in notionally taxing the property income u/s 23 of the Act. Moreso, when the provision of section 22 to 27 is not applicable in the case of the assessee. The assessee company was not the owner of land but Individual family members of the Luthra family was the actual owners of the land and the assessee company has taken land on lease from the Individual family members. The said land was taken on lease with annual lease rent of Rs 1000/- per annum and lease premium of Rs 40000/-.

15. The Ld CIT[A] observed that there was no provision in the Income Tax Act for set-off of rental income against the interest liability. The Ld CIT[A] while deciding the appeal of the assessee referred the order as passed in the case of the above assessee for the Asst Year 2007-08 wherein in Paras 3.3 to 3.5 of the order and confirmed the addition of Rs. 21,44,910/- for assessment year 2007-08 and accordingly, addition of Rs. 19,83,732/- for assessment year 2005-06 was confirmed.

16. The Ld CIT[A] in his order has observed the following facts while deciding the appeal as filed by the assessee:-

[i] the building was let-out to M/s Jasleen Educational Service Society, an associate concern of the appellant.

[ii] that no rent was charged for this premises from the Asst year 2005-06.

[iii] the substantial funds were made available for construction of the building by M/s Jasleen Educational Service Society to the assessee.

[iv] that no interest was charged by M/s Jasleen Education Service Society from the assessee.

17. The ld. Authorized Representative of the assessee further contended that Hon'ble Mumbai bench of ITAT in the case of Sonata Information Technology vs. Assessee [ Appeal No 1507 of 2012 dt 05-07-2012 ] had an occasion to discussed the issue of commercial expediency, in para 5 of the order, Hon'ble Bench has stated that :-

> *" _________Assessee relied judicial decisions to highlight that commercial expediency means anything that serves to promote and includes every means suitable to that end and expenditure which a prudent man may incur for the purpose of business. The decisions rendered in the following cases were referred to for the above proposition viz., Indian Steel & Wire Products Ltd. v. CIT (1968) 69 ITR 379 & Calcutta Landing & Shipping Co. Ltd. v. CIT*

*(1967) 65 ITR 1, Calcutta. It was argued that it was the prerogative of the businessman how to run the business and it is not upon the Revenue to prescribe what expenditure an assessee should incur and in what circumstances it should incur. It was reiterated that every businessman knows his interest best - CIT v. Dhanrajgirji Raja Narasinghirji (1973) 91 ITR 544 (SC). The decision of the Hon'ble Supreme Court in the case of CIT vs. Walchand & Co. (1967) 65 ITR 381 (SC) was referred to and it was submitted that in applying the test of commercial expediency whether the expenditure was wholly and exclusively laid out for the purpose of business, reasonableness of the expenditure has to be judged from the point of view of the business man and not of the revenue. The Hon'ble Bombay High Court's decision in the case of Aruna Mills (31 ITR 153) was also referred to wherein it was held as follows:*

*"Now, we have had occasion to point out in several decisions that what the Income-tax purports to tax is business profits, and business profits are the true profits of a business as ascertained according to commercial principles. There may be an expenditure or there may be a loss which may not be an admissible loss under any of the provisions of section 10(2) (corresponding to section 29 of the 1961 Act) and yet such an expenditure or loss would have to be allowed in order to determine what were the true profits of a business, and it is the duty of everyone who has anything to do with taxing business- people to understand what are the principles of commercial expediency. Unless one understands these ITA No.1507 of 2012 Sonata Information Technology Ltd Mumbai E Bench principles it is difficult to make a proper assessment on a business or on a businessman."*

18. In the present case the assessee has taken a prudent decision for neither taking rent from M/s Jasleen Education

Service Society nor paid interest on the amount of loan taken from the society. The dispute the AO can raise was only in respect of the quantum of amount but not the deal as done by the assessee. The assessee in this case has decided not to charge rental income in lieu of interest due on loan amount. Here, the quantum of interest and rental income are same. Since, this is a better deal by the assessee with M/s Jasleen Educational Society. The amount of rent was ascertained equivalent to the interest on loan. The Ld CIT[A] while deciding the appeal as filed for the Asst Year 2007-08 has discussed the effect when revenue is effected:-

| M/s Sheetu Educational Services P Ltd | | | | M/s Jasleen Education Service Society | | | |
|---|---|---|---|---|---|---|---|
| To Interest Paid | NIL | Rental Income | NIL | To Rent Paid | NIL | By Interest Income | NIL |
| | NIL | | NIL | | NIL | | NIL |

19. The ld. Authorized Representative of the assessee further contended that if we take an example that the said building was let out by the assessee to some other concerns and at the same time loan was also taken from some other persons. In that case the situation would be as under, in this calculation we have

considered the figure as taken by the AO in his order, though the same was disputed by us in the appeal in coming grounds:-

| M/s Sheetu Educational Services P Ltd | | | | M/s Jasleen Education Service Society | | | |
|---|---|---|---|---|---|---|---|
| To Interest Paid | 1983732 | By Rental Income | 1983732 | To Rent Paid | 1983732 | By Interest Income | 1983732 |
| | 1983732 | | 1983732 | | 1983732 | | 1983732 |

20. That in view of the above calculation the assessee had neither charged rental income nor paid interest. Hence, effectively there was no escapement of income. That in case of M/s Jasleen Education Service Society, the said society has neither paid rent for the building nor charged interest income. Hence, effectively there was no escapement of income. If the assessee has taken loans from outside parties, in that case, the assessee was liable to pay interest income and at the same time also earned rental income from M/s Jasleen Educational Service Society or any other parties. Hence, effective income in that case was also zero. If M/s Jasleen Education Service Society advanced amount to any other parties, in that case, the said society earned interest income

on the amount as advanced by it but at the same time the said society was also liable to pay rent on the building taken for the purpose of its school. Hence, effectively there was no change in the income as declared by the society. The Ld CIT[A] while deciding the appeal of the assessee referred the order as passed in the case of the above assessee for the Asst Year 2007-08 wherein in Paras 3.3 to 3.5 of the order, all aspect has been considered. The Ld CIT[A] was of the opinion that if interest was not charged by M/s Jasleen Educational Society, in that case, there was no income in the hand of the Jasleen Educational Society and at the same time there was no expenses in the case of the assessee. However, rental income remain to be taxed in the hand of the assessee but the Ld CIT[A] totally ignored that what about rent paid by the society to the assessee company. Similar to the setting off of interest, the amount of rent has also be set- off with each other. Hence, even following the principle of the Ld CIT[A] himself in that case also there was no income in the hand of the assessee company. In view of the above, the ld. Authorized

Representative of the assessee contended that as per view taken by the ld. CIT(A) in the case of the assessee as taken in the Asst year 2007-08, it was urged upon us to consider the same and delete the either notional taxability or allowed set-off of interest against the notional taxability of income.

21. The facts in the present case are the assessee has taken Land admeasuring 1.5 Acres on lease from Individual family members of the Luthra's family on lease through registered lease deed dt 24-08-1999 at a onetime premium of Rs 40000/- and annual lease rent of Rs 1000/-. The said land was demarcated for Educational purposes by Joint director of the Town & Country Planning vide its letter No 288/Ind dt 20-01-1999. Copy of the said lease deed was filed. As per the lease deed so executed the said land can be used for Educational purposes. The lessee has right to sub-lease the said land but for educational purposes. From the lease deed it is clear that the said land was not sold by the Luthra family to the assessee but right to use was transferred to the assessee. The ownership of the land is still with the Luthra family. As per the term of lease deed, the assessee can construct a

building on the said land. However, as per terms of the lease deed, the said land can be used for the purpose of education only. That in the present case, the assessee has constructed a building admeasuring 18570 Sq Fts. Breakup of the same is as under:-

| S.No | Particulars | Area |
|---|---|---|
| 1 | Total land area | 1.5 Acres |
| 2 | Constructed Area | |
| [i] | Ground Floor Area | 8060 Sq Fts |
| [ii] | First Floor Area | 8060 Sq Fts |
| [iii] | Auditorium Area | 1500 Sq Fts |
| [iv] | Generator Room | 250 Sq Fts |
| [v] | Library / Reading room | 700 Sq Fts |
| | Total constructed area | 18570 Sq Fts |

22. That from the Balance sheet it is clear that almost entire amount towards construction were contributed by M/s Jasleen Educational Service Society to whom said building was leased out by the assessee for running of the school viz AUCKLAND ACADEMY. The object of the assessee was to earn profit from taken the said land on lease and again sub-lease. However, in absence of the finance, the assessee bound to enter into an

understanding with JASLEEN EDUCAIONAL SERVICE SOCIETY for construction of the building on the said land and therefore entire amount towards construction were contributed by Jasleen Educational Service Society and in turn, both the parties of the agreement has agreed that no rent was charged by the assessee and in turn no interest is to be paid on the amount of deposit. The ld. Authorized Representative of the assessee also filed copy of the said agreement placed at page nos. 78 to 80 of paper book. In the present case, the assessee has taken land on lease from Individual family member of the Luthra's family. The annual lease rent as paid by the assessee was of Rs 1000/- P.A. The building was constructed by the assessee from the amount as received from the society. Hence, the school building was constructed with the finance of M/s Jasleen Educational Service Society. Prior to the said construction, the land of the assessee is simply a vacant land which is not taxable u/s 23 of the Income Tax Act. Thus, in the present case, if no rent was actually received by the assessee company in that case, the amount of lease rent as paid by the assessee of Rs 1000/- P.A to the Individual family member of the

Luthra family can only be disallowed but in no case, the same is taxable u/s 23 of the Income Tax Act. The assessee also used its building premises for running of the coaching classes. The assessee had claimed depreciation on the building which was used by it for the purpose of its business and also leased out as per term agreed by the assessee company with AUCKLAND ACADEMY. Thus, there is no reason for taxing the notional income by invoking the provision of section 23 of the Income Tax Act. The assessee has leased out the said building for long term used by AUCKLAND ACADEMY and therefore ownership of the land belonging to Luthra family and ownership on right to use with AUCKLAND ACADEMY. Since, entire amount for construction was contributed by AUCKLAND ACADEMY. The assessing officer was grossly erred in notionally taxing the rental income in the hand of the assessee.

As per Provision of section 27[iiib] of the Act, if a person who acquire any rights [excluding any rights by way of a lease from month to month or for a period not exceeding one year] in or with respect to any building or part thereof, by virtue of any such

transactions as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof. That in the present case in hand also, the building as constructed on the lease hold plot was leased out to AUCKLAND ACADEMY for long term period and not on month to month lease. The assessee has taken land on lease for 99 years and the same was also leased out for long term purpose. Hence, as per provision of section 27[iiib] of the Act, deemed ownership of the building transferred to AUCKLAND ACADEMY. Hence, there was no reason for taxing the notional rent in the hand of the assess. The ld. Authorized Representative of the assessee relied upon the decision of Hon'ble Delhi High court in the case of CIT vs. C.J. International Hotels Ltd as reported in 197 Taxman 230/ 53 DTR 92 , wherein the similar issue has been discussed in detail. Hence, the Assessing officer was not justified in notionally adding an amount of Rs 19,83,732/- to the income of the assessee under the head of Income from House Property in light of detailed discussion in para 2.6 to 2.9 of this letter.

23. The ld. Departmental Representative relied upon the orders of the lower authorities.

24. We have heard the rival submissions of both the parties and have perused the material available on record. We find that the assessee has land admeasuring 1.5 Acres on lease through registered lease deed dtd. 24.08.1999 from individual members of Luthra family. As per the lease deed the land so given under lease can be used only for the educational purposes . It is also clear from lease deed that the said land ownership was not transferred but right to use only was transferred. The assessee has received advance from Jasleen Educational Service Society which was utilized for construction of school building thereon. The assessee has given the said building to Jasleen Educational Service Society for running school in name of Auckland Academy. The assessee had entered in to an deed of sublease dtd. 28.08.1999 as appearing at page No 164 to 170 of Paper Book for the period of 30 years . the assessee further entered in to an deed of agreement dtd. 31.03.2000 appearing at page No 171 - 172 of Paper Book according to which the assessee has agreed with Jasleen

Educational Service Society being tenant of said school building that tenant has deposited with the owner an amount of security deposit on which interest shall not be charged by Jasleen Educational Service Society and in turn the owner i.e. M/s. Sheetu Educational Service Pvt. Ltd. shall not charge rent on said building. Thus, as per mutual understanding of both parties of agreement there can be no income on account of rent receipts or any payment of interest on account of advances/ deposits received from Jasleen Educational Service Society. The Ld. CIT (A) had considered this aspect and viewed that rental income if any would be set-off against the interest payable to Jasleen Educational Service Society on advances. Thus, effectively there is no escapement of income. However, CIT(A) did not allow the set-off of interest against rental income by saying that there is no provision of deduction of interest against rental income.

25. We further find that the assessee had leased out the said building to Jasleen Educational Service Society for 30 years for running thereon as school. Therefore, this amounts to deemed transfer of ownership of building to Jasleen Educational Service

Society appear provision of Section 27(iib) of the Act which reads as under:-27. "Owner of the house property", "annual charge", etc., defined.- For the purposes of sections 22 to 26--

"** ** **

(iiib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner."

26. For the purposes of Section 27 (iiib), it is necessary to understand the definitions of "immovable property" and "transfer" in Section 269UA (d) and (f), which read as under :-

'296UA.** ** **

(2)(d) "immovable property" means-(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation. --For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein ;

(*ii*) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building ;

(*f*) "transfer"-

(*i*) in relation to any immovable property referred to in sub-clause(i) of clause (d), means transfer of such

property by way of sale or exchange or lease for a term of not less than twelve years, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882).

Explanation. --For the purposes of this sub-clause, a lease which provides for the extension of the term thereof by a further term or terms shall be deemed to be a lease for a term of not less than twelve years, if the aggregate of the term for which such lease is to be granted and the further term or terms for which it can be so extended is not less than twelve years ;

(*ii*) in relation to any immovable property of the nature referred to in sub-clause (ii) of clause (d), means the doing of anything (whether by way of admitting as a member of or by way of transfer of shares in a co-operative society or company or other

association of persons or by way of any agreement or arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, such property.'

27. Thus, Sub clause (i) of Section 269UA(f) makes inter alia transaction of lease for a term of not less than twelve years, a transfer in relation to the immovable property referred to in sub-clause (i) of clause (d). The explanation appended to sub-clause (i) of Section 269UA (f) clarifies that a lease which provide for the extension of term by a further term or terms shall be deemed to be a lease if the aggregate of the term for which such lease is to be granted and the further term or terms is not less than twelve years. The essential condition, therefore, for a transfer of an immovable property referred to in clause (d)(i) of Section 269UA is that lease must be for a term of not less than twelve years. For computing twelve years, it is not necessary that initial term of lease must be less of twelve years, but if the lease provides for extension of lease and such lease has been extended by a further term or terms

and the aggregate of such term is not less than twelve years, it is deemed to be a transfer of immovable property and such transferee is deemed to be owner of such immovable property under Section 27(iiib) of the Income Tax Act.

28. In the light of above provision we find that the ownership over the building was deemed to have been transferred u/s 27(iiib) to Jasleen Educational Service Society as the assessee has let out the school building exceeding more than 12 years of lease as per sublease deed dtd. 28.08.1999 page No 164 to 170 of Paper Book and subsequent deed dated 31.03.2000. Therefore, the is no question of any notional income in the hands of the assessee on account of income from house property under as per provision of Section 27(iiib) of the Act . The Ld. A.R. has relied in the case of Nahalchand Laloochand (P) Ltd. vs. ACIT, Mumbai[2014] 52 taxmann.com 1567(SC)/ [2015] 228 Taxman 1(SC) wherein it was held that *the essential condition, for a transfer of an immovable property referred to in clause (d)(i) of section 269UA is that lease must be for a term of not less than twelve years. For computing twelve*

*years, it is not necessary that initial term of lease must be less of twelve years. but if the lease provides for extension of lease and such lease has been extended by a further term or terms and the aggregate of such term is not less than twelve years, it is deemed to be a transfer of immovable property and such transferee is deemed to be owner of such immovable property under section 27(iiib) of the Income tax Act. [Para 3]* In the present case the assessee has rented out the said building for 30 years of lease, hence, facts of this decision is squarely covered.

29. We also find support from decision of Hon`ble Delhi High Court in the case of CIT vs. ***C.J. International Hotels Ltd.*** [2011] 197 TAXMAN 230 (Delhi) wherein it was held as under :-

> ***"4.*** *With the consent of the learned counsel for the parties, we have heard the matter finally at this stage itself. The facts in brief leading to the aforesaid question of law may be recapitulated first. The assessee-company is running a five star hotel known as Hotel Le-Meridian*

*Windsor Place, New Delhi. The lawn on which the hotel is constructed belongs to NDMC and NDMC has executed a license deed in favour of the assessee granting licence for a period of 99 years for the running of the aforesaid hotel. After taking the said lawn on licence on the terms executed in the licence deed, the assessee had constructed the said hotel. Adjacent to the hotel, there is another building constructed on this very lawn, which is known as West Tower. This building is located in the same compound in which the Hotel building is located. Admittedly, this building is not used for hotel business of the assessee, but the apartments of this building were given on sub-licence basis to different parties for carrying on business as specified on the sub-licence agreements. The licence agreement which was entered into between the assessee and the NDMC permits the assessee to sub-licence the portion of the premises. It is on the basis of this authorization given in the licence deed that the assessee has sub-licenced offices and apartments in the West*

*Tower to the various parties. The sub-licences given to these parties are for a period of 9 years and 11 months, which is renewable at the request for the sub-licensees. The assessee is not charging any rent lease or licence fee from these parties instead, the assessee has received interest free security deposits in the year of original sub-licence, which receipt was shown by the assessee-company as unsecured loan in its balance sheet. The sub-licence deeds, which are executed by the assessee with the sub-licensees also permit the sub-licensees to transfer the same to any other person on payment of transfer charges to the assessee-company. Thus, the sub-licensee is entitled to transfer the said sub-licence to third party as well. However, at the time of transfer of the said sub-licence, certain transfer charges are payable to the assessee-company. It is not in dispute that whenever these transfer charges are received by the assessee on transfer of sub-licence by the sub-licensee in favour of the*

*third party, the assessee is showing these transfer charges as its income and is offering the same for tax.*

***5.*** *The Assessing Officer (AO) found that almost all the sub-licensees had transferred their sub-licenses and various other persons were, thus, occupying these premises. Those persons have entered into the agreement with the sub-licensees as per which they were paying rents to the sub-licensees. It is also an admitted fact that the rents/licence fees received by the sub-licensees on these transfers to the occupiers has been shown as rental income and taxed at the hands of sub-licensees under the head 'income from house property'.*

***6.*** *The Assessing Officer, however, asked the assessee to explain why property known as West Tower be not fixed on its annual letting value as per which section 23 of the Income-tax Act (hereinafter referred to as 'the Act'). To put it otherwise, the Assessing Officer wanted to fix annual letting value in respect of the said West Tower sub-licensed by the assessee by fixing its notional value and*

*charging the tax thereupon under the head 'income from house property'. It is for this reason that the aforesaid show- cause notice was issued. The assessee in reply to the said notice raised various objections to the aforesaid proposed move of the Assessing Officer. Some of these objections included:*

*(a)The assessee was only a licensee in respect of the aforesaid premises and the actual owner was NDMC. Thus, the assessee was not the 'owner' of the premises. Therefore, provisions of section 23 of the Act are not applicable.*

*(b)It was also highlighted that in the previous years, the aforesaid arrangement as disclosed by the assessee was accepted by the Assessing Officer and therefore, on the principle of consistency, such a move on the part of the Assessing Officer in fixing the annual letting value of the West Tower, when no actual rent/ licence fee was received by the assessee, was not proper.*

*(c)The assessee had entered into sub-licence deeds in respect of those portions and it could not be deemed as 'letting' of the property and for this reason also provisions of section 22 of the Act would not be applicable, as the assessee continued to be in the legal occupation and possession.*

*(d)The use of the premises by the sub-licensees was to assist the assessee-company in getting hotel accommodation booked for the guests, delegates of the sub-licensees, apart from the increase in catering and restaurants' activities used by the sub-licensees. Therefore, the use of certain portion by the sub-licensees was not for the purpose of or for the benefit of the business of the assessee-company.*

***7.*** *The Assessing Officer, however, did not accept the aforesaid explanation furnished by the assessee. He was of the view that the license agreement with the NDMC was for a period of 99 years with the right of constructing and developing the property which*

*makes the assessee-company owner of the property. He also opined that the assessee-company had sub-licensed the offices and apartments to various persons, some of whom had further sub-licensed the same; the assessee was not charging any rent, fees etc. on the sub-licensing of these properties, except interest free security deposits which were taken by the assessee at the time of sub- licence agreement. Therefore, it was proper, in such circumstances, to fix notional annual letting value of the premises and to charge tax thereupon insofar as the assessee is concerned.*

***8.*** *We may also point out that in ITA No. 1254 of 2010, which pertains to the assessment year 1999-2000 originally no such addition was made. However, reassessment proceedings were started by issuance of notice under section 143(2) read with section 147 of the Act and the Tribunal quashed those reassessment proceedings. It is not necessary*

*to go into the question as to whether reassessment proceedings were initiated or not inasmuch as on merit itself we have decided that such an addition was not proper.*

***9.*** *The Assessing Officer thereafter took into consideration the rent/ licence fee, which was paid by the occupiers to the sub-licensees to whom the assessee had sub-licensed the premises. The Assessing Officer on that basis calculated first care fee average and treated the same as annual letting value of the said West Tower and added the same under the head "income from house property".*

***10.*** *The assessee preferred appeal against this order before the CIT(A). In this appeal, the assessee took an additional ground predicated on the provisions of section 27(iii) read with section 269UA(f)( ii) of the Act and submitted that under those provisions, it would be a sub-licensee as deemed owner would be charged to tax in his hands.*

*The CIT(A) considered this argument, which was purely a legal argument based on the interpretation of the aforesaid sections on admitted facts on record, but did not accept the aforesaid pleading. After considering other submissions of the appellant, which were raised before the Assessing Officer, the CIT(A) upheld the order of the Assessing Officer on this ground. In this scenario, the assessee preferred further appeal before the Income-tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). This time, before the Tribunal, the assessee succeeded in its attempt to demonstrate that the assessee could not be liable to pay any such tax fixing letting value on notional basis when, in fact, no such amount of rent/ licence fee was received by the assessee. The Tribunal examined the licence agreement entered into between the NDMC and the assessee on the basis of which it has come to the conclusion that it is the NDMC, which is the "owner of*

*the premises and remains to be the owner of the premises in question". The Tribunal has further accepted the submissions of the assessee that in view of the provisions of section 27(iii) of the Act, it is the sub-licensee who would be "deemed owner" of those premises which the sub-licensees whereof transferred to the present occupiers and those occupiers are paying rent/licence fee to the sub-licensees. On that basis, the Tribunal has set aside the addition made by the Assessing Officer and deleted this component of income holding that the same would not be chargeable to tax.*

***11.*** *This is how the Department has filed the appeals pertaining to different assessment years. As pointed out above, though the issues before the Assessing Officer, CIT(A) as well as the Tribunal were numerous, in these appeals primarily one question of law which is formulated and reproduced above has been pressed by the Department.*

> ***12.*** *For the aforesaid reasons, we are of the view that the approach of the Tribunal in deciding the aforesaid issue is perfectly justified. There is no reason to interfere with the same. We clarify that the assessee would not be entitled to depreciation on this purpose. We, thus, answer the question of law in favour of the assessee and against the Revenue, as a result thereof all these appeals are dismissed.*

30. Since in the present case also the assessee has given the building on lease for more than 12 years hence, deemed ownership has been transferred to Jasleen Educational Service Society, therefore, no notional income under the head of income from house property is chargeable in the case of the assessee. Therefore, respectfully following the above decision, we hold that the AO was not justified in charging of notional rental income in the hands of the assessee on building used for running of schedule by Jasleen Educational Service Society. In the light of above facts and circumstances, the all above grounds of appeal for all the six years are allowed and

ground no. 3 for A.Y. 05-06,06-07, and 08-09 to 10-11 and ground no. 2 for A.Y. 07-08 has become infructuous hence, treated as dismissed.

31. Ground no. 4 for assessment years 2005-06, 2006-07, ground no. 3 for assessment year 2007-08 and ground no. 4 for assessment year 2008-09 to 2010-11 relate to maintaining disallowance of expenses of Rs. 3,35,652/-, Rs. 4,45,470/-, Rs. 4,90,583/-, Rs. 34,640/-, Rs. 4,729/- and Rs. 22,012/- respectively claimed against coaching income.

32. The Ld. Counsel for the assessee contended that in this ground of appeal, the assessee has challenged the disallowance of expenses of Rs 3,35,652/- for assessment year 2005-06. The assessee has shown coaching income of Rs 5,00,000/- and against the coaching income, certain deduction was claimed. The nature of income and expense as claimed by the assessee are as under:-

| **S. No.** | **Particulars** | **2005-06** |
|---|---|---|
| 1 | Coaching & Other Fee received | 5,00,000 |
| 2. | Other Income | - |
| | Total Income | 5,00,000 |

| | | |
|---|---|---|
| 1 | Salaries | 2,89,171 |
| 2 | Office Expenses | 573 |
| 3 | Legal & Professional Charges | 1,200 |
| 4 | Lease Rent | 1,000 |
| 5. | Insurance Charges | 10,242 |
| 6. | Bank Charges | 2,065 |
| 7. | Filing Charges | 600 |
| 8. | Audit fees | 4,000 |
| 9. | Pre-operative exp | 1,308 |
| 10. | Rates & Taxes | 22,993 |
| 11. | Professional Tax | 2,500 |
| 12 | Telephone Exp | - |
| 13. | Conveyance | - |
| 14. | FBT Tax | - |
| | **Total Expenses** | 3,35,652 |
| | **Net Profit/Loss before depreciation** | 1,64,348 |
| 15. | Depreciation | 5,72,905 |
| | **Net Loss after Depreciation** | **-4,08,557** |

33. The total expenses as incurred by the assessee was of Rs 3,35,652/-. The assessee prior to claiming of depreciation of Rs 5,72,905/- earned net income of Rs 1,64,348/-. Thus, it is not correct on the part of the assessing officer to disallow entire amount of expenses as claimed by the assessee even when from

the coaching business, the assessee having net income of Rs 1,64,348/-.From the expenses, it is clear that these expenses having direct nexus with the income as shown by the assessee. Hence, the assessing officer was not justified in accepting the income of the assessee and disallowing entire amount of expenses as claimed by it. From the nature of expenses it is clear that these are incidental to the business of the assessee company. Hence, the same is allowable as business expenditure. The Ld. Counsel for the assessee concluded that the assessing officer was not justified in disallowing the entire amount of expenses as claimed. The disallowance of Rs 3,35,652/- as made by the assessing officer may be deleted in full.

34. The ld. Departmental Representative relied upon the orders of the lower authorities.

35. We have considered the facts, rival submissions and perused the material available on record. We find from the above that since the corresponding income was taxed by the assessing officer and disallowance of expenses as claimed is not justifiable, the disallowance of expenses as made by the assessing officer was not

justifiable. We hereby direct the assessing officer to allow the deduction on account of expenses as claimed by the assessee. Accordingly, the above grounds of appeal for all the assessment years are allowed.

36. Ground no. 5 for assessment year 2005-06 & 2006-07, ground no. 4 for assessment year 2007-08 and ground no. 5 for assessment year 2008-09 to 2010-11 relate to maintaining of disallowance of depreciation of Rs. 5,72,905/-, Rs. 6,22,197/-, Rs. 5,06,445/-, Rs. 5,29,073/-, Rs. 4,93,017/- and Rs. 4,61,523/- respectively.

37. The above grounds of appeal taken by the assessee in all the assessment years pertaining to depreciation on building and other assets like furniture & fixture etc. The ld. Authorized Representative of the assessee did not press the ground relating to depreciation on school buildings, hence, the disallowance of depreciation relating to building is dismissed and depreciation other than building is allowed accordingly. This ground is partly allowed.

38. Ground no. 6 relates to charging of interest u/s 234B for assessment years 2005-06, 2006-07, 2008-09 to 2010-11 and ground no. 5 of assessment year 2007-08.

39. The Ld. Counsel for the assessee contended that in ground No 6, the assessee claimed interest U/s 234B of the Act , which is chargeable as per sub-section [3] of section 234B of the Act. The assessment order in this case was passed U/s 147 r.w.s 143[3] of the Act and therefore interest under this section is chargeable as per sub-section [3] of section 234B of the Act as held by this Bench. The I.T.A.T., Indore Bench in the said case has held as under :-

> *"77. We have considered the rival contentions. In view of decision of Kerala High Court in the case of Lakshmikanthan (supra), we direct the Assessing Officer to recompute the interest u/s 234B which provides that where original assessment completed u/s 143 is revised either u/s 147 or u/s 153A, then interest for non-payment or short payment of advance tax is payable only for the period mentioned*

*in Section 234B(3) which provides for interest from the date of completion of regular assessment u/s 143(1) till the date of completion of reassessment. The Assessing Officer is directed accordingly."*

40. The ld. Authorized Representative of the assessee concluded that the ld. CIT(A) has considered the said ground as consequential in nature. The Hon'ble Bench is requested to direct the AO to charge interest as per sub-Section (3) of Section 234B of the Act.

41. The ld. Departmental Representative agreed to it.

42. We have considered the facts, rival submissions and perused the material available on record. We have also perused the order passed by this Bench. Following the decision of I.T.A.T. Indore Bench, the AO is directed to charge interest u/s 234B of the Income-tax Act, 1961, as per sub-Section (3) on the amount of total income that may be finally assessed.

43. In the result, all the appeals of the assessee for assessment year 2005-06 to 2010-11 are partly allowed as per our

observations recorded above in I.T.A.No. 24/Ind/2015 for all the assessment years.

The order has been pronounced in open court on the 28th February,2017.

| **Sd/-** | **Sd/-** |
|---|---|
| (डी.टी.गरासिया) | (ओ.पी.मीना) |
| न्यायिक सदस्य | लेखा सदस्य |
| **(D.T.GARASIA)** | **(O.P.MEENA)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

दिनांक /**Dated :28th February,2017.**

**CPU***