

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 4931/Del /2014
Assessment Year: 2011-12**

Shri Nitin Johari, 2 nd Floor, 15 Sadhna Enclave, New Delhi. (Appellant)	vs	ACIT, Central Circle-13, New Delhi. (Respondent)
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Appellant by : Shri Rahul Chaurasia, CA
Respondent by: Shri Atiq Ahmad, Sr. DR

**Date of Hearing : 11.09.2017
Date of Pronouncement: 31.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) – 1, New Delhi for assessment year 2011–12, wherein vide order dated 15/06/2014, the assessee's appeal challenging addition on account of notional rental income added under section 23 (4) of the Income Tax Act, 1961 and amounting to Rs. 1,21,968/- was confirmed.

2. The brief facts of the case are that the assessee had filed his return of income declaring a total income of Rs. 60,48,850/-. Subsequently, the case was taken up for scrutiny and during the course of assessment proceedings it was observed that the assessee was owning another residential property situated at Hyderabad. It was observed that the assessee had shown a rental income of Rs. 1,44,000/- from these premises during assessment year 2009 – 10 which had been increased to Rs. 1,58,400/- by the assessing officer and was accepted by the assessee, but for the year under consideration, no rental income had been shown from the said premises. The AO was of the opinion that provisions of section 23 (4) of the Income Tax Act, 1961 were attracted and notional income had to be included in the income of the assessee as if the property was let out. The AO proceeded to estimate the annual rental value at Rs. 1,74,240/- and after allowing the statutory deduction of 30% under section 24 (a), an amount of Rs. 1,21,968/- was added to the total income of the assessee. The assessee preferred an appeal before the Ld. CIT (Appeals) who confirmed the notional adjustment. Now the assessee is in appeal before us and has challenged the confirmation by raising the following grounds of appeal –

“1. That the order dated 05-06-2014 passed u/s 250 of the Income Tax Act, by the Learned Commissioner of Income-Tax (Appeals) I, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assistant Commissioner of Income-tax, Central Circle-13, New Delhi in making an addition of Rs. 1,21,968/- by applying the provisions of section 23(4) of the Income-tax Act, 1961 in respect of the property bearing No. 201, 2nd Floor, Regency Squire Apartments, 1-5-76, Street No. 8/26 Habsiguda, Upal Municipality and Mundal Hyderabad.”

3. The Ld. authorised representative submitted that while it was undisputed that the assessee was owning the impugned property during the year under consideration, it was also a fact that the said property was lying vacant during the previous year relevant to the year under appeal and no benefit was derived therefrom. It was submitted that in absence of any real income to the assessee, there was no cause for imputing any notional rental income there from. It was submitted that “income” means “real income” and not fictional income. It was also submitted that the assessee was contemplating sale of this property and, therefore, the same was lying vacant so that the same could be sold without any delay. The Ld. authorised representative placed on record a copy of the advertisement published by the assessee in the

Deccan Chronicle, Hyderabad edition on 03/06/2011 to substantiate the claim that the house was indeed lying vacant and steps were being taken for sale of the same.

4. The Ld. Senior Departmental Representative, in response, vehemently argued that the addition on account of notional rental income had been correctly made and submitted that the addition may be upheld.

5. We have heard the rival submissions and have also perused the material on record. The Ld. CIT (Appeals) has discussed the issue in paragraph 4 of the impugned order and has noted that although only real income is to be taxed under the Income Tax Act, there were certain exceptions to this rule and one of the exceptions was taxation of income from house property. The Ld. CIT (Appeals) has noted that income from house property is taxed on the basis of its annual value and if the assessee has only one house property then the annual value of such house property is taken as nil even though it might have been lying vacant. However, the annual value of the second property is to be taxed mandatorily. The Ld. CIT (Appeals) has further noted that since the impugned property at Hyderabad was the second property, the annual value of said property was chargeable to tax

irrespective of the fact whether it was lying vacant or was given on rent. The Ld. authorised representative, although, assailed the adjudication by the Ld. CIT (Appeals), he could not point out any legal infirmity in the reasoning and finding so arrived at by the Ld. CIT (Appeals). In the circumstances we find no reason to interfere with the findings of the lower authorities and dismiss the ground of appeal raised by the assessee.

6. In the final result the appeal of the assessee stands dismissed.

The order is pronounced in the open court on 31st October, 2017.

Sd/-

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st October, 2017

‘GS’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR