

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA Nos.: -6072,6073,6074,6075/Del/2015
A Ys: 2006-07,2007-08,2008-09,2010-11

Sudhir Kumar Mittal (HUF) C/o RRA Taxindia, D-28, South Extension, Part-1, New Delhi 110 049 PAN AABHS1399M	Vs.	ACIT Circle-32(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Somil Aggarwal, Advocate
Department by :	Shri Amit Jain, Sr. DR
Date of Hearing	25/07/2018
Date of pronouncement	25/07/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeals have been filed by the assessee against separate impugned orders of even date, 1.10.2015, passed by Ld. CIT (Appeals)-18, New Delhi for the quantum of assessment u/s 143(3)/147 for the assessment years 2006-07, 2007-08, 2008-09 and 2010-11. Since issues involved in all the appeals are similar arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order of all the years.

2. In various grounds of appeal, assessee has challenged the validity of proceedings u/s 147; and on merits it has challenged the assessment of notional rent while computing the income under the house property u/s 23.

3. Before us the Ld. Counsel for the assessee Dr. Rakesh Gupta, at the outset submitted that the grounds relating to validity of proceedings u/s 147 are not pressed for the reason that on merits this issue stands squarely covered by the decision of Tribunal in assessee's own case for the assessment year 2009-10 and 2011-12. He submitted that the issue of taxing of notional rent had first arisen in the assessment year 2009-10, wherein the AO had enhanced the ALV of the property at E-29, NDSE-II owned by the Assessee (HUF), the part of which was rented to M/s. Supreme Textiles. The AO had enhanced the ALV of Rs. 48 lacs as against the rental income from the assessee of Rs. 15,000/-. The Tribunal in A.Y. 2009-10 had set aside this issue to the file of AO; and in the set aside proceedings the AO after detailed discussion has accepted the actual rent received by the assessee as the correct ALV. Further this issue has arisen in the assessment year 2011-12 also, wherein the Tribunal has allowed this issue in favour of the assessee.

4. On the other hand Ld. DR strongly relied upon the order of the AO and Ld. CIT (A) and submitted that the ALV shown by the assessee is far below the actual market rate and therefore, same has rightly been enhanced by the AO.

5. After considering the rival submissions and on perusal of the relevant finding given in the impugned orders as well as material referred to before us, we find that in all the appeals impugned before us, the reopening u/s 147 has been done on the ground that during the course of assessment proceedings 2009-10 the gross annual rent

received from M/s. Supreme Textiles at Rs. 15,000/- was found not correct and accordingly, the ALV was enhanced by the AO and for that reason the assessee's case was reopened and notices u/s 148 was issued for all these years. The facts in brief are that, the assessee HUF was the owner of the house property at E-29, NDSE-II, New Delhi consisting of 1800 sq. ft. Out of the said area, 800 sq. ft. was rented to M/s. N.B. Footwear Pvt. Ltd. for rent of Rs. 55.20 lakhs per annum; and remaining 1000 sq. ft. was let out to M/s. Supreme Textiles at the rate of RS. 15,000/-. It was observed by the AO that the Karta of Assessee HUF, Shri S.K Mittal alongwith other coparceners were also the partners of M/s. Supreme Textile who was running its business on tenancy basis from the said premises. The AO in A.Y. 2009-10 held that the rent received by the assessee firm M/s. Supreme Textiles was not fair ALV and accordingly ALV was determined @ Rs. 4 lacs per month. In the A.Y. 2009-10, Tribunal vide order dated 8th April, 2015 in ITA No. 1481/Del/2013 has remanded back this issue to the file of the AO to pass a fresh assessment for proper determination of the ALV as this property was under Delhi Rent Control Act. In set aside proceedings, the AO noted that since this property was rented way back in the year 1971 and the rent was fixed in that year and the said property comes under the Delhi Rent Control Act; and therefore, the ALV will be determined as per the Delhi Rent Control Act, hence the rent cannot exceed rent determined under the said Act. Accordingly, AO after relying upon various decisions of Hon'ble High Court accepted that the ALV of the property u/s 23(1) cannot be more than the standard rent if the property is under Rent Control Act. Accordingly, the enhancement of ALV made in the original round was deleted. Again this issue has come up for consideration in the A.Y. 2011-12, wherein the Tribunal has deleted the similar addition after observing and holding as under:-

“7. We have heard both the parties and perused the records, especially the impugned order as well as the decision of the G-Bench, ITAT, New Delhi in assessee’s own case decided on 08.04.2015 passed in ITA No. 1481/Del/2013 (AY 2009-10) wherein the Tribunal has remitted back the issues to AO for re-adjudicate the same and pass a fresh order. We further note that pursuant to the Tribunal’s order dated 08.04.2015, as aforesaid, the AO accepted the taxable income as per appeal effect order dated 29.7.2015 and assessed the income at Rs. 45,39,100/- vide order 16.2.2016 passed u/s. 143(3)/254 of the Income Tax Act, 1961 in assessee’s own case for the assessment year 2009-10. For the sake of clarity, we are reproducing hereunder the relevant paragraphs of the said assessment order dated 16.2.2016 passed by the AO u/s. 143(3)/254 of the Act.

“...However, the assessee HUF is showing the rent received from M/s Supreme Textiles of Rs. 15,000/- as rental income which is more than the standard rent of Rs. 10,060/-. The rental expenditure debited in the P&L A/c of the M/s Supreme Textiles is also Rs. 15,000/- only as seen from the submission of P&L A/c. The income as declared in the income tax return is being taken as the income from the said property.

In the light of the above discussion, facts of the case, the findings after due verification and on applicability of case laws referred above, the taxable income as per appeal effect order u/s. 254/250/143(3) dated 29.7.2015 of Rs. 45,39,104/- (Rounded off Rs. 45,39,100/- was being accepted as assessed income.

Income assessed at Rs. 45,39,100/- Credit of pre-paid taxes /TDS and self assessment tax is being given while computing

the tax liability. Interest as per applicable provisions of section 234A/234B/234C/234D charged and ITNS – 150 issued.”

7.1 After perusing the aforesaid assessment order dated 16.2.2016 relevant to assessment year 2009-10 wherein the similar issues as involved in this appeal were raised and pursuant to the Tribunal’s directions, as aforesaid, the AO has accepted the declared income as assessed income. Therefore, in our considered opinion by following the Rule of consistency, the issues in dispute need to be decided in favour of the assessee and accordingly, the declared income of Rs.63,40,520/- was assessed on the same amount and interest as per applicable provisions of section 234A, 234B, 234C & 234D of the Act shall be charged, if any.”

6. Since similar facts are permeating in this year also, therefore, respectfully following the precedence, we hold that the rent received by the assessee from M/s. Supreme Textile which is under the Delhi Control Rent Act is to be reckoned as the ALV in terms of section 23(1)(a), because the rent cannot exceed more than what has been prescribed under the said Act. Accordingly, the addition made by the AO in all the impugned assessment years is directed to be deleted.

7. In all the years one additional other ground raised by the assessee is that, there is no question of charging rental income the tax u/s 22 as such property is occupied for the purpose of business of the assessee. This ground is dismissed in view of the finding above; because we have already held that the rent income shown by the assessee from property is at ALV.

8. In the result appeals of the assessee are partly allowed.

This decision was pronounced in the Open Court on 25th July, 2018.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 25/ 07 /2018

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi