

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER,**

**ITA No.3414/DEL/2019
[Assessment Year: 2015-16]**

Smt. Asha Burman, 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi	ACIT, Circle-46(1), New Delhi
PAN-AAEPB0966C	
Appellant	Respondent

Appellant by	Shri M.P. Rastogi
Respondent by	Shri Mithun Sethy

Date of Hearing	14/08/2019
Date of Pronouncement	14/08/2019

ORDER

PER T.S. KAPOOR, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of the Ld. CIT(A)-16, New Delhi, dated 19/03/2019.

2. The Ld AR, at the outset submitted that the assessee had let out only 03rd Floor of the building, situated at Kautilya Marg, however, the Assessing Officer took the annual rental value of whole of the building and assessed the income from house property on the basis of ARV of whole of the building. It was submitted that the assessee in the lease deed, due to in advertent mistake, had not mentioned that she had let out only third floor of the building and therefore detailed submissions

were made before the Id. CIT(A) regarding this fact but the Ld.CIT(A) dismissed the appeal of the assessee relying on the lease deed and did not verify the arguments of assessee on the basis of physical verification. Therefore, it was prayed the matter may be set aside to the assessing officer, who should be directed to verify this fact.

3. The Ld DR, On the other hand, submitted that the Ld CIT(A) has considered the arguments of the assessee and has reproduced lease deed in his appellate order. There is no mention of leasing out of 3rd floor, therefore, the appeal of the assessee should be dismissed.

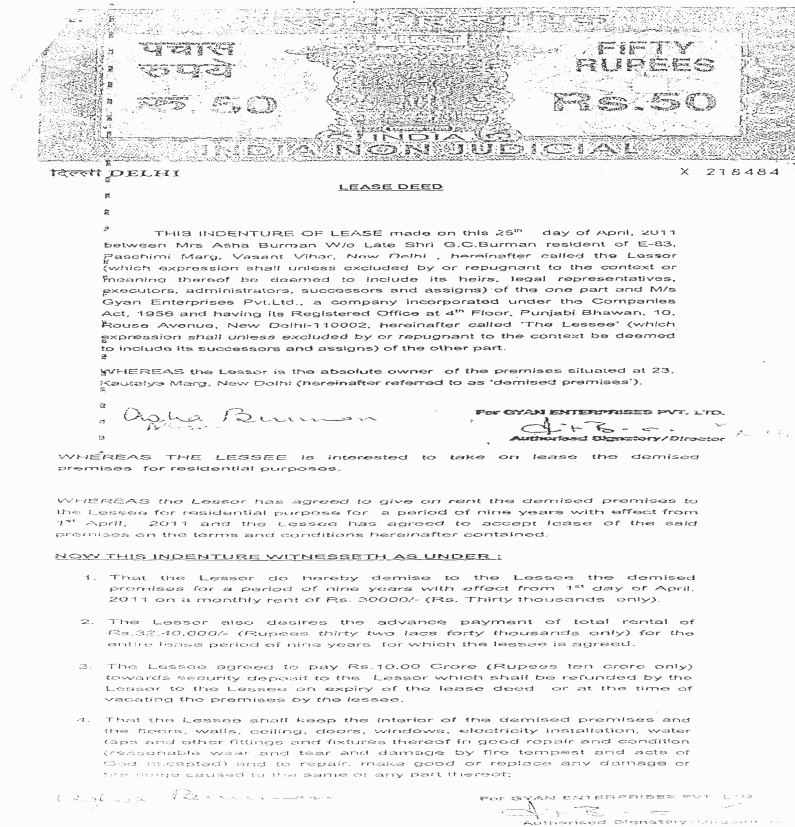
4. We have heard the rival parties and have gone through the material available on record. We find that during the course of assessment proceedings, the Assessing Officer observed that the assessee had leased out her property for a meagre amount of Rs.30,000/- per month and at the same time she had received deposit of Rs.10 crores from the tenant. The Assessing Officer estimated the rent as per the provisions of section 23(1) of the Act and made additions of Rs.1,78,76,700/-.

5. The assessee took the matter before Ld CIT(A) and besides other arguments also took the argument that only a part of building was let out and the remaining part was retained by the assessee for herself. Such submissions of the assessee are reproduced by the Ld CIT(A) at page

13 of his order. However, he dismissed the appeal of the assessee by holding that in the rent deed, there is no mention of leasing out of part of the property and held that entire building has been let out and therefore he dismissed the appeal of the assessee. The relevant portion of the order of the Id. CIT(A) is reproduced hereunder:-

"A perusal of the rejoinder of the appellant was made. The appellant has claimed that the entire property was not let out by the appellant and hence the rental value of Bungalow 19 rented out by Mrs Gujral cannot be the correct yardstick of estimation of the rental property of the appellant. The appellant has claimed that the property constitutes ground + 3 Floors, out of which Ground + 2 floors are retained by the appellant and only the 3rd Floor has been rented out to Gyan enterprises.

To examine the veracity of the claim of the appellant, the lease deed was examined. It is noted that the Lease deed pertains to the entire property situated at 23, Kautilya Marg, New Delhi. There is no clause in the rent deed stating that only a part of the premises have been leased out to Gyan enterprises as claimed by the appellant during appellant proceedings. A scanned copy of the lease deed is reproduced as under to substantiate my aforementioned observation:



5. That the Lessee shall keep the demised premises free from the storage of petrol or any other goods of combustible or explosive nature except goods of such nature as are required for the use of the Lessee and permitted by Law.
6. That the lease deed can be terminated prior to its expiry by either side after giving 3 months notice or paying three months rental in lieu thereof.
7. That the Lessee shall observe and perform all the terms and conditions imposed by the Government, Municipality or any local authority from time to time.
8. That the Lessee shall handover the vacant peaceful possession of the demised premises to the Lessor on the expiry of the terms hereof or sooner determination thereof as herein provided.
9. That the Lessee shall also pay Electricity & Water charges, security charges etc.
10. That the Lessor shall pay all Municipal charges and all other taxes, dues, duties pertaining to the demised premises.
11. The Lessor shall not be responsible for any damage that may happen to the person or property whatsoever of the Lessee, their using the demised premises for the time being by fire, rain, floods, leakage, bursting of water or gas pipes, or electric wires, coating or tubes of other installations in or about the demised premises or by the giving away of any portion or portions of the floorings, walls, roof, ceiling or any other part of the building or from any cause whatsoever.

Asha Burman

For GYAN ENTERPRISES PVT. LTD.

A. B. C.
 Authorised Signatory/Director

12. The Lessor hereby undertake not to do any act or commit any default by which its ownership or the right of occupation of the demised premises may be adversely affected.

13. That in the event of any dispute, the Lease Deed is subject to the exclusive jurisdiction of the courts of Delhi alone.

IN WITNESS WHEREOF, the parties hereto have signed hereunder on the date and place first above-mentioned.

WITNESSES:

A. A. S.
 (ASHA AGARWAL)

Asha Burman
 (Mrs Asha Burman)
 LESSOR

2. *A. B. C.*
 Authorised Signatory/Director

For Gyan Enterprises Pvt. Ltd.
 (LESSEE)

For GYAN ENTERPRISES PVT. LTD.

A. B. C.
 Authorised Signatory/Director

In the light of the detailed discussion above, the clear-cut finding of the AO regarding an existing comparable property in the immediate vicinity, I have no hesitation in holding that the AO had rightly estimated the annual rental value of the property at Rs.1,79,00,000/-. I uphold the addition of Rs.1,78,76,700/- made by the AO on this account."

6. The Ld AR before us, had stated that the assessee inadvertently could not make a mention of the fact of having let out only a part of building, whereas the fact remains that only 3rd floor was let out. He has also mentioned that this fact can be verified by deputing officer of the Department. The Ld CIT(A) has not considered this aspect and has dismissed the appeal relying on the lease deed. Therefore, we remit the

issue back to the Assessing Officer who should readjudicate the issue after physically verifying the contention of the assessee regarding having let out only a part of building. The Assessing Officer is further directed to examine other circumstantial evidences which the assessee may file in support of her contentions and only then he should decide as per law. Needless to say that the assessee will be provided sufficient opportunity of being heard.

7. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14/08/2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER
Delhi; Dated: 14/08/2019.
Shekhar, Sr. P.S

Sd
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi