

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND.**

MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3636/Del/2016
Assessment Year: 2011-12

| | | |
|---|-----|---|
| Padmini Narasimhan C-45, Ground, South Extension-II, Delhi PAN No. AAFPN4103Q (APPELLANT) | Vs. | ACIT Circle – 32 (1) New Delhi (RESPONDENT) |
|---|-----|---|

| | |
|---------------|-------------------------|
| Appellant by | Sh. Rajiv Singh, CA |
| Respondent by | Ms. Ashima Neb, Sr. DR. |

| | |
|------------------------|------------|
| Date of hearing: | 28/08/2019 |
| Date of Pronouncement: | 13/11/2019 |

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 06-04-2016 of the CIT(A)-18, New Delhi relating to A.Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual and derives income from house property, capital gains and other sources. She filed her return of income on 31.03.2012 declaring total income of Rs.40,73,683/-. During the course of assessment proceedings the AO noted that the assessee has shown the following rental income from property at C-45, Ground, South Extension-II, New Delhi.

1. T. Narsimhan (@ Rs.420000/- p.m.)
2. Anirudh Chari (@ Rs.33333/- p.m.)

He further noted that the property at C-45, Ground Floor, South Extension-II, Delhi consists of basement and ground floor where the assessee is owner of 50% share and balance 50% share is owned by the husband of the assessee. Further the assessee has also purchased 50% share owned by her husband on 04.02.2011. He, therefore, asked the assessee to justify the rent received from the above persons at different rates. It was explained by the assessee that the property at C-45, South Extension-II, Delhi has three parts namely basement, ground floor and servant quarter. All parts have separate entry. The ground floor has been let out to Mr. T. Narshimhan where his parents and younger dependent son stay with him. He has been given all the three car parkings and the house is fully furnished having four bed rooms etc. The servant quarter consisting of a single room with toilet has been let out to Mr. Anirudh Chary who was then a bachelor. It was explained that there is huge structural and interior related difference in the ground floor as compared to the servant quarter.

3. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that the assessee lives with her husband with two sons at C-45, South Extension-II, New Delhi. Further while the husband Mr. T. Narshimhan is paying rent @ of 4, 20,000/- per month, however, her son is giving rent only of Rs.33,333/- per month which is not commensurate with the market rent. He, therefore, adopted the fair market rent of the property let out to Mr. Anirudh Chari @ Rs.4,20,000/- per

month. He accordingly determined the total income of the property let out to Mr. Anirudh Chari at Rs. 50,40,000/- for 12 months. After allowing deduction of Rs. 15,12,000/- u/s. 24 of the IT Act, the AO computed the income from house property let out to Mr. Anirudh at Rs. 35,28,000/- which he added to the total income of the assessee.

4. In appeal the Ld. CIT(A) noted that the property was originally purchased by the assessee jointly with her husband each holding 50% shares. The husband of the assessee Mr. T. Narasihman sold his entire share in the property to the assessee on 04.02.2011. Therefore, he held that the entire rental income shown for the period from 01.04.2010 to 03.02.2011 in the hands of the assessee as received from Mr. T. Narasihman is to be treated as “income from other sources” for the impugned assessment year as there is no evidence that it was rented out during that period.

5. So far as the balance period of the year i.e. after the assessee became full owner of the property is concerned, he held that rent in excess of fair rental value which is taken at Rs. 100 per square ft. as per the submission of the assessee is to be treated as income from other sources, since the claim has ostensibly done to claim higher deduction towards maintenance u/s. 24 etc.

6. So far as the enhancement of rental value let out to Mr. Anirudh Chary is concerned, he accepted the contention of the assessee that the rent for 190 square ft has been rented out to Mr. Anirudh Chary for Rs.33,333/- per month is higher than the

market rent of 100 per square ft. and, therefore, there was no basis on the part of the AO to enhance the rent. He, however, held that the rent in excess Rs.100/- per sft. is to be considered as “income from other sources”. Accordingly he directed the AO to re-compute that total income.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the followings grounds :-

1. *The Ld. CIT(A) has erred in law and in facts of the case in not adjudicating the ground regarding of violation of principals of natural justice by the Ld. AO while passing the assessment order u/s. 143 (3).*

2. *The Ld. CIT(A) has erred in law and in facts of the case in treating the rental income as income from other sources in respect of the period 01.04.2010 to 03.02.2011.*

3. *The Ld. CIT(A) has erred in law and facts of the case in directing the assessing officer to treat the rent received from Mr. Anirudh Chari in excess 100 per sq. ft. as income from other sources.*

4. *The Ld. CIT(A) has erred in law and facts of the case in directing the assessing officer to reopen the assessment for A.Y.2010-11 & 2012-13.*

8. The Ld. Counsel for the assessee submitted that assessee was not given proper opportunity by the AO or by the CIT(A) and the CIT(A) has not properly adjudicated the ground raised before him regarding the violation of principles of natural justice by the AO while passing the assessment order. He submitted that when the amount was received by the assessee from her husband and her son as rent and if the CIT(A) holds that the fair rental value is

only Rs. 100 per square ft., then the balance amount cannot be treated as “income from other sources” and the same should have been considered as gift from the husband and son. Alternatively, he submitted that even if such income is charged to income as “income from other sources” than deduction u/s.57 should have been allowed. Further the CIT(A) by directing the AO to reopen the case for A.Y. 2010-11 and 2012-13 has exceeded his powers. He submitted that the Ld. CIT(A) has no power to change the nature of income and cannot shift income from one head to another. He accordingly submitted that the order of the CIT(A) be set aside and the grounds raised by the assessee be allowed.

9. The DR on the other hand heavily relied on the order of the CIT(A).

10. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case had purchased house property situated at C-45, Ground, South Extension-II, New Delhi alongwith her husband on 25.02.2009 for Rs. 2.10 crores + stamp duty and registration expenses. The assessee and her husband holds 50% each in the said property. We find the assessee purchased the share of her husband on 04.02.2011 for the consideration of Rs. 1.05 crores + stamp duty and registration expenses. We find the assessee during the year under consideration has shown rental income from the said property at Rs. 50,40,000/- from her husband and Rs. 4 lacs from her son for the entire year. We find the AO

determined the rental income from Mr. Anirduh Chary at Rs. 50,40,000 per annum and after allowing the deduction u/s. 24 made addition of Rs. 35,28,000/- to the total income of the assessee. We find in appeal the Ld. CIT(A) directed the AO to treat the rental income shown by the assessee for the period from 01.04.2010 to 03.02.2011 in the hands of the assessee received from Mr. T. Narasihman as income from other sources and consider the rent in excess of FRV @ 100 per square ft. for the remaining period as “income from other sources”. Similarly he also directed the AO to treat the rent received from Mr. Anirudh Chary in excess of Rs.100 per sq. ft. as “income from other sources”. It is the argument of the Ld. Counsel for the assessee that the amount received from her husband for the period 01.04.2010 to 03.02.2011 cannot be treated as “income from other sources” and can be treated as gift. Similarly the rent received in excess of Rs.100 per square ft. from her husband for the period from 04.02.2011 to 31.03.2011 and the rent received from her son for the entire year cannot be treated as “income from other sources” and can be treated as gift from the husband and son. It is also his submission that in case a part of the rent is treated as income from other sources, the assessee is entitled to deduction u/s. 57 of the IT Act, 1961. We find this type of argument was neither taken before the AO or CIT(A) nor considered by them. Further it is also one of the ground taken by the assessee that she was not given proper opportunity to substantiate her case and the principle of natural justice have been violated. Considering the totality of the facts of the case and

in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to give one more opportunity to the assessee to substantiate her case and decide the issue as per fact and law. We hold and direct accordingly. The grounds of appeal No.1 to 3 by the assessee are accordingly allowed for statistical purpose.

11. So far as the ground No. 4 is concerned the same relates to the order of the CIT(A) in directing the AO to reopen the assessment for A.Y.2010-11 & 2012-13. A perusal of the order of the CIT(A) shows that he has simply directed the AO that he may reopen the case, if necessary, after examination of the issue for those years. Therefore, the assessee should not have any grievance on this issue. We accordingly dismiss the ground raised by the assessee on this issue.

12. In the result the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 13.11.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 13.11.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

| | |
|--|------------|
| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the approved draft comes to the Sr.PS/PS | 13.11.2019 |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | 13.11.2019 |
| Date on which the fair order comes back to the Sr. PS/ PS | 13.11.2019 |
| Date on which the final order is uploaded on the website of ITAT | 13.11.2019 |
| Date on which the file goes to the Bench Clerk | 13.11.2019 |
| Date on which file goes to the Head Clerk. | |
| The date on which file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |