

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" New Delhi**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.1095/Del/2016
निर्धारणवर्ष/Assessment Year:2011-12**

Girish Kapur 3, Aurangzeb Lane, New Delhi.	बनाम Vs.	JCIT Range-31, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. AEHPK7076D		

निर्धारितीकीओरसे /Assessee by	Sh. Bharat Beriwal, Adv.
राजस्वकीओरसे /Revenue by	Sh. S.N. Meena, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	25.11.2019
उद्घोषणाकीतारीख/Pronouncement on	25.11.2019

आदेश /O R D E R

PER N.K. BILLAIYA, A.M.

1. This appeal filed by the assessee is preferred against the order of the Ld. CIT(Appeals)-18, New Delhi dated 16.12.2015 pertaining to AY 2011-12.
2. The first grievance of the assessee relates to the addition of Rs. 7,83,312/- made by the AO on account of credit card expenses. The second grievance relates to the addition of Rs. 8,92,465/- made by the AO on account of income from house property.

3. The return of income was selected for scrutiny through CASS. In its return of income the assessee has declared income from salary, house property and other sources.

4. There was an AIR Information regarding payment of credit card bills amounting to Rs. 35,96,250/- and Rs. 3,20,308/-. The assessee was asked to explain the source of these payments. In his reply dated 26.12.2013 the assessee explained that payment of Rs. 35,96,454/- and Rs. 3,14,430/- was on account of credit card bills and the payments have been made by the Atlas Cycle (Haryana) Limited on behalf of the assessee since the assessee is a Joint President of the Company. Certificate in this respect was also submitted.

5. The reply along with the certificate were discarded by the AO who was of the opinion that the expenses like lunch, dinner and hotel charges, expensive items purchased through credit card cannot be said to be incurred wholly and exclusively for the business of the Company and there has to be some personal element in these expenses which have been reimbursed by the employer. Accordingly, the AO disallowed 20% of credit card expenses and made addition of Rs. 7,83,312/-.

6. Assessee carried the matter before the Ld. CIT(A) but without any success.

7. Before us, the Counsel for the assessee reiterated what has been stated before the lower authorities. Though the DR strongly supported the findings of the AO but wanted to delay the disposal of the appeal and sought adjournment.

8. We have carefully considered the orders of the authorities below. At the very outset, we have to say that both the lower authorities have not understood the fact in true perspective. The assessee was asked to explain the source of the payments made through credit card. The only thing which the assessee was required was the source of payments and the source has been explained to be Atlas Cycle (Haryana) Limited of which the assessee happens to be a Vice President. The Company has also given a certificate in this respect along with the details of credit card payments which are placed at pages 26 to 29 of the PB. These credit card payments were never claimed as expenditure, therefore, there can never be any personal element. Since, the expenses were never claimed there is no question of any *ad hoc* disallowance. In our considered view, once the source of the credit card payments have been established there should not be any disallowance on this account. The AO is directed to delete the addition of Rs. 7,83,312/-.

9. Proceeding further the AO noticed that the assessee has shown income from house property as under:

i. Flat No. 6-C, Girdhar Apartment Ferozshah
Road, New Delhi

Rs. 46,800/-

- ii. Flat No. SR-31, DLF Qutab Enclave,
Gurgaon, Haryana Rs. 1,08,100/-
- iii. Flat No. R-35, G.K.1, New Delhi Rs. 4,20,000/-

10. The AO was of the opinion that considering the location of the properties the ALV of these properties appeared to be on lower side. The AO admitted that the properties were not let out during the year but was of the firm belief that annual value of the property has to be taxed under the head “income from house property”.

11. In so far as the Flat at DLF, Qutab is concerned the AO found that in the same Qutab Enclave, Flat No. 33 which was let out by a family member of the assessee the rent received was Rs. 4,20,000/-. The AO determined the ALV of the said property at Rs. 4,20,000/-.

12. In respect of the other two properties AO made some enquiries through Inspector of his Office and as a result of such enquiry the AO recomputed the ALV by taking notional rent of both the properties at Rs. 13.52 lakhs and made the addition of Rs. 8,92,465/-. Assessee carried the matter before the Ld. CIT(A) but without any success.

13. Before us, the Counsel for the assessee vehemently stated that since the properties were never let out the Annual Let Out Value (ALV) has to be determined as per the fair rent. It is the say of the Counsel that the enquiries made by the AO were never confronted to the assessee and the AO has violated the principles of natural justice. The Counsel further pointed out that in earlier years and in subsequent year the AO

himself has accepted the ALV shown by the assessee and by not accepting earlier years orders the AO has breached the rule of consistency. Per contra, the DR strongly supported the findings of the lower authorities.

14. We have carefully considered the orders of the authorities below. There is no dispute that the properties were not let out during the year under consideration. It is equally true that what is taxable under the head “income from house property” is the ALV of that property. The assessment is based upon the enquiries made by the AO through Inspector of his Office. There is no denying that such enquiry was never revealed to the assessee and no opportunity was given to the assessee to furnish his reply. In our considered opinion, this amounts to violation of principles of natural justice *audi alteram partem*.

15. In the interest of justice, we restore this issue to the files of the AO. The AO is directed to confront the assessee with the enquiries made by him and give a reasonable and proper opportunity to the assessee. Further the AO is also directed to verify whether in earlier assessment years and in subsequent assessment years the ALV returned by the assessee has been accepted and if found correct then justify by a well reasoned order why he is breaking the rule of consistency, after giving a reasonable and sufficient opportunity of being heard to the assessee.

16. In the result, ground no. 2 is treated as allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is partly allowed.

The order pronounced in the open court on 25.11.2019

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 25th November, 2019
**Kavita Arora, Sr. PS*

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi