

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER**

**I.T.A .No.-2954/Del/2016  
(ASSESSMENT YEAR-2011-12)**

Nahid Finlease P.ltd., 16 <sup>th</sup> Floor, Statesman House, Barakhamba Road, New Delhi-110001. PAN-AABCN5146L <b>(APPELLANT)</b>	Vs	ACIT, Central Circle-19, Jhandewalan Extension, New Delhi-110055. <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Sh.Rohit Garg, CA</b>
<b>Revenue by</b>	<b>Sh.Anil Kumar Sharma, Sr.DR</b>
<b>Date of Hearing</b>	<b>04.10.2016</b>
<b>Date of Pronouncement</b>	<b>07.12.2016</b>

**ORDER**

The present appeal has been filed by the assessee assailing the correctness of the order dated 29.02.2016 of the CIT(A)-30, New Delhi pertaining to 2011-12 on the following grounds:-

1. *"That the Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and in law in upholding the order dated 19.03.2014 passed by the assessing officer under section 143(3) of the Act wherein income of the appellant was assessed at Rs.16,89,734 as against Nil income declared by the appellant in return of income.*
2. *That the C'IT(A)/ assessing officer erred on facts and in law in assessing income from house properly at Rs.16,89,734 with respect to office space owned by the appellant \without appreciating that the same was used by the appellant for business purposes and therefore. not assessable to tax under head 'house property'.*
3. *Without prejudice, the CIT(A) erred on facts and in law in not restricting the value of above house property to 1/3<sup>rd</sup> of the total area, being the area given on lease by the appellant and excluding the remaining 2/3<sup>rd</sup> area inasmuch as the same was utilized by the appellant for own business and profession.  
The appellant craves leave to add, amend, alter or vary from the above grounds of appeal at or before the time of hearing."*

2. The Ld.AR inviting attention to the impugned order submitted that the AO in regard to the very same property considering the fact that the assessee had not carried out any business by an order passed u/s 143(3) dated 28.12.2015 in 2013-14 AY relied upon, the view taken in 2014-15 AY and considering the rent receipt paid by the said tenant M/s Today Hotel Pvt. Ltd. accepted the fair rental value as Rs.13,11,048/ as income from house property. Accordingly, it was his limited prayer that let the issue be restored to the AO to consider the view taken by the AO in the two succeeding consecutive years where full facts

have been thrashed out by the parties as in the year under consideration the facts are sketchy. The Ld.Sr.DR considering the aforesaid order of the AO in 2013-14 AY, had no objection if the issue is considered afresh by the AO.

3. I have heard the rival submissions and perused the material available on record. The facts recorded in the assessment order are that the assessee is the owner of office space number A-1601 & B-1601, 16<sup>th</sup> Floor, Statesman House, Barakhamba road, New Delhi having total super built up area of 5402 sq.ft. The AO required the assessee company to explain why the company had not shown rental income from the property and also show caused the assessee to explain why the fair rental value of the property should not to be taken as deemed rental income from the property and added back to the income of the company.

3.1. The assessee as per its reply dated 18.03.2014 submitted that there was no rental income for the assessment year 2011-12 from the said property as 1/3<sup>rd</sup> of the total space of 5402 sq.ft was used by M/s Today Hotel Pvt.Ltd. and the balance of the space was used by the assessee company for its own business purposes. It was also submitted that the rateable value of the said property as assessed by the New Delhi Municipal Counsel in the last assessment order was Rs.34,02,400/- on the basis of M/s I & E Advertising Private Limited. The said calculation was claimed to be not correct and it was requested that the income for the assessment year under consideration should not be assessed u/s 23 as has been done in the earlier year. For this purpose a copy of property tax bill, challan of property tax paid in the financial year 2010-11 has been filed. The reply of the assessee was considered and found to be not acceptable as not only the assessee was found to have not carried out any business activities in the said place but it was also noted that the entire electricity bills and other maintenance expenses were paid by M/s Today Hotel Pvt. Ltd., New Delhi. The details of the business activities state to be carried out by the assessee were also found to be not available thus it was concluded that the assessee has not carried out any business activities and has not used the premises for its own purposes.

Accordingly, the fair rental value of the said property was taken as Rs. 34,02,400/-. The AO further considered that the assessee was basically a paper company and not actively pursuing any business as it was simply receiving funds from paper/inactive companies of similar nature in the form of share capital or loans and passing it off in the form of share capital or loans and advances. Thus it was held that the assessee did not have any legitimate income.

3.2. The issue travelled in appeal before the CIT(A). The CIT(A) in para 5.4, considering the fact that the assessee had not entered into any Rent Agreement with the tenant M/s Today Hotels Pvt. Ltd. which was a group company of the assessee wherein no rent had been paid by the tenant of the assessee apart from the payment of entire electricity and other payments. Considering the fact that no business activity was carried out by the assessee which finding was not assailed in appeal before the CIT(A), it was held that the entire premises was used by the tenant. Since the submissions made in the assessment proceedings were re-iterated the CIT(A) held that there was no infirmity pointed out in the assessment order. The addition made was sustained.

3.3. In the afore-mentioned peculiar facts and circumstances, it is seen that the Assessing Officer in 2012-13 AY relying upon the order pertaining to 2013-14 AY wherein admittedly rent was received by the assessee amounting to Rs. 10,80,000/- where the limited prayer of the assessee being that facts and findings pertaining to 2012-13 AY may also be considered was not opposed by the Revenue, it was considered appropriate to restore the issue back to the AO with the direction to pass a speaking order in accordance with law. Considering the facts accepted in the immediately subsequent assessment year, it is seen that the Ld.AR has not made a reference to the factual position of 2010-11 AY which has been taken note of by the AO in the year under consideration since at present stage his limited prayer is that the issue be remanded which prayer is not opposed by the Revenue. Accordingly, considering the prayer and the submissions, the impugned order is

set aside and the AO is directed to pass a speaking order after giving the assessee a reasonable opportunity of being heard and addressing the view taken in 2012-13 AY.

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

**The order is pronounced in the open court on 07<sup>th</sup> of December, 2016.**

**Sd/-**

**(DIVA SINGH)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI