

**THE HON'BLE SRI JUSTICE DILIP B.BHOSALE**

**AND**

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**ITTA Nos.264 of 2003; 121 of 2004; 2 of 2005; 370**

**and 390 of 2010**

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**COMMON JUDGMENT:** (per the Hon'ble Sri Justice A.Ramalingeswara Rao)

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Heard Sri Challa Gunaranjan, the learned counsel appearing for assessee and Sri S.R.Ashok, the learned Senior Counsel appearing for Revenue.

2. All these appeals are being disposed of by this common judgment, as the following substantial question of law was raised and argued before us in all the appeals.

“ Whether the Tribunal was justified in holding that the rents received from the sub-leased property ought to be taxed in the hands of the assessee?”

3. ITTA.No.121 of 2004 is filed by the Revenue, whereas the rest of ITTA Nos.264 of 2003, 2 of 2005, 370 and 390 of 2010 were filed by the assessee. In the above appeals, though various substantial questions of law were raised, the learned counsel for the parties confined their arguments to the above substantial question of law only.

**ITTA No.264 of 2003:**

4. In this appeal, the Assessing Officer passed an order on 29.03.2000, assessing fair rental value and including the same in the net taxable income as Rs.5,59,860/-. Accordingly, he computed the tax and interest thereon. Challenging the same, the assessee preferred an appeal before the Deputy

Commissioner of Income Tax, who confirmed the same by his order dated 21.02.2001. Challenging the same, the assessee further preferred an appeal before the Commissioner of Income Tax (Appeals)-VI, who by his order dated 08.01.2002, dismissed the same. Aggrieved by the same, the assessee preferred an appeal before the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad, raising 5 grounds and the Tribunal disposed of ITA.No.645/Hyd/2001 relating to the assessment year 1997-98 along with ITA.No.113/Hyd/2002 relating to the assessment year 1998-99. The Tribunal, by its order dated 11.07.2003, dismissed the appeal for the assessment year 1997-98 and partly allowed the appeal for the assessment year 1998-99. While dismissing the appeal for the assessment year 1997-98, the Tribunal relied on its earlier order dated 18.08.1998 for the assessment years 1990-91 to 1994-95 in ITA.Nos.982 to 986/Hyd/97. In respect of the appeal for the assessment year 1998-99, the Tribunal held that the annual letting value of the property let out to Gopal Babu has to be determined on the basis of municipal valuation and directed the Assessing Officer to determine the annual letting value accordingly. Challenging the said finding insofar as it went against the Revenue, the Revenue filed ITTA.No.121 of 2004.

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**ITTA No.121 of 2004:**

5. This appeal arises out of the assessment order passed by the Assessing Officer on 08.03.2000 for the assessment year 1998-99. Later on, the case was converted into scrutiny and a notice under Section 143 (2) of the Income Tax Act, 1961 (for short, the Act) was issued. Several notices were issued to the assessee, who responded ultimately on 27.01.2001 by urging that the assessment may be computed as per his return of income filed. The assessee submitted a letter dated 06.02.2011 furnishing the details of rents received from Premalatha Agarwal, Sunita Agarwal and Snehalatha Agarwal, totalling to Rs.4,14,000/- and stated that the income cannot be taxed twice simultaneously and for the last more than 25 years the assessments were done and they were upheld. However, the rental value of the property of the said three persons was taken as per the actual rent realised and in respect of Gopal Babu Agarwal, the estimated rent based on the rents received by Smt.Snehalatha Agarwal was taken. The total net taxable income under the head income from house property

was assessed at Rs.6,38,400/- and tax was calculated accordingly. The assessee preferred an appeal to the Commissioner, who upheld the order of the Assessing Officer, by his order dated 08.01.2002. Challenging the same, the assessee filed ITA.No.113/Hyd/2002 before the Tribunal, who disposed of the same along with ITA.No.645/Hyd/2001 relating to the assessment year 1997-98, by its order dated 11.07.2003.

#### **ITTA.No.2 of 2005:**

6. In this case, the Assessing Officer passed an order on 31.03.1999 in respect of the assessment year 1996-97 calculating the gross rental income at Rs.6,50,000/- and after deducting 1/5<sup>th</sup> thereon for repairs, took the total income at Rs.5,20,000/-. The assessee preferred an appeal to the appellate authority and it was dismissed on 19.01.2000 upholding the order of the Assessing Officer to the extent of including the rental income in the total income. Aggrieved by the same, the assessee preferred further appeal before the Tribunal, which, by its order dated 31.08.2004, dismissed the appeal based on the earlier order dated 18.08.1998 for the assessment years 1990-91 to 1994-95 in ITA.Nos.982 to 986/Hyd/97.

#### **ITTA Nos.370 and 390 of 2010:**

7. These appeals arise out of assessment orders passed by the Assessing Officer on 24.03.2003 for the assessment years 1999-00 and 2000-01 respectively assessing the net taxable income under the head of income from house property at Rs.6,05,925/- and Rs.6,32,085/- respectively and calculating interest thereon. Challenging both the assessment orders, the assessee preferred ITA.Nos.132 and 133 respectively before the Commissioner, who by a common order dated 28.04.2004, dismissed both the appeals. The assessee took up the matter to the Tribunal in ITA.Nos.571 and 559/Hyd/2004 respectively and the Tribunal dismissed both the appeals by order dated 08.11.2007 based on the order dated 18.08.1998 passed in ITA.Nos.982 to 986/Hyd/97 relating to the assessment years 1991-92 to 1994-95. Against the order in ITA.No.571 of 2004, the assessee preferred ITTA.No.370 of 2010 for the assessment year 1999-00 and against the order in ITA.No.559 of 2004, the

assessee preferred ITTA.No.390 of 2010 for the assessment year 2000-01.

8. The brief facts of the case are follows:

The assessee, Maneklal Agarwal, was allotted an extent of 7260 square yards of vacant site by the Andhra Pradesh Industrial Investment Corporation in plot No.9/4 at road No.5, Nacharam, Hyderabad. During the period from 1978 to 1987, the assessee constructed four blocks viz., 10,000 sft., of ACC structure, 2 RCC structures of 5,000 sft., each called Blocks A and B and 10,000 sft., of RCC structure called Block C. The assessee claimed that these blocks were leased out to his family members, i.e., 10,000 sft., of ACC structure was leased out to his wife, Smt.Premalata, Blocks A and B in favour of his daughters-in-law, Smt.Snehalata Agarwal and Smt.Sunita Agarwal and Block C in favour of his son Gopalababu Agarwal. Lease deeds were entered agreeing to pay an amount of Rs.500/- each per month. The ACC structure was given on lease in favour of his wife and Blocks A and B were further leased out to sub-tenants and the lessees realised more rent. The details of the rents received by the assessee from his family members and the rent realised by the lessees from sub-tenants are as follows:

Rents received by the assessee from his family members:

| Sl.No | Assessment year | Annual rent received from the family members | Annual rent received from the sub-lessees (As calculated by the Assessing Officer) |
|-------|-----------------|----------------------------------------------|------------------------------------------------------------------------------------|
| 1     | 1996-97         | Rs.38,400/-                                  | Rs.6,50,000/-                                                                      |
| 2     | 1997-98         | Rs.48,000/-                                  | Rs.6,99,820/-                                                                      |
| 3     | 1998-99         | Rs.84,000/-                                  | Rs.7,98,000/-                                                                      |
| 4     | 1999-00         | Rs.84,000/-                                  | Rs.8,43,740/-                                                                      |

The Assessing Officer took the rental income realised from the sub-lessees, and after deducting 1/5<sup>th</sup> for repairs, included the same in the total income of the assessee. In respect of the assessment years 1990-91 to 1994-95, the Tribunal passed an order on 18.08.1998, dismissing the appeals preferred by the assessee holding that there was no evidence to show that the assessee

leased out the properties in an unfinished state and the respective lessees had invested huge amounts to make them fit for letting. It was also held that the leases were not genuine and consequently the assessee is the beneficiary of the rental income realised from the ultimate tenants. Hence, based on the decisions of the Hon'ble Supreme Court, it was held that the income had to be assessed in the hands of the right person and the assessee is the right person for assessing the rental income realised in respect of the four blocks of industrial structures. Accordingly, the entire rent received from the tenants is computed as the income of the assessee from the properties.

9. It may be noted that though the Tribunal confirmed the order of the Commissioner in respect of net taxable income from the house property relating to the assessment year 1998-99 in respect of three lessees except the property leased out to Gopal Babu. But it appears that the assessee has not preferred any appeal against the order in ITA.No.113/H/2002 in so far as it went against those lessees whose rental income was upheld but only the Revenue preferred an appeal in ITTA No.121 of 2004 against the finding recorded in respect of valuation of the rental income from the property leased out to him.

10. In the light of the above facts, the learned counsel for the assessee contended that the Tribunal erred in allowing the calculation of net taxable income from house property based on the income realised by sub-leases of the properties. The learned Senior Counsel for the Revenue, on the other hand, submitted that the learned counsel for the assessee did not argue with regard to the said point before the Tribunal, as the matter was already concluded in ITA.Nos.982 to 986/Hyd/97, dated 18.08.1998, relating to the assessment years 1990-91 to 1994-95. The learned counsel for the assessee, in reply, submitted that though the findings were recorded against the assessee in the above ITAs, due to introduction of Kar Vivad Samadhan Scheme, the demand was settled under the said scheme and they are not precluded from raising the said plea in the subsequent assessment years.

11. The learned Senior Counsel for the Revenue relied upon Section 23 of the

Act, which reads as follows:

**“23. Annual value how determined:**

(1) For the purposes of section 22, the annual value of any property shall be deemed to be-

- a. the sum for which the property might reasonably be expected to let from year to year; or
- b. where the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or
- c. where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

*Explanation.*—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

(2) Where the property consists of a house or part of a house which—

- a. is in the occupation of the owner for the purposes of his own residence; or
- b. cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be nil.

(3) The provisions of sub-section (2) shall not apply if—

- a. the house or part of the house is actually let during the whole or any part of the previous year; or
- b. any other benefit therefrom is derived by the owner.

(4) Where the property referred to in sub-section (2) consists of more than one house—

- a. the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;
- b. the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.”

12. The Tribunal, in its order dated 18.08.1998, elaborately considered the rival contentions and held that the assessee himself constructed the four blocks and the leases in favour of his family members are not genuine, by rejecting the plea taken on behalf of the lessees that they developed the leased property. The said order has become final. Though the demand of tax was satisfied under a scheme introduced by the Government of India, it cannot be said that the findings recorded therein are open for re-agitation. In fact, the Tribunal in the appeals before it, against which the present appeals arose, took into consideration the said order dated 18.08.1998 and passed the orders. The learned counsel for the assessee also did not challenge the said findings nor argued anything with regard to the said point before the Tribunal in view of the earlier order dated 18.08.1998. Hence, it is not open to the assessee to reopen a final finding recorded by the Tribunal in earlier proceedings between the same parties on the same point for the first time before this court. In fact, as already stated above, the assessee did not argue anything with regard to the above point before the Tribunal.

13. However, we have carefully considered and examined whether the contentions raised by the assessee are tenable. The assessee's contention is that the property was leased out to his family members in an unfinished stage and the lessees later on developed the property and sub-let it to the sub-lessees. No evidence was let in before the Tribunal in support of the said contention and hence it was rejected in the order dated 18.08.1998. The Tribunal held that the lessees were only intermediaries introduced by the assessee under the guise of alleged lease deeds for diverting the rental income from the hands of the assessee and the leases are not genuine. In the said order, it was held that as per the decisions of the Hon'ble Supreme Court, the income had to be assessed in the hands of the right person and the assessee is the right person for assessing the rental income realised in respect of four blocks of industrial structures. The Tribunal on the basis of evidence, as a matter of fact, decided that the leases were not genuine and the property was developed by the assessee only. These aspects on facts cannot be upset by this Court while deciding the substantial question of law unless it is perverse. There is no material to show that the findings are perverse. On the basis of

those findings, the only logical consequence would be to assess the income realised from letting out the property to the income of the assessee, he being the right person. This conclusion finds support in view of the following decisions.

14. In **Jamnadas Kanhaiyalal V. Commissioner of Income Tax, M.P., Bhopal**, the Hon'ble Supreme Court held that the Income Tax Officer was entitled to determine whether the amount disclosed was or was not the income of the declarant, while dealing with the case of another assessee under Section 68 of the Act. The Income Tax Officer was not prevented from investigating into the nature and source of sums credited in the books of account of an assessee and reject his explanation to the effect that the sums belonged to the persons who had made declarations about them under Section 24 of the Act. In the said case, the Hon'ble Supreme Court was answering a reference made by the Income Tax Appellate Tribunal, at the instance of the assessee. The assessee therein was a partnership firm and it consisted of 5 partners i.e., the assessee and his 3 major sons and minor son admitted to the benefits of the partnership. In the assessment proceedings for the assessment year 1967-68, the Income Tax Officer noticed in the books of account of the assessee five cash credits of Rs.9,250/- each. The Income Tax Officer called upon the assessee to explain the genuineness as well as the source of the cash credits. The assessee disavowed all knowledge as to the capacity of the creditors to advance the amounts in question. However, he admitted that the creditors had no independent source of income of their own. It was contended before the Income Tax Officer that the creditors having made voluntary disclosures under the Voluntary Disclosure Scheme and the disclosures made by them having been accepted by the Commissioner of Income Tax and tax paid thereon, the amount of Rs.46,250/- (Rs.9,250/- X 5) could not be treated as income of the assessee from undisclosed sources. The Income Tax Officer held that the disclosures made under the Scheme granted immunity from further taxation only to the declarant, and not to person to whom the income actually belonged. He treated it as the assessee's income from undisclosed sources. According to him, such cash credits were treated in their names after making false declarations under the Scheme, with a view to avoid a higher rate of taxation. The Appellate



Assistant Commissioner disagreed with the Income Tax Officer holding that when an amount was disclosed by a person under Section 24 of the Act, there was an immunity not only as regards the declarant, but there was also a finality as to the assessment. The Appellate Tribunal disagreed with the Appellate Assistant Commissioner and upheld the decision of the Income Tax Officer. The assessee applied to the Appellate Tribunal under Section 256 of the Act to refer the question of law arising out of its order to the Madhya Pradesh High Court for its opinion. Since there was a conflict of opinion between different High Courts as to the true nature of the immunity granted under Section 24 of the Act, the Appellate Tribunal made a reference under Section 257 of the Act to the Hon'ble Supreme Court on the following questions of law.

“ 1. Whether on the facts and in the circumstances of the case, it was open to the Revenue authorities to investigate into the genuineness of the five credits aggregating to Rs.46,250/- and records a finding in regard thereto, when the Disclosure petitions made by the five creditors under Section 24 of the Finance (No.2) Act, 1965, had been acted upon by the Revenue authorities?

2. If the answer to the first question is in the negative and in favour of the assessee, whether the addition of Rs.46,250/- to the income of the assessee as representing its income from undisclosed sources, for the assessment years 1967-68, is valid and justified in law?”

15. With regard to the first question, the Hon'ble Supreme Court held as follows:

“ 18. The immunity under Section 24 of the Act was conferred on the declarant only, and there was nothing to preclude an investigation into the true nature and source of the credits. The ITO was, therefore, justified in treating the cash credits in the books of account of the assessee in the names of the creditors as unexplained cash credits. The finality under Sub-section (8) is to the order of the Central Board of Revenue under Sub-section (6). Under Sub-section (4) the Commissioner of Income Tax was required, within thirty days, if satisfied that the whole or any part of the income declared had been detected or deemed to have been detected by the ITO prior to the date of declaration, to make an order in writing to that effect and forward a copy thereof to the declarant. Any person who objected to such an order could appeal under Sub-section (5) to the Central Board of Revenue stating the grounds for such an objection. The Board was empowered to pass such orders as it thought fit under Sub-section (6). This order of the Board under Sub-section (6) was final and conclusive by reason of Sub-section (8). Thus, the finality under Sub-section (8) was to the order of the Board under Sub-section (6) of Section 24 and not to the assessment of tax made on the declaration furnished by the creditors under the scheme, by virtue

of the legal fiction contained in Sub-section (3) of Section 24 of the Act.”

16. With regard to the second question, The Hon'ble Supreme Court held as follows:

“ 21. The next question that calls for determination is whether the non-obstante clause contained in Sub-section (1) of Section 24 of the Act precludes the Department from proceeding against the person to whom the income actually belonged. Under Sub-section (1) of Section 24 the declaration was required to be made in respect of the amount which represented the income of the declarant. The declaration could not be made in respect of an amount which was not the income of the declarant. If, therefore, a person made a false declaration with respect to an amount which was not his income, but was the income of somebody else, then there was nothing to prevent an investigation into the true nature and sources of the said amount. There was nothing in Section 24 of the Act which prevented the ITO, if he was not satisfied with the explanation of an assessee about the genuineness or source of an amount found credited in his books, in spite of its having already been made the subject of a declaration by the creditor and then taxed under the scheme. We find no warrant for the submission that Section 24 had an overriding effect over Section 68 of the Income Tax Act, 1961, insofar as the persons other than the declarants were concerned.

20. In our judgment, the legal fiction created by Sub-section (3) of Section 24 of the Act by virtue of which the amount declared by the declarant was to be charged to income tax "as if such amount were the total income of the declarant" was limited in its scope, and it cannot be invoked in assessment proceedings relating to any person other than the person making the declaration under the Act so as to rule out the applicability of Section 68 of the Income Tax Act, 1961.

21. The last question that remains is whether the same income cannot be taxed twice, once in the hands of the creditors and again in the hands of the assessee. In a case of this description, there is no question of double taxation. The situation is of the assessee's own making in getting false declarations filed in the names of the creditors with a view to avoid higher slab of taxation. Once it was found that the income declared by the creditors did not belong to them, there was nothing to prevent the same being taxed in the hands of the assessee to which it actually belonged.

22. It follows that the decisions of the Gujarat High Court in *Manilal Gafoorbhai Shah v. Commissioner of Income Tax*, of the Allahabad High Court in *Badri Prasad & Sons v. Commissioner of Income Tax*, and *Pioneer Trading Syndicate v. Commissioner of Income Tax, Lucknow* and of the Madhya Pradesh High Court in *Addl. Commissioner of Income Tax v. Samrathmal Santoshchand* which lay down the true scope of the Voluntary Disclosure Scheme under s. 24 of the Act must be upheld. The decisions of the Delhi High Court in *Rattan Lal & Ors v. Income Tax Officer and Shakuntala Devi & ors. v. C.I.T.* and of the Jammu & Kashmir High Court in *Mohd. Ahsan Wani v. C.I.T.*, taking a view to

the contrary, are overruled.

23. The Income Tax officer was entitled to determine whether the amount disclosed was or was not the income of the declarant, while dealing with the case of another assessee under Section 68 of the Income Tax Act, 1961. The legal fiction created by Sub-section (3) of Section 24 was restricted to the Voluntary Disclosure Scheme itself. The protection enjoyed by the declarant under that scheme extended only to the amounts so declared being not liable to be added, in any assessment, of the declarant. There was no absolute finality attached to the declaration especially when the nature and source of the sum declared was being determined for the purpose of its inclusion in the income of an assessee other than the declarant. There was, therefore, nothing which prevented the Income Tax officer from investigating into the nature and source of the sums credited in the books of account of an assessee and reject his explanation to the effect that the sums belonged to the persons who had made declarations about them under Section 24 of the Act.”

Accordingly, answered the said questions in favour of the Revenue and against the assessee.

17. The said decision was followed by the Hon’ble Supreme Court in **Income Tax Officer, New Delhi V. Rattan Lal** and **Radhe Shyam Tibrewal V. Commissioner of Income Tax, Assam.**

18. In **Income Tax Officer V. Atchaiah**, the Hon’ble Supreme Court considered the following questions.

“ Assessing officer was justified in issuing notice under Section 148 as the law under 1922 Act provided that once assessing officer exercises option to tax either AOP or the individual, he cannot tax the other entity is not existing under the Act of 1961 and revenue is bound to tax the right person if wrong person is assessed, option is available to the revenue to tax the right person and issue notice under Section 148 to the correct person.”

19. The said case arose out of an order passed by this Court along with a Writ Petition filed by the respondent therein seeking an order restraining the appellant (respondent in the said Writ Petition) from taking any action pursuant to the notice dated 17.03.1972 issued under Section 148 of the Act. The

respondent and another purchased an extent of 454.11 acres in a village in Medak District from two persons under a sale deed dated 20.10.1962 for a consideration of Rs.75,000/-. Prior to the purchase, the lands were notified for acquisition under the Land Acquisition Act. The Vendees appeared before the Land Acquisition Officer claiming compensation. An award was passed on 04.02.1964 determining the compensation at Rs.1,38,794.12 annas and the said amount was received by the Vendees on 04.12.1964 in equal shares. On a reference under Section 18 of the Land Acquisition Act, the amount was enhanced to Rs.3,95,026/- and the same was also shared by them in equal proportions. In the assessment proceedings relating to the assessment year 1965-66, the Income Tax Officer included a sum of Rs.35,397/- treating it as a capital gain. Relating to the assessment year 1968-69, the enhanced compensation was brought to tax as capital gain. A notice was issued to both the Vendees by the Income Tax Officer stating that he has reason to believe that the income chargeable to tax for the assessment year 1964-65 has escaped assessment. He called upon them to file a return. They filed a nil return on 03.04.1972. The Income Tax Officer proposed to tax them as an Association of Persons and bring the entire profit made by them as capital gain in the hands of such Association of Persons. Though an objection was raised by them, when they noticed that the Income Tax Officer inclined to proceed with the assessment, they approached this Court by way of a Writ Petition questioning the notice dated 19.02.1972. It was contended that the Income Tax Officer, having assessed the share of each of them in their respective individual hands, has no jurisdiction to assess the same income as the income of and in the hands of the Association of Persons aforesaid. The said contention was accepted by this Court. When the matter went to Hon'ble Supreme Court, it held as follows:

“ 7 . In our opinion, the contention urged by Dr.Gauri Shaker merits acceptance. We are of the opinion that under the present Act, the Income Tax Officer has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By “right person”, we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression “wrong person” is obviously used as the opposite of the expression “right person”. Merely because a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right person with respect to that income. This is so irrespective of the fact which course is more beneficial to the revenue. In our opinion, the language of the relevant provisions of the present Act is quite clear and unambiguous. Section 183 shows that where

the Parliament intended to provide an option, it provided so expressly. Where a person is taxed wrongfully, he is no doubt entitled to be relieved of it in accordance with law but that is a different matter altogether. The person lawfully liable to be taxed can claim no immunity because the Assessing Officer (Income Tax Officer) has taxed the said income in the hands of another person contrary to law.....”

The Hon’ble Supreme Court, accordingly, allowed the appeal and set aside the judgment of this Court.

20. In the instant case, in view of finding of fact recorded by the Tribunal with regard to the nature of the leases executed by the assessee being bogus and the structures were raised by the assessee himself, we think it proper to include the net rental value to the income of the assessee. There is no provision for assessing rental value of the property let out to Gopal Babu on the basis of municipal valuation, as ordered by the Tribunal in ITA.No.113/Hyd/2002 relating to the assessment year 1998-99. The method adapted by the Income Tax Officer estimating the rental value in respect of his case appears to be proper.

21. In view of the same, we answer the substantial question of law in favour of the Revenue and against the assessee. Accordingly, the appeal filed by the Revenue i.e., ITTA.No.121 of 2004 is allowed and the appeals filed by the assessee i.e., ITTA Nos.264 of 2003, 2 of 2005, 370 and 390 of 2010 are dismissed. There shall be no order as to costs. Miscellaneous petitions pending in these appeals, if any, shall stand disposed of.

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**DILIP B.BHOSALE, J**

Date: 25.02.2015

TJMR

**THE HON'BLE SRI JUSTICE DILIP B.BHOSALE**

**AND**

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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(per the Hon'ble Sri Justice A.Ramalingeswara Rao)

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TJMR