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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****ITR No. 72 OF 1993**

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Date of Decision: 01.09.2010.**M/S JAGATJIT INDUSTRIES LD.****. . . Appellant**Through :

Mr. Satyen Sethi, Advocate

VERSUS

COMMISSIONER OF INCOME TAX**. . . Respondent**Through:

Ms. Prem Lata Bansal, Advocate

CORAM :-**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. These references relate to the assessment years 1981-82 and 1984-85. In these years, the assessee had disclosed, *inter alia*, rental income from certain flats in Ashoka Estates, Barakhamba Road and Bhandari House, Nehru Place New Delhi. The Income Tax Officer assessed these rental income under the head "income from house property". Subsequently, the orders were amended and the income was assessed under the head "Income from other sources" on the ground that the registered sale deeds in respect of the flats, were not yet executed in favour of the assessee-company. This was done in exercise of power under Section 154 read with Section 155 of the Act. While doing so, the Assessing Officer relied upon the judgment of this Court in **Sushil Ansal**



Vs. CIT, Delhi, 160 ITR 308. This position was confirmed in appeals filed by the assessee before the CIT (A) as well as ITAT. However, the assessee made application for reference under Section 256 (1) of the Act and on that, the following two questions are referred for opinion of this Court :-

“1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that for assessment year after 1976-77 the decision of Sushil Ansal in 160 ITR 308 governs taxation of income by way of rent derived by a person, other than the legal owner, as chargeable under the head ‘Income from other sources’?

2. Whether on the facts and circumstances of the case, the Tribunal was right in law in upholding jurisdiction/action u/s 154 of the Act of the assessing Officer following the decision of Sushil Ansal Vs. CIT 160 ITR 308?”

2 As pointed out above and is clearly reflected in the first question formulated by the Tribunal, that the rental income was treated as “Income from other sources” by modifying the earlier order, relying upon the judgment of this Court in **Sushhil Ansal** (supra). However, said decision has since been overruled by the Supreme Court in the case of **Commissioner of Income Tax Vs. Podar Cement Pvt. Ltd. And Others, 226 ITR 625**. The Supreme Court has held that where the assessee has not become the owner of the property in question, rental there from could be treated as income under the head of “income from house property” and not “income from other sources”. Following that



assessee and against the revenue. In view thereof, need to answer the second question does not arise.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

SEPTEMBER 1, 2010
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