

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

**ITA Nos.665 & 666(Bang) 2014
(Assessment years : 2007-08 & 2008-09)**

The Deputy Commissioner of Income-tax,
Circle-7(1),
Bangalore

Appellant

Vs

M/s Subramanian Plaza,
No.1, SJR Primus, Ind.Layout,
7th Block, Koramangala,
Bangalore-560 095
PAN No.ABDFS5618J

Respondent

**Revenue by : Dr. Shankar Prasad, K. JCIT
Assessee by : Shri D.Devaraj, CA**

**Date of hearing : 02-02-2015
Date of pronouncement : 20-02-2015**

ORDER

PER SHRI ABRAHAM P GEORGE, AM:

In these appeals filed by the revenue it has raised common grounds of which ground no.2 is the grievance raised. This particular ground no.2 is reproduced hereunder;

“2. On the facts and in the circumstances of the case the learned CIT(A) has not appreciated the fact that as per Board’s Circular No.28 dated 20-08-1969 the assessee

has to prove to the satisfaction of the AO that the second borrowal has been fully utilized for the purpose of repayment of original loan. In the instant case, the assessee has failed to prove that the original loan was taken for the purpose of construction and also that the new loan taken was utilized for the purpose of repayment of the original loan”.

2. Assessee a firm deriving income from house property had filed its return for the impugned assessment year claiming deduction of Rs.1,47,985/- and Rs.1,47,689/- as interest on borrowed funds used for construction of the property, income from which was offered under the head “Income from house property”. The claim of interest was against a loan from HDFC Bank. AO during the course of assessment proceedings sought the assessee how the claim was justified. Reply of the assessee was that the loans were first taken from one M/s S.J.R Builders for construction of the building and later when HDFC bank sanctioned the loan, it was utilized for paying of the loan from S.J.R.Builders. Reliance was placed on the Board’s Circular No.28 dated 20-08-1969. Assessee argued that interest paid on loans used for repaying original loan utilized for construction of the building was allowable under section 24(1)(vi) of the IT Act. However, the learned AO was not impressed. According to the AO, M/s SJR Builders & Developers, was a sister concern and not a financial institution. Similar disallowances were made in AY: 2009-10 also, based on which the assessments for the impugned assessments years, were re-

opened. Therefore, according to him, the disallowances made for AY: 2009-10 were to be made in the impugned assessment year also. Especially so, since the sanction letter from M/s HDFC Bank reflected the loans to have been sanctioned for rental discounting and not for construction of the building.

3. Aggrieved by the addition of the interest claimed u/s 24(b) of the IT Act, assessee moved in appeal before the learned CIT(A).

4. Argument of the assessee was that similar claim made by the assessee for AY: 2009-10, though initially disallowed by the AO was on assessee's appeal allowed by the learned CIT(A). Assessee also pointed out that the impugned assessments were pursuant to re-opening under section 148 of the Act and such a re-opening was based on the assessment for AY: 2009-10, where a similar disallowance was made. The CIT(A)'s finding that his predecessor had allowed the claim of the assessee for AY: 2009-10 and allowed the appeals of the assessee for the impugned assessment year.

5. Now before us, learned DR submitted that the second loan was not taken for building purposes and therefore, the claim of interest thereon could not be allowed.

6. Per contra, learned AR submitted that the issue had reached this Tribunal on assessee's appeal for the AY: 2009-10 in ITA No.1295(B)/2013. Placing reliance on the order dated 10-10-2014 of this Tribunal learned AR

submitted that this Tribunal had confirmed the CIT(A)'s order deleting the disallowance made under section 24(b) of the Act. A copy of the order was placed on record.

7. We have perused the orders and heard the rival contentions. It is not disputed that the impugned assessments were re-assessments pursuant to re-opening under section 147 of the Act. Such re-opening was on account of the assessment done for assessment year 2009-10 where a similar claim under section 24(b) on the very same loan interest was disallowed. The said issue had reached this Tribunal and this Tribunal held as under at para-6 of its order dated 10-10-2014 in ITA No.1295(B)/2013.

“ We have considered the submissions of the learned DR. We are of the view that the contentions put forth by the revenue are without any basis. The AO disallowed interest claimed as deduction u/s 24(b) of the Act on the ground that the loan amount availed by the assessee from HDFC Bank on which interest was paid, had not been utilized for the construction of commercial complex and therefore, did not fulfil the condition of having been used for the purpose of construction of building. With regard to the claim that the second loan availed from HDFC Bank was used to repay the earlier loan taken from sister concern, the AO took the view that the second loan was taken in the name of assessee, but used by the sister concern for its own business purposes. It is thus clear that nexus between first and second loan

clearly exists and the ground raised by the revenue goes beyond the finding of the AO. Such a contention by the revenue is therefore not sustainable. In the given circumstances, Circular No.28 dated 20-08-1969 was clearly applicable to the case of the assessee. We are therefore of the view that the CIT(A) was fully justified in directing the AO to allow the assessee's claim of deduction u/s 24(b) of the Act. we do not find any grounds to interfere with the order of the CIT(A)"

What we find is that substratum for making the addition has disappeared for the impugned assessment year due to the order of the Tribunal for assessment year 2009-10. We therefore, find no reason to interfere with the order of the learned CIT(A).

8. Appeals of the revenue stand dismissed.

Order pronounced in the open Court on 20th February, 2015.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Bangalore:
D a t e d : 20-02-2015

am*

Copy to :

- 1 Appellant
- 2 Respondent
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- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-
(ABRAHAM P GEORGE)
(ACCOUNTANT MEMBER)

AR, ITAT, Bangalore