



2. The brief facts of the case are that the Assessing Officer noted that the assessee-firm derived its income from rent received from the property owned by it at Akruti City Ltd., MIDC, SEEPZ, Andheri. The net loss as per the Profit & Loss Account as declared by the assessee was Rs.30,19,668/-. During the year, the assessee-firm made investment in a house property. The said property was given on rent of Rs.24,41,998/-. The assessee has declared the said rental income as 'income from business' and consequently filed the return at a loss of Rs.30,19,668/- after claiming depreciation of Rs.44,56,861/-, loan processing and interest charges of Rs.5,68,801/- and administrative expenses of Rs.4,36,004/- on the said property. The Assessing Officer, after calling for explanation of the assessee, treated the said income of Rs.24,41,998/- as 'income from house property' and also disallowed the interest amounting to Rs.4,56,441/- as even u/s 24(b) of the Income Tax Act, 1961 (in short 'the Act'), the assessee has not filed certificate from the person to whom interest was paid and the capital borrowed. The assessee went in appeal before the CIT(A). CIT(A) confirmed the order of the Assessing Officer that the rental income has to be assessed under the head 'income from house property', but in respect of the claim of interest amounting to Rs.4,56,441/-, he verified the sanction letter of the loan and noted that the term loan has been sanctioned against the rent receivable and, therefore, he took the view that it is not a housing loan granted for the purchase of the property and accordingly, confirmed the order of Assessing Officer denying the deduction u/s 24(b) of the Act.

3. We heard the rival submissions and carefully considered the same. We noted that subsequent to the order of CIT(A), now this matter is no more *res integra* in view of the decisions of the Hon'ble Supreme Court in the case of *Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC)* as well as *Rayala Corporation Pvt. Ltd. vs. ACIT in Civil Appeal No.6437 of 2016 dated 11<sup>th</sup> August, 2016*. We, therefore, set aside the order of CIT(A) and restore this issue to the file of Assessing Officer with the direction that the Assessing Officer shall re-decide the issue whether the income has to be assessed under the head 'income from house property' or 'income from business' in accordance with the decision of the Hon'ble Supreme Court in the case of *Chennai Properties and Investments Ltd.* as well as *Rayala Corporation Pvt. Ltd. (supra)*.

4. Coming to the issue regarding the claim of deduction of assessee in respect of interest amounting to Rs.4,56,441/-, this interest has been paid by the assessee on the loan which has been sanctioned by HDFC against the rent receivable. This interest has not been paid on the housing loan. If the income of assessee is being assessed under the head 'income from house property', we hold that the assessee will not be entitled for deduction of interest u/s 24(b) of the Act. In case the Assessing Officer assesses the income under the head 'income from business', we are of the view that the interest paid by assessee on the sanction of the term loan shall be allowed u/s 36(1)(iii) of the Act as the loan has been received by the assessee for the purpose of business. We may clarify that in case the income of assessee is assessed by the Assessing Officer in view of the decision of the Hon'ble Supreme Court

in the case of *Rayala Corporation Pvt. Ltd. (supra)* under the head 'income from business', assessee should be allowed all the deductions in respect of the depreciation and other expenses as has been claimed by the assessee, as the income under the head 'income from business' has to be computed after allowing the deductions as specified u/s 30 to 37 of the Act.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23<sup>rd</sup> December, 2016.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Date : 23<sup>rd</sup> December, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "E" Bench, Mumbai
- 6) Guard file

Sd/-  
**(P.K. BANSAL)**  
**ACCOUNTANT MEMBER**

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai