

आयकर अपीलीय अधिकरण, सी खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL, MUMBAI - C BENCH

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member

आयकर अपील सं./ITA No.7125/Mum/2014, निर्धारण वर्ष/Assessment Year-2009-10

ACIT, CC-5(2), earlier CC-33, Room No. 32(3), Ground Floor, Aayakar Bhavan, M.K. Road, Marine Lines, Mumbai-400020	Vs	Sh. Praful N. Satra, 702, Rehana Heights, 6 th Chapel Lane, Santacruz (W), Mumbai-400058. PAN:AHZPS4559A
---	----	--

(अपीलार्थी /Assessee)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से/ Revenue by : Ms. Radha Katyal Narang (DR)

निर्धारिती ओर से/Assessee by : Shri Vijay Mehta, Harsh Bhuta (AR)

सुनवाई की तारीख/ Date of Hearing : 28-06-2016

घोषणा की तारीख / Date of Pronouncement : 29-07-2016

ORDER/आदेश

न्यायिक सदस्य पवन सिंह के अनुसार PER PAWAN SINGH, JM-

1. The present appeal is filed by Revenue against the order of Commissioner of Income Tax (Appeals) (CIT(A)-41, Mumbai dated 26.08.2014 for Assessment Year (AY)-2009-10. Though the Revenue has raised as many as four Grounds of appeal, however, as per our considered opinion the only substantial Ground is “whether the CIT(A) erred in allowing sum of Rs. 48,00,000/- as interest expense u/s. 24 of the Act”.
2. Brief facts of the case are that the assessee is a promoter and Managing Director of M/s. Satra Properties(I) Ltd., filed return of income for relevant AY declaring total income of Rs. 1,50,98,166/-. M/s Satra Properties (I) Ltd. is engaged in premium residential apartment, commercial premises Malls and Hotels and majority of the projects located at premium location in Mumbai. A search & seizure action was conducted in case of M/s Satra Properties (I) Ltd. along with its group concerns on 23.12.2010. While framing assessment a notice u/s 143(2) and 142(1) dated 04.12.2012 was issued to the assessee to explain repayment of interest on housing loan amounting to Rs.48,00,000/-. The assessee filed reply to the show cause and contended that assessee has taken loan from Ashok Commercial Enterprises in previous year. Subsequently, in the year under consideration the loan was repaid back after availing fresh loan from Cosmos Bank Ltd. The contention of assessee was not accepted by the AO holding that assessee has

availed this loan from Cosmos Bank Ltd. for repayment of loan to M/s Ashok Commercial Enterprises. The AO concluded that the property was already constructed, thus cannot be said that loan taken from Cosmos Bank was for housing purpose. No interest to M/s Ashok Commercial Enterprises has been claimed by assessee in previous year. Thus, the AO disallowed Rs. 48,00,000/- of interest on account of housing loan in the order passed u/s 143(3) r.w.s. 153A of the Act. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A), wherein the appeal of the assessee was accepted and addition made on account of disallowance of interest expenses of Rs. 48,00,000/- was deleted. Aggrieved by the order of CIT(A), the Revenue has filed the present appeal before us.

3. We have heard the Ld Departmental Representative of Revenue and Ld Authorised Representative (AR) of assessee and perused the material available on record. DR for Revenue argued that Id. CIT(A) wrongly allowed the claim of interest expenses of Rs. 48,00,000/- on the basis of CBDT Circular No. 363 dated 24.06.1983. Ld. DR for Revenue also argued that assessee has not claimed interest in the earlier AY and has developed a device to avoid the tax showing it as the loan was taken for business activities. AR for assessee argued that the assessee has purchased office premises at 2nd floor, Dev Plaza, Andheri from M/s. Dev Construction for a consideration of Rs. 3.45 crores. The said consideration was paid to M/s Dev Construction temporarily by arranging funds from M/s Ashok Commercial Enterprises on the interest @ 12% p.a. Subsequently, to pay the said loan, the assessee approached the Cosmos Co-op. Bank Ltd. and the loan was sanctioned as a term loan of Rs. 15 crores and some part of loan was utilized for re-payment of loan to M/s Ashok Commercial Enterprises. The assessee offered the income from rent received from the said office premises starting from FY-2008-09. Ld AR of assessee further argued that Board Circular No. 363 dated 24.06.1983 provides that where the property has been acquired, constructed, renew or repaired with borrowed capital, the amount of interest payable of such capital shall be allowed as admissible deduction in computation of income of the said property, whether a fresh loan is raised or repaid or by way of repayment of original loan for the said purpose. The interest payable in respect of the said second loan would also be admissible for deduction u/s 24(1)(vi) of the Act.
4. We have considered the rival contention of the parties and considered the material available on record. The AO while making the re-assessment proceeding raised the question as to why the interest of housing loan should not be disallowed. The assessee

contended that he availed a loan from Cosmos Bank for repayment of loan to M/s Ashok Commercial Enterprises. The AO disallowed the interest expenses holding that property was already constructed and the loan taken from Cosmos Bank cannot be said to taken for housing purpose. The similar contention was made before the CIT(A). The CIT (A) while considering the contention of the assessee and the contents of CBDT Circular No. 363 dated 24.06.1983. We have also considered the said Circular, extraction of which referred by Id. CIT(A) in paragraph no. 5.2 of its order and the same are reproduced below:

"1. Section 24(1) of the Income-tax Act, 1961 - Instruction regarding - Section 24(1)(vi) of the Income-tax Act, 1961, provides that where the property has been acquired, constructed, repaired, renewed or re-constructed with borrowed capital, the amount of any interest payable on such capital shall be allowed as admissible deduction in the computation of the income from the said property.

2. A question has been raised whether in a case where a fresh loan has been raised to repay 'the original loan taken for the above purpose, the interest payable in respect of the second loan would also be admissible as a deduction u/s.24(1)(vi) of the Income-tax Act.

3. The matter has been considered by the Board and it has been decided if the second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the Income-tax Officer (now Assessing Officer), the interest paid on the second loan would also be allowed as a deduction u/s. 24(1)(vi)."

5. In the Circular referred above, it has clarified that if housing loan has been raised merely to re-pay the original loan and this fact is proved to the satisfaction of the AO, the interest paid on such loan would be allowed as deduction in computation of "Income from House Property", therefore, the finding of AO in disallowing the deduction of interest of Rs. 48,00,000/- on funds borrowed from Cosmos Co-op. Bank are not in consonance with the Board Circular. As per our considered opinion, all facts were properly appreciated and considered by the CIT(A) while giving his findings.
6. With these observation, we hold that the order of CIT(A) are reasoned one and does not suffer from any illegality or infirmity.

As a result, appeal filed by the Revenue is dismissed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 29th July,2016.

□ देश की घोषणा खुले न्यायालय में दिनांक 29 जुलाई,2016 को की गई ।

Sd/-

(राजेन्द्र /RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai,दिनांक/Date: 29.07.2016

Sd/-

(पवन सिंह / PAWAN SINGH)

न्यायिक सदस्य / JUDICIAL MEMBER

SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय □ यकर □ युक्त, 4.The concerned CIT /संबद्ध □ यकर □ युक्त
- 5.DR “C” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, सी खंडपीठ, □ .अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

□ देशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

□ यकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.