

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**  
**Before Shri Shamim Yahya, Accountant Member**

ITA No.1047/Mum/2017 : Asst.Year 2012-2013

M/s.Aura Realfinvest Private Limited Plot No.11, Cama Industrial Estate Walbhat Road, Goregaon (East) Mumbai – 400 063. <b>PAN :AAFCA9243F.</b>	<b>बनाम/</b> Vs.	The Income Tax Officer Ward 12(1)(2) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Shri Bhagirath Singh  
प्रत्यर्थी की ओर से /Respondent by : Shri B.Satyanarayana Raju (Sr.DR)

सुनवाई की तारीख / Date of Hearing : 15.05.2017	घोषणा की तारीख / Date of Pronouncement : 04.07.2017
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**आदेश / ORDER**

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.11.2016 and pertains to assessment year 2012-2013.

2. The grounds of appeal read as under:-

**Disallowance of Rs.7,71,745/- u/s 24(b).**

1) Because, the Ld. CIT(A) erred in law as well as on facts of the case while confirming disallowance of Rs.7,71,745/- u/s 24(b).

2) Because, the Ld. CIT(A) has erred in overlooking and in rejecting the detailed facts submitted along with various documents and evidence placed in paper book filed.

3) Because, the Ld. CIT(A) failed to appreciate the fact that the Ld, A.O. disallowed the interest on borrowed loans for not

*submitting certificate of interest as per second proviso of section 24(b) of the IT. Act.*

4) *Because, the Ld. CIT(A) failed to appreciate the fact that certificate of interest as per second proviso to section 24(b) is applicable when annual value of the property is taken as NIL u/s 23(3) of the Act and not where the house property is let out.*

5) *The Appellant craves leave to add, amend, or alter any of the grounds of appeal on or before the date of hearing.”*

3. The brief facts of the case are as under:-

During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee had claimed deduction u/s 24(b) of the Income-tax Act of Rs.7,71,745 against income from house property. The assessee was asked to submit necessary evidence to substantiate its claim. In response to the same, the assessee furnished Form No.27A which was in respect of TDS instead of certificate of interest on borrowed loans. Since the assessee failed to produce necessary proof in respect of interest on borrowed funds, the A.O. disallowed an amount of Rs.7,71,745 u/s 24(b) and added back the same to the total income of the assessee.

4. Before the learned CIT(A), assessee made following submissions:-

*“The Ld. A.O. disallowed interest claim of Rs.7,71,745/- u/s 24(b) of the AT. Act, 1961 stating that the appellant failed to submit certificate of interest on borrowed loans.*

*The appellant vide its letter dt. 24.02.2015 submitted details of interest payment of Rs. 7,71,745/-, tax deducted at source thereon and copy of e-TDS statement showing the payment of*

*TDS on the interest paid. Copy of letter alongwith the details submitted are enclosed.*

*The Ld. A.O. talks of certificate of interest on borrowed loans which is required as per second proviso to Section 24(b) of the I. T. Act. The requirement under second proviso is applicable when Annual value of the house property is taken as NIL u/s 23(3) of the Act and not where the house property is let out and annual value is not taken as NIL. In the appellant's case, annual value of the property was Rs.9,50,666/- and therefore proviso to Section 24(b) of the Act is not attracted. However, the appellant had submitted confirmation of the parties to whom interest was paid. Further a letter dt. 16.03.2015 explaining the case, was sent to the A.O: which was not accepted stating that assessment order had already been passed, whereas the assessment order is dt. 17.03.2015. A copy of the said letter is enclosed."*

5. However, the learned CIT(A) proceeded to confirm the addition on a different reasoning than that made out by the Assessing Officer. He held as under:-

*"In the instant case property has been acquired in earlier year, however the interest expense claim is made in the current year which is subsequent to the acquisition of the property. The claim that the borrowed fund on which interest was paid as deduction under section 24 was obtained only for the acquisition of property in question is not established. As per the ratio of the Delhi ITAT decision in the case of ACIT Circle 27(1), Vs. M/s Super Time Industries (supra) the borrowing must bear direct nexus with the acquisition, construction, repair or reconstruction of the property for allowance of interest on borrowed capital u/s 24(b). This nexus between the borrowed funds and acquisition of property is glaringly missing in the present case and hence the claim of interest on borrowed capital of the assessee u/s 24(b) is to be order. Since the nexus of acquisition of relevant property out of borrowed capital has not been established the question to allow deduction u/s. 24(b) of interest paid on such*

*borrowed capital does not arise. The disallowance of interest on borrowed capital claimed of Rs.7,71,745 made by the A.O. is found to be in order and is upheld. Accordingly these grounds of appeal are dismissed.”*

6. Against this order, assessee is in appeal before the ITAT.

7. I have heard both the Counsel and perused the records. I find that learned CIT(A) has not at all considered the objection of the assessee to the order of the Assessing Officer. He has proceeded to confirm the addition of the Assessing Officer on a totally different reasoning. In my considered opinion, the interest of justice mandates that the issue be remitted to the file of the Assessing Officer. Accordingly, the issue stands remitted to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh after giving the assessee proper opportunity of being heard.

8. In the result, this appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on this 04<sup>th</sup> day of July, 2017.

Sd/-  
(Shamim Yahya)  
**ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 04<sup>th</sup> July, 2017.  
Devdas\*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**