

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI, G. MANJUNATHA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. No. 377/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri. Parikshit Mandir Sial 501, Sea Goddess Green Field Estate, A.B Nair Road, Opp. Juhu Post Office, Juhu, Mumbai - 400 057.	बनाम/ Vs.	ITO (I.T)-4(2)(2), Mumbai Air India Building., Nariman Point, Mumbai-400 021
स्थायीलेखासं./जीआइआरसं . /PAN/GIR No.		AVJPS5311E
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri.Reepal Tralashawala, A.R.
प्रत्यर्थी की ओर से/ Revenue by	:	Shri. Rajat Mittal, D.R

सुनवाई की तारीख/ Date of Hearing	:	04/07/2018
घोषणा की तारीख/ Date of Pronouncement	:	11/07/2018

आदेश / O R D E R

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-58, Mumbai, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 26.02.2016 for Assessment Year 2013-14.

2. Briefly stated, the assessee had filed his return of income for Assessment Year 2013-14 on 30.07.2013, declaring total income of Rs. 38,28,609/-. The case of the assessee was subsequently selected for scrutiny assessment under 143(2) of the Act.

3. During the course of the assessment proceedings the A.O observed that the assessee had offered interest income of Rs. 20,51,062/- in his return of income. On a perusal of the details, it was noticed that the assessee had earned interest income of Rs. 58,35,655/- viz. (i). Interest on Fixed deposits : Rs. 57,48,933/-; and (ii). Other interest : Rs. 87,727/-. It was observed by the A.O that the assessee after claiming deduction of interest expenses of Rs. 37,84,593/- pertaining to a loan raised from the bank (against the security of FDR), had offered the balance interest income of Rs. 20,51,062/- for tax in his return of income. The A.O called upon the assessee to justify his claim of deduction of the interest expense of Rs. 37,84,593/- under Sec. 57 of the Act. In reply, it was submitted by the assessee that the aforesaid interest expenditure pertained to a bank loan (against security of the FDR) which was raised by him for purchase of a Flat No. 201, Sea Goddess, Juhu, Mumbai in joint ownership with his mother. It was submitted by the assessee that by raising the bank loan he was able to protect the interest income received on the FDR. Alternatively, it was submitted by the assessee that as the interest expenditure was incurred on the funds borrowed for acquisition of a property, thus, the same would even otherwise be entitled for deduction under Sec. 24(b) of the Act. However, the A.O observing that there was an absence of an inextricable nexus between the incurring of the interest expenditure and earning of the interest income as required under Sec. 57(iii) of the Act, therefore, disallowed the claim of deduction of Rs. 37,84,593/- raised by the assessee. On the basis of the aforesaid deliberations the A.O assessed the income of the assessee at Rs. 76,13,200/- .

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee before him, was however not persuaded to subscribe to the same. Observing, that the interest expenditure of Rs. 37,84,593/- was not wholly and exclusively incurred by the assessee for earning of the interest income, the CIT(A) taking

support of the judgments of the Hon'ble High Court of Bombay in the case of Bai Bhuriben Lallubhai Vs. CIT (1956) 29 ITR 545 (Bom) and that of the Hon'ble Supreme Court in the case of Vijaya Laxmi Sugar Mills Ltd. Vs. CIT (1991) 191 ITR 641 (SC), upheld the disallowance of the claim of deduction of the assessee under Sec. 57(iii) of the Act. The alternative contention of the assessee, that the interest expenditure incurred on the borrowed funds utilized for purchase of residential property would be entitled for deduction under Sec. 24(b), also did not find favor with the CIT(A). The CIT(A) observed that as the assessee had neither furnished the computation of the annual lettable value of the said property, nor placed on record any document evidencing the fact that the property under consideration was ready for occupation, therefore, the said contention of the assessee could not be accepted.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized representative (for short 'A.R') for the assessee took us through the facts of the case. It was averred by the ld. A.R that the lower authorities had erred in disallowing the claim of deduction of the interest expenditure while assessing the income of the assessee. The ld. A.R vehemently stressed on the fact that the decision of the assessee for not opting for a premature encashment of the FDR's and rather raising a loan from the bank to facilitate purchase of residential property, was backed with the intent of protecting the interest income received from the fixed deposits. The ld. A.R in order to drive home his contention that the interest expenditure incurred was liable for being set off against the interest income on FDR's, relied on the order of a coordinate bench of the Tribunal, viz. Raj Kumar Aggarwal Vs. DCIT, Circle-2, Agra (ITA No. 176/Agra/2013; dated 18.07.2014). Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the incurring of the interest expenditure did not bear any nexus with the earning of the interest income on the fixed deposits as required per the mandate of Sec. 57(iii) of the Act, therefore, the same was rightly disallowed by the lower authorities. The ld. D.R

in order to fortify his aforesaid contention relied on the following judicial pronouncements:

- (i). CIT Vs. V.P Gopinathan
(2001) 248 ITR 449 (SC)
- (ii). Smt. Padmavati Jaikrishna Bs. Addl. CIT
(1987) 166 ITR 176 (SC)
- (iii). CIT Vs. Amritaben R. Shah
(1999) 238 ITR 777 (Bom)
- (iv). Saluja Farms Vs. CIT
(2002) 254 ITR 172 (Del)

The ld. D.R taking support of the aforesaid judicial pronouncements, submitted that the Hon'ble Courts in the aforementioned cases involving identical facts, had concluded that the interest expenditure incurred on loans (against the security of FDR) was not to be allowed as a deduction under Sec. 57(iii) against the interest income earned on the FDR. As regards the alternative claim of the assessee, that the interest expenditure on the borrowed funds which were utilized for purchase of a residential property was allowable as a deduction under Sec. 24(b) of the Act, the ld. D.R relying on the orders of the lower authorities submitted that as the assessee had neither furnished the computation of the annual lettable value (for short 'ALV') of the said property, nor placed on record any document evidencing the fact that the property under consideration was ready for occupation, therefore, the said claim of the assessee was rightly rejected by the lower authorities.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the deductions allowed against the income chargeable under the head "Income from other sources" are circumscribed in Sec. 57 of

the Act. Still further, in case of interest income earned by an assessee, only the expenditure (not being in the nature of a capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income is to be allowed as a deduction under Sec. 57(iii) of the Act. We thus, in the backdrop of the facts of the case before us, are of the considered view that as the interest expenditure of Rs. 37,84,593/- incurred by the assessee on the loan raised for purchase of property (against the security of FDR's), cannot be construed as having been laid out or expended wholly and exclusively for the purpose of making or earning of the interest income on the said FDR's, therefore, the same cannot be allowed as a deduction as against the interest income of the assessee. We are of the considered view that the existence of an inextricable nexus between the incurring of the interest expenditure and earning of the interest income is a pre-requisite condition for allowability of the interest expenditure as a deduction under Sec. 57(iii) of the Act. We find that our aforesaid view stands fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Dr. V.P Gopinathan (2001) 248 ITR 449 (SC)**. The Hon'ble Apex Court deliberating on the issue under consideration, in the backdrop of identical facts as were involved in the case before them, had observed as under:

"It was not disputed, as it could not be, that if the assessee had taken a loan from another bank and paid interest thereon his real income would not diminish to the extent thereof. The only question then is : does it make any difference that he took the loan from the same bank in which he had placed the fixed deposit. There is no difference in the eye of the law. The interest that the assessee received from the bank was income in his hands. It could stand diminished only if there was a provision in law which permits such diminution. There is none, and, therefore, the amount paid by the assessee as interest on the loan that he took from the bank did not reduce his income by way of interest on the fixed deposit by him in the bank."

We thus, in terms of our aforesaid observations, being of the considered view that as the issue under consideration is no more *res integra* in light of the aforesaid judgment of the Hon'ble Apex Court in the case of Dr. V.P

Gopinathan (supra), uphold the order of the CIT(A) to the said extent. The **Ground of appeal No. 1** raised by the assessee is dismissed.

7. We shall now advert to the alternative claim of the assessee that as the interest expenditure of Rs. 37,84,593/- was incurred on the funds borrowed for acquisition of a property, thus, the same would be entitled for deduction under Sec. 24(b) of the Act. We are of the considered view that as the assessee had claimed the aforesaid interest expenditure of Rs. 37,84,593/- as a deduction under Sec. 57(iii), therefore, for the said reason he had not raised a claim as regards seeking deduction of the same under Sec. 24(b) of the Act. However, we find that the assessee had unsuccessfully raised such claim before the A.O and the CIT(A). On a perusal of the reasoning given by the CIT(A) for not accepting the said claim of the assessee, we find that he had declined to accept the same, for the reason that the assessee had neither furnished the computation of the annual lettable value of the said property, nor placed on record any document evidencing the fact that the property under consideration was ready for occupation.

8. We have given a thoughtful consideration to the aforesaid claim of the assessee in the backdrop of the facts available on record. We find that the fact that the claim of the assessee that the loan was raised by him for purchase of a residential property viz. Flat No. 201, Sea Goddess, Juhu, Mumbai in joint ownership with his mother, finds mention in the assessment order. We though are not oblivious of the fact that the assessee had in his return of income not raised a specific claim as regards deduction of the interest expenditure under Sec. 24(b) of the Act, but the same as observed by us hereinabove, was backed by the reason that the assessee had claimed the same as a deduction under Sec. 57(iii) of the Act. Be that as it may, we are of the considered view that though the claim of deduction under Sec. 24(b) was not raised by the assessee before the lower authorities, but as the fact as regards incurring of interest expenditure on the loan raised by the assessee on purchase of a residential

property viz. Flat No. 201, Sea Goddess, Juhu, Mumbai in joint ownership with his mother, is borne on record, thus, the claim as regards seeking of deduction of the interest expenditure under Sec. 24(b) can safely be held to have been raised by the assessee remaining well within the realm of his rights. We find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom)**. The Hon'ble High Court in the aforementioned case, had observed that the assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claim before them. The Hon'ble High Court further observed that the appellate authorities have jurisdiction to deal not merely with additional grounds which became available on account of change of circumstances or law, but also with additional grounds which were available when the return was filed. We further find that the **Hon'ble High Court of Bombay** in the cases of **Ahemadabad Electricity Company Vs. CIT and Godavari Sugar Mills Ltd. Vs. CIT (1993) 199 ITR 351 (Bom)**, had observed that the basic purpose of an appeal procedure in an income tax matter is to ascertain the correct tax liability of the assessee in accordance with law. It was observed by the Hon'ble Court that both the Appellate Assistant Commissioner and the Appellate Tribunal can consider the proceedings and the material on record before it, for the purpose of determining the correct tax liability of the assessee.

9. We have deliberated at length on the issue under consideration and are of the considered view that the interest expenditure incurred by the assessee on the loan raised by him, to the extent the same is relatable to the funds utilized by him towards purchase of his share of ownership in the residential property viz. Flat No. 201, Sea Goddess, Juhu, Mumbai, would be eligible for deduction under Sec. 24(b) of the Act. We thus, restore the matter to the file of the A.O, who shall after making necessary verifications allow the deduction of

the interest expenditure under Sec. 24(b) of the Act to the assessee. The **Ground of appeal No. 2** raised by the assessee is allowed in terms of our aforesaid observations.

10. The appeal of the assessee is partly allowed.

Order pronounced in the open court on 11.07.2018

Sd/-

(G. MANJUNATHA)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 11 .07.2018

PS: Rohit

Sd/-

(RAVISH SOOD)

न्यायिकसदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार(Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai

