

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-I": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2527/Del/2016
(Assessment Year: 2011-12)

Prahlad Dass Mittal, Mittal Bhawan, 70, Darya Ganj, New Delhi PAN: AAFPM6366G	Vs.	Assessing Officer, Ward-31(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Prahlad Dass Mittal, CA
Revenue by:	Shri Pradeep Singh Gautam, Sr. DR
Date of Hearing	04/03/2020
Date of pronouncement	/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT(A)-20, New Delhi dated 09.03.2016.
2. The assessee has raised the following grounds of appeal:-
 - “1. That the Ld. A.O. as well as Ld. CIT (Appeal) have eared while disallowing the claim of interest of Rs.6,40,411/- against the property income in spite of the fact that the interest has been paid on the borrowings made for the purpose of payment of liabilities to the bankers from whom part rights of the property in question was acquired.
 2. That the Ld. Assessing Officer as well as ld. CIT Appeal are wrong while not accepting the fact that the funds borrowed for the purpose of repayment of liabilities created by the previous owner is a part of cost of acquisition as defined U/s 55(2) of the I.T Act, 1961.

3. *That the entire Assessment Order is wrong, arbitrary, illegal, unjust against the facts as well as against the Law.*
4. *That the appellant craves leave to amend any one or more of the grounds of appeal as stated above as & when the need for doing so arise.”*
3. The brief facts of the case shows that the assessee is an individual, chartered accountant, deriving income from house property and from profession. He filed return of income on 30.03.2012 declaring total income of Rs. 2775227/-. Assessment u/s 143(3) of the Act was passed on 14.03.2014 determining total income of the assessee at Rs. 3415640/-.
4. The ld AO made an addition of Rs. 640411/- being interest on borrowed capital. The assessee submitted that he has received a house property situated at Asaf Ali Road, Delhi as gift from Smt Shanta Jain and relationship of donor was as sister. The above interest was disallowed to the assessee in the assessment year 2011-12 and therefore for similar reason the above interest was disallowed to the assessee. The assessee contested the above order before the ld CIT(A) who dismissed the appeal of the assessee based on the order of his predecessor for Assessment Year 2007-08 as identical issue was involved therein. Therefore, the assessee is in appeal before us.
5. The ld AR submitted that identical issue reached at the level of coordinate bench for Assessment Year 2007-08 and Assessment Year 2009-10 in ITA No. 5861/Del/2011 and ITA No. 2167/Del/2013, wherein, the coordinate bench allowed the claim of the assessee therefore, the issue is squarely covered in favour of the assessee.
6. The ld DR supported the orders of the lower authorities.
7. We have carefully considered the rival contentions and find that identical issue was covered by the coordinate bench for AY 2007-

08 and 2009-10 in its order dated 11.05.2016 [**2016 (5) TMI 1147 - ITAT DELHI**], wherein, in para No. 6.5 of that the coordinate bench held that assessee borrowed money to perfect the of his property and therefore, its cost of improvement and consequential interest expenditure incurred was held to be allowable u/s 24(b) of the Income Tax Act, 1961. The coordinate bench held as under :-

“6.3. In the case of RM Arunachalam vs. CIT the Hon’ble Supreme Court has approved the judgement of the Hon’ble Gujarat High Court in the case of CIT vs. Daksha Ramanlal, wherein it is held that the payment made by the person for the purpose of clearing the mortgages created by the previous owner, is to be treated as cost of acquisition. The interest of the mortgagee in the property is acquired at a cost and this is deductible u/s 48 of the Act. The Hon’ble Gujarat High Court has held as follows.

“Held, when the previous owner gifted the mortgaged property to the assessee, what he had transferred to the assessee was the right, title or interest which he had in that property. When the assessee discharged the mortgage by paying ₹ 25,000 to the mortgagee, what he did was to purchase that right or interest which the mortgagor did not then possess and which the mortgagee had in the property. When the assessee sold the property, he did not merely sell the right, title or interest which he had received from the donor, but also the right, title or interest which he had purchased from the mortgagee. For this reason, the case would not be covered by section 49(1)(ii) nor by section 55(2)(ii) for the purpose of computation of the capital gains.”

6.4. Applying the propositions laid down by the Hon’ble Supreme Court to the facts of the case, we have to hold that the mortgage loan and other liabilities repaid by the assessee, to the extent it has improved his right to title and interest in the property should be considered as cost of improvement incurred by the assessee. The government

valuer has fixed the value of the property at ₹ 47,62,000/-, as mentioned at page 29 para 9 of the registered gift deed. The factors which went into the valuation are not known. The principle laid down by the Hon'ble Supreme Court that, amounts paid by the donee to discharge the liabilities which resulted in his right, title and interest of the assessee in the property being improved has to be taken as cost of improvement is to be applied and this ground of the assessee should be allowed. No contrary decision is brought to our notice by the Ld.D.R.

6.5. Submissions made by the assessee that the loans and liabilities repaid was only to improve and perfect his title to the property, and not otherwise, and that all these loans and other liabilities are attached to this property is not factually disputed by the Revenue. Keeping in view the legal position laid down by the Hon'ble Apex Court, we direct the A.O. to consider the repayment of liabilities of the donor, made by the assessee as that which is incurred to perfect his title of the property and thus it is cost of improvement and consequentially the borrowings made for the same is to be taken as that which is for incurring the cost of improvement of the property and consequentially the interest expenditure incurred should be allowable u/s 24(b) of the Act. Hence we allow this ground of the assessee.”

8. As there is no change in the facts and circumstances, respectfully following the orders of the coordinate bench where one of us (Honourable JM) as party to the same, we direct the ld AO to delete the addition of Rs. 640411/-. Accordingly, appeal filed by the assessee is allowed.

Order pronounced in the open court on 19/05/2020.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/05/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi