

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.258/Bang/2019
(Assessment Year: 2013-14)

Shri Bindumalyam G Muralidhara,
No.103, Model House Street,
Basavanagudi, Bangalore.
PAN ABTPM 6084C

....Appellant.

Vs.

Assistant Commissioner of Income Tax,
Circle 2(3)(1), Bangalore.

.....Respondent.

Assessee By:	Shri Ashok Kulkarni, Advocate.
Revenue By:	Shri Kannan Narayan, JCIT (D.R)

Date of Hearing :	07.12 .2020.
Date of Pronouncement :	08.12.2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) - 2, Bangalore Dt.28.12.2018 for the Assessment Year 2013-14.

2. The assessee has raised only one ground with regard to disallowance of interest at Rs.17,86,360 by lower authorities.

3. The facts of the case are that the assessee is a Doctor by profession in Bangalore. He has availed housing loan from Syndicate Bank in the year 2005-06 for construction of residence at Bangalore. The said loan was taken over by Standard Chartered Bank vide Agreement dt.20.06.2011. The assessee has also availed another loan bearing No.45605115894 of Rs.3.33 Crores vide Agreement Dt.20.06.2011. The interest on first housing loan was Rs.4,68,940. The interest on another loan of Rs.3.33 Crores was at Rs.35,72,717. The assessee claimed interest on loan of Rs.1,50,000 under Section 24 of the Act. The assessee has claimed Rs.35,72,717 interest as a deduction from business income. The Assessing Officer observed that the second loan of Rs.3.33 Crores availed by the assessee under the head "Home Saver Loan" and the assessee not able to prove as to how the loan was utilized. Though the assessee has claimed that the said loan was used for business purpose, the assessee has not furnished any document to support the claim. Accordingly, the Assessing Officer disallowed Rs.17,86,360 out of Rs.35,72,717 claimed as interest expenses by the assessee. On appeal, the CIT (Appeals) observed that the assessee has not carried on any business activity in the year under consideration. The interest was on loan obtained for construction of the building and purchase of equipment which is in the nature of capital asset as such

they are not put to use. The CIT (Appeals) held that the assessee is not entitled for deduction of interest on such loan. Accordingly, the CIT (Appeals) held that these interest expenses are in the capital nature and dismissed the appeal of the assessee. Aggrieved by the assessee, the assessee is in appeal before us.

4. The learned Authorised Representative submitted that the assessee constructed a residential building at No.103, Model House Street, Basavanagudi, Bangalore in the year 2005-06 for which housing loan was taken from Syndicate Bank in the year 2005 to the tune of Rs.52.34 lakhs. In the assessment year under consideration, the assessee's share in the said property was 70% and 30% was owned by the assessee's wife Smt. B.M. Anuradha. In later year, the said loan was taken over by Standard Chartered Bank. In the assessment year under consideration, the assessee incurred interest expenditure on this loan at Rs.4,68,940 and out of this, the assessee claimed Rs.1.5 lakhs as deduction Under Section 24 under the head 'House Property'. The second loan was availed by the assessee at Rs.3.33 Crores in the year vide Agreement dt.20.06.2011. It is a Topup loan by mortgaging of residential house at Rs.3.33 Crores and this is a business loan and on which the assessee incurred an expenditure of Rs.35,72,717 towards interest and this was claimed as business expenditure Under Section 36(1)(iii) of the Act. This loan has no connection with the construction of the building and it is not a home loan though the name has been given as home saver loan and this was

availed by mortgaging the residential property. Further it was submitted that though the Assessing Officer observed that the assessee has not produced any evidence to prove the usage of this fund. Contrary to this finding by the Assessing Officer, the CIT (Appeals) observed that no business activity was started and hence this interest on loan obtained for construction of building and purchase of equipment cannot be allowed as a revenue expenditure. According to the learned Authorised Representative these findings of the Assessing Officer and CIT (Appeals) are contradictory in nature which shall be vacated. On the other hand, the Id. DR contended that it should be treated as capital in nature. Further the Id. DR submitted that the assessee has availed second loan for the purpose of construction of building and purchase of equipment and it is in the nature of capital expenditure since the business of the assessee not commenced.

5. We have heard both the parties and perused the material on record. The assessee ;avaled two loans, first loan bearing No.48309141 for Rs.52.34 lakhs vide Agreement dt.20.06.2011, there is no dispute regarding this as a housing loan and interest on this claimed as a deduction Under Section 24 of the Act.

6. The assessee availed another loan bearing No.45605115894 at Rs.3.33 Crores vide Agreement dt.20.06.2011 on mortgaging the said residential property. On this, the assessee has said to be incurred an expenditure of Rs.35,72,717. The

assessee claimed this as an expenditure Under Section 36(1)(iii) of the Act. The Assessing Officer allowed 50% of the expenditure and balance amount disallowed to the extent of Rs.17,86,360. Now the contention of the Id. DR is that the assessee has not commenced the business and this amount has been utilized for construction of building and purchase of equipment which was not put to use so as to claim the deduction Under Section 36(1)(iii) of the Act. The interest was not allowed under Section 36(1)(iii) of the Act by the lower authorities. In our opinion, the usage of loan fund to be examined by the Assessing Officer by verifying the amount released by the Standard Chartered Bank. The Assessing Officer has to examine how the fund was utilized by the assessee and whether it was used for the purpose of business, such interest has to be allowed Under Section 36(1)(iii) of the Act if the business of the assessee has been commenced. At this point, it is appropriate to note that the assessee is already in the business of medical profession and the assessee is offering income from the said business or profession and now it is not possible to hold that the assessee has not commenced business as it is also the plea of the assessee that depreciation has been granted on the assets purchased out of this loan. In such circumstances, the Assessing Officer has to see only utilization of funds whether the said fund is used for the purpose of business. We deem it fit to examine the claim of the assessee by the Assessing Officer, as such we remit to

the file of Assessing Officer for fresh consideration as per law. The appeal of the assessee is allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(SMT. BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 08.12.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore