

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'SMC' BENCH : Hyderabad**

(Through Video Conference)

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 523/Hyd./2020
Assessment Year: 2009-10**

Mrs. Hima Bindu Putta
Secunderabad

vs. ITO, Ward 6(3)
Hyderabad

[PAN: AGIPP8031C]

(Appellant)

(Respondent)

For Assessee: Sri B.Sai Prasad, Adv.

For Revenue: Sri Sunil Kumar Pandey, D.R.

Date of Hearing : 12/04/2021

Date of Pronouncement : 03/05/2021

ORDER

This is assessee's appeal for A.Y 2009-10 against the order of the CIT(A)-6, Hyderabad dated 30.07.2020.

2. Brief facts of the case are that the assessee, an individual, filed her return of income for assessment year 2009-10 on 19.12.2009, declaring loss of Rs.9,19,260/-. During the assessment proceedings u/s 143 (3) of the Act, the Assessing officer observed that the assessee has admitted loss from house property of (-) Rs. 9,31,723/- while she admitted rental income of Rs. 15 lacs. The Assessing Officer observed that the tenant of the assessee is OSI Consulting Pvt Limited which in turn has provided residential accommodation to Sri Y. Anil Kumar, the husband of the assessee, and that the assessee is residing with her husband. Therefore, he observed that the premises is being occupied by the assessee and her husband.

2.1. Assessee, therefore, was asked to explain as to why the 'income from house property' should not be computed as income from 'self-occupied property' of the assessee. Assessee submitted that as rent is admitted in her computation of total income, the income from house property is to be computed as a rented out property only. However, Assessing officer, observed that since the assessee is also residing in the property, it should be treated as a self-occupied property and therefore the income is to be computed @ 50% as self-occupied and 50% as let-out. Therefore, he treated the rental income at Rs15 lakhs and therefrom, he reduced the municipal taxes and 30% for repairs and maintenance. Thereafter, he allowed only 50% of interest to be set off and on the balance 50% of interest, he restricted it to Rs.1,50,000/- towards self occupied property and recomputed income from house property at Rs.2,058/-.

2.2. Aggrieved, assessee preferred an appeal before the CIT(A) who dismissed the same and the assessee is in second appeal before the tribunal by raising the following grounds of appeal.

"1. The order of ld.CIT(A) is erroneous both on facts and in law..

2. The CIT(A) erred in confirming the disallowance of Rs.9,63,222/- being 50% of the interest paid on loan taken claimed as per provisions of s.23 of the Act.

3. (a) CIT(A) ought to have decided the matter i.e. determination of income from house property in accordance with provisions of s.23 & 24 of the Act.

(b) While the income from house property is to be determined as per provision of sec.23 & 24 of the Act the CIT(A) arrived at the decision basing her findings purely on surmises and assumptions."

3. Ld.counsel for assessee submitted that the Assessing officer, while accepting the assessee as the owner of the property, only for the reason that that assessee is also residing there along with her husband, has treated it as a self-occupied property. He submitted that assessee has purchased the residential house and property has been let out to the company, which in turn has given to the assessee's husband (who is the director of the company)

for his residential occupation. The case of the assessee is that, CIT(A) has grossly erred in holding that the property belongs to the assessee's husband and that the interest expenditure is not allowable in the hands of the assessee. He submitted that since assessee is the owner and has let out the property, the rental income has to be treated as 'income from house property' and eligible deductions there from should be allowed under section 24 of the Act. In the alternative, ld.counsel for assessee also submitted that 50% of the house may be treated as self-occupied property and income from house property be recomputed accordingly.

4. Ld.DR, on the other hand, supported orders of the authorities below and submitted that the assessee had no source of income and it is her husband who has purchased the house, which in turn, has been given on rent to the assessee's husband to claim interest expenditure from the rental income. This, according to him is a colorable device adopted by the assessee. Therefore, he sought confirmation of the orders of the authorities below.

5. Having regard to rival contentions and material placed on record I find that there is no dispute that the assessee is the owner of the property and has purchased it with borrowed capital. There is also no dispute that assessee has let-out the property to the company M/s OSI Consulting Private Limited and received Rs. 15 lakhs as rental income for assessment year 2009-10. Since assessee has received the rental income and also has offered it as income from house property, assessee is eligible to claim deductions u/s 24(2) of the Act. The assessee is the wife of Mr.Y Anil Kumar who has been given the property as residential accommodation by the company and therefore it cannot be held that assessee herself is occupying the property. Therefore, having regard to contentions of the assessee, I hold that the rental income received from M/s OSI Consultancy P Ltd. is to be treated as 'income from house property' and all eligible deductions therefrom including interest on borrowed capital is to be allowed therefrom.

In view of the same, assessee's appeal stands allowed.

Order pronounced in Open Court on 03/05/2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 03rd May, 2021

- *gmv*

Copy of Order forwarded to:

1. Smt. Hima Bindu Putta, Plot no.916/B, Road no.46, Jubilee Hills, Hyderabad – 500 033, Telangana.
2. ITO, Ward 6(3), Hyderabad.
3. JCIT, Range 6, Hyderabad.
5. CIT(A)-6, Hyderabad.
6. Pr.CIT -6, Hyderabad
- 7 D.R. ITAT Hyderabad
8. Guard File