

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5861/Del/2011
AY: 2007-08**

A n d

**ITA No.2167/Del/2013
AY: 2009-10**

Sh. Prahlad Das Mittal
70, Mittal Bhawan
New Delhi 110 002

vs. ITO, Ward 37(1)
New Delhi

PAN: AAFPM 6366 G
(Appellant)

(Respondent)

Appellant by : Shri P.D.Mittal, A.R.

Respondent by : Ms. Anima Barnwal, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

These two appeals are filed by the Assessee are directed against the order dated 31.10.2011 of Ld.CIT(A)-XXI, New Delhi pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2007-08 and order dt. 11.2.2013 pertaining to the A.Y. 2009-10.

2. Facts in brief:- The assessee is a Chartered Accountant by profession. He derives income from house property as well as income from profession. He filed his return of income on 31.7.2007 declaring total income of Rs.8,42,363/-. In his return of income he declared rental income of Rs.47,11,140/- from two properties. He claimed Rs.20,84,422/- u/s 24(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on the

ground that he incurred interest on borrowed capital, which were utilised for acquiring one of the properties. On a query from the Assessing Officer (hereinafter referred to as the AO), the assessee submitted that property bearing no.20, Block No.1, situated at Asaf Ali Road (Ajmiri Gate Extension), New Delhi (hereinafter called 'the property'), built on a plot of land measuring 427.35 square metres and bearing municipal no.3428, Ward no.VIII, was gifted to him by his aunty Smt.Shantha Jain, W/o Late Sh.Amarchand Jain, vide gift deed dt. 29.8.2002. At page 20 of this gift deed it is stated as follows:

“However, there are certain liabilities including property tax etc. on the said property of which DONEE is well aware of and also handling the same and shall discharge the same as such the said property is gifted on “as is where is basis”.

2.1. The assessee claims to have repaid loan liabilities to various creditors to the tune of Rs.2.20 crores which were the liabilities of the Donor and that he also incurred an amount of Rs.6,19,060/- towards the cost of stamp duty for execution of gift deed. He further claims that the assessee has borrowed funds approximately to the tune of Rs.1.50 crores for discharging the liabilities attached to the said property and that the balance of such liabilities which were attached to the property and were repaid were met out of the own funds belonging to the assessee. It is claimed that he had incurred interest of Rs.20,84,422/- on these borrowed funds and that the same is allowable u/s 24(b) of the Act. The A.O. rejected the contention of the assessee that the funds borrowed for the purpose of repayment of liabilities created by the previous owner, as part of cost of acquisition. He noted that the family members of the donor had taken loans on various occasions and this property was given as security. In the opinion of the A.O. the assessee discharged the loan or liability of other family members, to redeem honour of the family as well as the family business and that such discharging of liability cannot be treated as cost for acquisition of the property. He further pointed out that the claim of the assessee that he had incurred expenditure towards repayment of loans and liabilities to the tune

of Rs.2,22,38,664/-, for value of a property worth only Rs.4,76,20,000/- is not acceptable. Aggrieved the assessee carried the matter in appeal. The First Appellate Authority came to a conclusion that the amount of Rs.2,22,38,664/- was not paid for acquiring assets worth Rs.47,62,000/- only. He further gave factual finding that the borrowed capital was not utilised for acquiring the property.

3. Aggrieved the assessee is before us on the following grounds.

“1. That the Ld. A.O. as well as Ld. CIT (Appeal) have erred while disallowing the claim of interest of Rs.2084422/- 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.”

3.1. ITA 2167/Del/2013 Assessment Year 2009-10:

“1. That the Ld. A.O. as well as Ld. CIT (Appeal) have erred while disallowing the claim of interest of Rs.2714749/- 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.”

4. We have heard Shri P.D.Mittal, the assessee in person and Ms. Anima Barnwal, Ld. Sr.D.R. on behalf of the Revenue.

5. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of the lower authorities and case laws cited, we hold as follows.

6. The assessee contends that the value of the property in the gift deed to the tune of Rs.47,62,000/-, was made, after considering the depressing factors being mortgage and loan liabilities. He relied on the following case laws in support of his contention that the repayment of liabilities attached to this gifted property, should be considered as cost of improvement and consequentially the interest expenditure incurred on funds borrowed for cost of improvement of the property is allowable u/s 24(b) of the Act.

- (i) Shri Shyam Gopal in ITA 4894/Del/2004 Delhi E Bench of the ITAT order dt.November, 2006.
- (ii) RM Arunachalam vs. CIT (SC) 227 ITR 222
- (iii) CIT vs. Daksha Raman Lal (Gujarat) 197 ITR 123 judgement dt.Feb.25, 1992

6.1. The Ld.Sr.D.R. submitted that, the valuation of the property in the gift deed was only Rs.47,62,000/- and that the assessee has not lead any evidence in support of his claim that depressing factors were taken into consideration while fixing the value of the property for the purpose of gift. It was emphasised that the claim that the assessee had incurred expenditure

of Rs.2,22,38,664/- for the purpose of acquiring property worth Rs.47.62 lakhs is against human probability. He relied on the order of the A.O. as well as that of the Ld.CIT(A) and submitted that the same be upheld.

6.2. After hearing both the parties, we hold as follows.

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 Rs. 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 mortgage. 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 Rs.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.

7. In the result both the appeals of the assessee for A.Y. 2007-08 as well as for the A.Y. 2009-10 are allowed.

Order pronounced in the Open Court on 11th May, 2016.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 11th May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar