

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI M.BALAGANESH (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.4831/MUM/2019
(Assessment Year: 2015-16)**

Mr. Abeezer Faizullabhoy
C/o Nanubhai Desai & co.
517, Sir Vithaldas Chambers,
Mumbai Samachar Marg,
Mumbai, Maharashtra 400 001

Vs. Commissioner of Income
Tax - (Appeals) -28
Maharashtra

PAN No. AAAPF1616K

(Assessee)

(Revenue)

Assessee by : None
Revenue by : Shri Brajendra Kumar, Senior D.R

Date of Hearing : 23/08/2021
Date of pronouncement : 01/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-28, Mumbai, dated 26.04.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 27.12.2017 for A.Y.2015-16. The assessee has assailed the impugned order on the following grounds before us:

- "1. On the facts and circumstances of the case and in law the learned CIT (Appeals) -28, erred in confirming the disallowance of deduction under Section 24(b) of The Income Tax Act pertaining to interest on Home Loan amounting to Rs.2,00,000/- on the ground that the possession of property has not yet been acquired by the appellant.

2. The appellant submits that on the facts and circumstances of the case as well as in law, the said amount of Rs.2,00,000/- should be allowed as a deduction from the income under the head "income from House Property".
3. The appellate prays for appropriate relief."

2. Briefly stated, the assessee who is a lawyer by profession had e-filed his return of income for A.Y. 2015-16 on 31.03.2017, declaring a total income of Rs.1,19,68,190/-. The return of income was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had under the head 'Income from House property' claimed deduction of interest paid on borrowed capital of Rs. 2 lac under Sec. 24(b) of the Act. On being queried, it was submitted by the assessee that the aforesaid claim for deduction of interest pertained to the funds which were borrowed by him for purchasing a residential property viz. Flat No. A-2101, Palm Beach Residency 'A' Wing, 21st Floor, Sector 4, Palm Beach Road, Nerul, Navi Mumbai. However, the A.O taking note of the fact that the assessee had not taken possession of the aforementioned property in question, thus, disallowed his aforesaid claim for deduction of interest u/s 24(b) of the Act. Accordingly, the A.O vide his order passed u/s 143(3) of the Act, dated 27.12.2017 assessed the income of the assessee at Rs.1,21,68,190/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). However, the CIT(A) not finding favor with the contentions advanced by the assessee upheld the disallowance of the assessee's claim for deduction u/s 24(b) of the Act, observing as under:

"5.4 Appros to the above, I find that there is absolutely no force in the contention of the appellant at all. This is because, it is an admitted position that the particular property in respect of which the appellant is trying to claim the deduction u/s. 24(b) is neither in the possession of the appellant, nor he has any sort of physical domain over the same. In reality, the fact situation of the appellant is that here is a dispute going on between the

appellant and the society/builder due to which there is protracted litigation and that the appellant is not in a position to take control/domain of the impugned property.

5.4 It is very clear that section 24(b) pre-supposes that there should be an income chargeable under the head House Property against which the deduction of municipal tax etc., can be claimed. Here, this is not so at all because of the dispute as referred to the above and hence, it is an axiomatic corollary that the appellant is not likely to get any kind of control/domain over the property in the near future and hence, is not likely to have any income from the same. If the logic of the appellant is to be given credence to, then it would mean that for several years, the appellant would not be in receipt of any income from the property and yet, the deduction u/s. 24(b) would continue to be claimed by it. This, obviously, cannot be the intent of the legislature in providing for the typology of the deduction u/s. 24(b).

5.5 In view of the above discussion, I cannot find any fault with the order of the AO in disallowing the deduction u/s. 24(b) to the tune of Rs.2,00,000/-. The same is therefore, confirmed and the ground no.1 and its sub-grounds are dismissed.”

5. The assessee being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. As the assessee appellant despite having been intimated about the hearing of the appeal had failed to put up an appearance before us, therefore, we are constrained to proceed with the appeal as per Rule 24 of the Appellate Tribunal Rules, 1963 and dispose off the same after hearing the respondent revenue and perusing the orders of the lower authorities.

6. The Id. Departmental Representative relied on the orders of the lower authorities.

7. We have heard the Id. Departmental Representative and perused the orders of the lower authorities. Issue involved in the present appeal lies in a narrow compass i.e as to whether or not the lower authorities were justified in law and the facts of the case in declining the assessee's claim for deduction of the interest paid on loan that was utilized for purchasing a residential house vide a registered 'agreement' dated 20.09.2009. As is discernible from the records, the assessee had vide a registered 'agreement' dated 20.09.2009 purchased a residential property, viz. Flat No. A-2101, Palm Beach Residency 'A' Wing, 21st Floor, Sector 4, Palm Beach Road, Nerul, Navi Mumbai for a consideration of

Rs.1,60,89,250/-. For acquiring the aforementioned property the assessee had taken a loan on which interest of Rs. 2,69,842.12 was paid by him during the year under consideration. Certificate evidencing the payment of the aforesaid amount of interest on borrowed funds was filed by the assessee in the course of the assessment proceedings. As observed by us hereinabove, the claim for deduction of interest u/s 24(b) of Rs.2 lac was raised by the assessee in his return of income. However, the said claim of deduction was declined by the A.O, for the reason, that the assessee had not taken possession of the property in question. On appeal, the view taken by the A.O was upheld by the CIT(A). For a fair appreciation of the issue in question, we think it apt to cull out Sec. 24(b) of the Act as was available on the statute during the year under consideration, as under:

“24. Income chargeable under the head “Income from house property” shall be computed after making the following deductions, namely: -

- (a)
- (b). Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees:

Provided further that where the property referred to in the proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed [within [five] years from the end of the financial year in which capital was borrowed], the amount of deduction under this clause shall not exceed. [two lakh rupees].

Explanation.— Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any pan thereof allowed as deduction under any other provision of this Act shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous year:]

[Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property,

or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.-For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital.]”

On a perusal of the aforesaid statutory provision, we find that the same therein contemplates that an assessee shall be entitled to claim deduction of any interest payable on the capital borrowed by him for acquiring, constructing, repairing, renewing or reconstructing a property. Admittedly, the assessee had acquired the residential property in question way back vide an ‘agreement’ dated 20.09.2009. In our considered view, for claiming deduction of interest under Sec. 24(b) of the Act there is neither any such precondition nor an eligibility criteria prescribed that the assessee should have taken possession of the property so purchased or acquired by him. Insofar the ‘1st proviso’ and ‘2nd proviso’ to Sec. 24(b) are concerned, the same only contemplates an innate upper limit of the amount of deduction qua the properties referred to in sub-section (2) of Sec. 23 of the Act i.e a residential house. However, the aforesaid *provisos* by no means jeopardizes the entitlement of an assessee to claim deduction of the interest payable by him on the capital borrowed for acquiring, constructing, repairing, renewing or reconstructing a residential property that does not fall within the realm of sub-section (2) of Sec. 23 of the Act. Also, we are unable to persuade ourselves to accept the view of the CIT(A) that as in the absence of any control/domain over the property in question the assessee would not be in receipt of any income from the same, therefore, allowing of deduction under Sec. 24(b) qua the said property would be beyond comprehension. We are afraid that the said view of the CIT(A) is absolutely misconceived and in fact divorced of any force of law. Insofar the determination of the ‘annual lettable value’ of a property is concerned, the same as per Sec. 22 r.w Sec. 23 of the Act is dependant on the ‘ownership’ of the property, irrespective of the fact whether the assessee has taken the possession

of the same or not. Although, as per the plain literal interpretation of Sec. 24(b) of the Act there is no bar on an assessee to claim deduction of interest payable on a loan taken for purchasing a residential property, though, the possession of the same might not have been vested with him, however, even otherwise the logic given by the CIT(A) for declining the aforesaid claim of deduction of the assessee clearly militates against the mandate of Sec. 22 to 24 of the Act. Accordingly, as in the case before us the assessee had admittedly paid interest of Rs. 2,69,842.12 on the capital that was borrowed by him for acquiring the property in question, which was duly evidenced on the basis of the certificate that was filed in the course of the assessment proceedings, therefore, we are unable to concur with the lower authorities who had declined his aforesaid claim for deduction of interest under Sec. 24(b) of the Act. We, thus, not finding favor with the view taken by the CIT(A) therein set-aside his order and direct the A.O to allow the assessee's claim for deduction of Rs. 2 lac under Sec. 24(b) of the Act.

8. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 01.09.2021

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 01.09.2021
PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai