

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 749/Chny/2019  
निर्धारण वर्ष/Assessment Year:2010-11

Dr. (Late) S. Ashok,  
Represented by Dr. Anisha Ashok  
Legal Representative, 121, G.N. Chetty  
Road, T. Nagar, Chennai 600 017.  
[PAN:AABPA2448M]

Vs. The Assistant Commissioner of  
Income Tax, Non Corporate Circle 1(1),  
Income Tax Office, Room No. 309, III  
Floor, Wanaparthy Block, 121, M.G.  
Road, Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R. Vijayaraghavan, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 06.04.2022  
घोषणा की तारीख /Date of Pronouncement : 12.04.2022

**आदेश /O R D E R**

**PER V. DURGA RAO., JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Chennai, dated 14.12.2018 relevant to the assessment year 2010-11. challenging the appellate order of confirming the property acquired is a residential building and not a 'business asset' as claimed by the assessee.

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2010-11 on 20.09.2010 admitting a

total income of ₹.1,39,33,160/-. The same was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. After following due procedures, the assessment under section 143(3) of the Act was completed on 07.03.2013 by assessing total income of the assessee at ₹.1,40,44,383/-. Subsequently, since the Assessing Officer believed that the income chargeable to tax has escaped assessment for the assessment year 2010-11, the Assessing Officer reopened the assessment by issuing notice under section 148 of the Act. During the course of reassessment proceedings, the Assessing Officer noted from the documents submitted by the assessee that he had availed a 'Home Loan' from the State Bank of India amounting to ₹.4,00,00,000/-. The said loan was sanctioned as Home loan at the following address: "Old No. 57, New No. 120, G.N. Chetty Road, T. Nagar. The said address for which the loan was availed is the residential address of the assessee as verified from the return ITR V and Form 3CD. The loan has been taken in order to acquire the property which was in the name of his brother. The AR also admitted that the said property was classified as a residential property only as per Electricity Board as well as by the City Corporation. In this regard, the assessee has only been

paying charges on residential rates, whereas, the assessee claims to have been used the building as a hospital. Since the loan availed for the property is self occupied property (no rental income offered and assessee himself is residing on the said property as verified from computation of total income and Form 3CD), the Assessing Officer restricted the debit of interest on Housing loan in P&L a/c at ₹.1,50,000/- and the balance excess debit of interest on housing loan to the tune of ₹. 24,24,935/- was disallowed and brought to tax and completed the assessment under section 143(3) r.w. section 147 of the Act dated 21.03.2016. Further, the depreciation claim made by the assessee on the building has been revoked as it is an asset used not in connection with the business of the assessee and accordingly, disallowed the depreciation claim of ₹.5,45,000/- and brought to tax. On appeal, the Id. CIT(A) confirmed the addition made by the Assessing Officer.

3. On being aggrieved, the assessee is in appeal before the Tribunal with regard to the claim of interest expenditure as well as depreciation claim. By reiterating the detailed written submissions as was made before the authorities below, the Id. Counsel for the

assessee has submitted that the Department has taken two different view on an identical set of facts for two different assessment years and prayed for deleting the additions made towards disallowance of interest expenditure as well disallowance of depreciation claimed by the assessee.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee has acquired the property situated at Door No. 57 (old)/New No. 120, G.N. Chetty Road, Chennai from assessee's brother Shri S. Anand by availing term loan of ₹.4 crores on 04.07.2008 provided to professional sector clients (claimed as a home loan – P Segment advance) on the security of immovable property. The assessee has claimed the interest paid on loan, which was disallowed by the Assessing Officer by holding that the property acquired by the assessee was a residential property and not put to use in business purpose since the property has been classified as a residential one in the corporation and electricity board records.

5.1 It is an admitted fact that the previous owner of the property held it as a residential property and after acquiring the same by the assessee, the property was put in use for professional business purpose by the assessee. In fact, the Id. Counsel for the assessee has submitted that the Inspector of the Department has inspected the building on 10.02.2016 to ascertain how the building was made use of for the purpose of the hospital and noted the following details:

- i. Ground floor – out patients consulting room of the doctors and their assistants, Ultra sound can centre, pathology lab and pharmacy.
- ii. First floor – retiring room of the assessee (as the Chief Surgeon of the Hospital). The retiring room of the duty doctors, hall where the VIP guests waited for their consultations a kitchen and wash room.

5.2 It was further submission that the Inspector conducted enquiries with the staff of the hospital who were present and who are in the employment of hospital from 2009-10 financial year and even earlier. The staff so enquired clarified to the Inspector as to how the building was used in financial year 2008-09 and 2009-10 and in the subsequent years as a portion of the existing hospital. However, the assessment

order passed under section 143(3) r.w.s. 147 of the Act dated 21.03.2016 is very silent about the report of the Inspector deputed for inspection of the assessee's building. It is very clear from the assessment order that the Assessing Officer used the records of electricity board and corporation for making the disallowance despite the fact that the building is being under use of professional business purpose of the assessee much prior to the assessment year under consideration. It is also strange to note from the written submissions filed before the authorities below that similar claim of deduction was allowed to the assessee for the assessment years 2009-10, 2011-12, 2012-13 and 2014-15 and thus, we are of the opinion that the Assessing Officer has drawn two different conclusions on the same set of facts for different assessment years is legally not correct.

6. Under the above facts and circumstances, we set aside the orders of authorities below and remit the matter back to the file of the Assessing Officer to verify the assessment records ever since the property was acquired by the assessee with regard to the claim of deduction of interest expenditure as well as allowability of depreciation

and decide the issues afresh by affording an opportunity of being heard to the assessee.

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

Order pronounced on the 12<sup>th</sup> April, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 12.04.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.