

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI**

**BEFORE**

**SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 500/Del/2019  
Assessment Year: 2015-16

DCIT, Circle-4(1), New Delhi.	Vs.	Sh. Kanwal Mohan Singh Sehgal Flat No. 8, Ground Floor, Block Saraswati-8, Sector-D, Pocket-6, Vasant Kunj, Delhi- 110 070 PAN AANPS0486K
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Sanjeev Khurana, CA
Department by:	Shri Anuj Garg, Sr. DR
Date of Hearing:	06.07.2022
Date of pronouncement	25.08.2022

**ORDER**

**PER ASTHA CHANDRA**

The appeal by the Revenue is directed against the order dated 07.09.2018 of the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi ("**CIT(A)**") pertaining to the assessment year ("**AY**") 2015-16.

2. The Revenue has taken the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 1,00,91,252/- made on account of indexed cost of House Property pertaining to interest expenses.
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing deduction u/s 54 of the I.T. Act of Rs. 1,70,00,000/- on account of acquisition of new residential unit.”

3. The assessee is an individual. He has income from salary from M/s. Banox Exim Pvt. Ltd. where he is Director, income from house property, profit from partnership firm M/s. Prime Banox, long term capital gain and income from other sources. He filed his return for AY 2015-16 on 29.09.2015 declaring income of Rs. 1,57,00,290/-. The case was selected for scrutiny under CASS. The Ld. Assessing Officer (**“AO”**) found that the assessee sold his residential house for Rs. 5,80,00,000/- and Computed Long Term Capital Gain (**‘LTCG’**) of Rs. 1,94,89,939/- out of which he claimed deduction of Rs. 1,70,00,000/- under section 54 of the Income Tax Act, 1961 (**the “Act”**) and declared taxable capital gain of Rs. 24,89,939/-. While computing capital gain of Rs. 1,94,89,939/- the assessee has claimed deduction of interest cost of Rs. 1,00,91,252/- as indexed cost of acquisition. On query, the assessee submitted that interest incurred for acquisition of capital asset forms part of cost of asset and relied on the following decisions:

1. CIT vs. Sri Hari Ram Hotels Pvt. Ltd. 188 Taxman 178 (Kar)
2. CIT vs. Shri Raja Gopala Rao 252 ITR 459 (Mad)
3. CIT vs. Mithilesh Kumari (1973) 92 ITR 9 (Delhi)

4. The submission of the assessee was not acceptable to the Ld. AO who observed that the decisions (supra) are not applicable to the case of the assessee. These decisions (supra) say that actual cost would include all expenditure necessary to bring the assets into existence and put them in working condition. Nowhere it has been held therein that expenditure incurred after the acquisition of the asset would be included in the cost of assets. He therefore held that interest paid by the assessee for the period commencing from the date of acquisition of asset till the date of sale would not form part of the cost of acquisition. According to Ld. AO such interest expenditure does not fall within the ambit of section 48 and cited the decision of Mumbai Bench of the ITAT in Macintosh Finance Estate Ltd. vs. Addl. CIT (2007) 12 SOT 324. He also observed that in determining the cost of acquisition, the interest component after bringing the asset into existence is not taken into consideration as per Explanation 8 to section 43 of the Act.

Moreover, in earlier years the assessee has claimed deduction of interest in respect of self occupied property sold during the year under section 24(b) of the Act under the head "House Property". Hence it cannot be treated as cost of acquisition of property for capital gain. Accordingly, the Ld. AO did not allow the impugned interest as indexed cost of acquisition.

5. Further, the Ld. AO negated the claim of the assessee for deduction of Rs. 1,70,00,000/- under section 54 of the Act. He found that the assessee purchased agricultural land measuring 87120 sq. ft. From M/s. Banox Exim Pvt. Ltd. in which he is director and gets salary. The Ld. AO issued commission under section 131(1)(d) of the Act to ITO, Ward Bhiwadi. He deputed his inspector who reported that the land in question is being used as Farm House and that the residential house is constructed in 1350 sq ft., guest house in 900 sq ft., staff quarters and toilets 500 sq. ft., swimming pool 400 sq. ft. and shed for parking & pets 1800 sq. ft. Based on the above report and that the land is still agricultural in revenue records, the Ld. AO disallowed the impugned deduction under section 54 of the Act.

6. Both the issues aforementioned were challenged by the assessee in appeal filed before the Ld. CIT(A) .

6.1 On the issue whether interest incurred for acquisition of capital asset would form part of cost of asset or not, the Ld. CIT(A) held in favour of the assessee by observing as under in para 8.4 to 8.7 of his appellate order:

*"8.4 On careful consideration of the facts of the case, I find that Assessing Officer has heavily relied upon the following cases a) Macintosh Finance Estates Ltd. vs Additional CIT (ITAT Mumbai) b) V. Mahesh, ITO vs Vikram Sadanand Hoskote (ITAT Mumbai). The Hon'ble ITAT Mumbai Bench, in the case of DCIT Vs Shri Fritz D. Silva delivered in 2015, has overruled the decision in the case of Macintosh Finance Estates Ltd. vs Additional CIT relying on the decision of Madras High Court in the case of Trishul Investments Ltd. The same is explained through following relevant extract of judgment –*

*"In fact, we find that the question which is presently before us, arose for consideration directly before the Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra). Ostensibly, the Mumbai Bench of the Tribunal in the case of Macintosh Finance Estates Limited (supra), did not have the benefit of the Judgment of Hon'ble Madras High Court because the Judgment of Hon'ble Madras High Court*

*was rendered on 12.07.2007, whereas, the decision in the case of Macintosh Finance Estates Limited (supra), was rendered by the Tribunal on an earlier date i.e. on 27.02.2006. Therefore, the Judgment of Hon'ble Madras High Court being directly on the point, we prefer to follow the same."*

8.5 Assessing Officer has further observed that interest component after bringing the asset into existence cannot be taken into consideration as per Explanation 8 of Section 43 of IT Act. But Section 43 is applicable for definition of certain terms relevant to income from profits and gains of business or profession from section 28 to 41. In present Case, interest on housing loan does not pertain to Business.

8.6 It is held that if property is purchased from borrowed funds, the amount of interest constitutes the actual cost to that property. To exclude the interest amount from the actual cost of the assets/property would lead anomalous result.

8.7 A perusal of provisions of section 24(b) and 48 of the Act makes it unambiguous that none of them excludes operation of the other. In other words, a deduction under section 24(b) is claimed when concerned assessee declares income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48 of the Act."

6.2 On the issue of denial of exemption of assessee's claim under section 54, the Ld. CIT(A) held in para 12.4 of his appellate order as under:

*"12.4 On careful consideration of the facts of the case, it is clear that the assessee has made the investment in the residential house and land appurtenant thereto. The Income Tax Act does not limit the size of appurtenant land. There is no restriction or legal bar for the claim of exemption to make the investment in the residential house on the agricultural land. The report received by the Assessing Officer on the issue of commission to ITO, Bhiwadi, makes it clear that not only the residential house was found existing, there is a guest house, staff quarter and toilets, swimming pool and shed for parking and pets. It means the residential house is habitable full of amenities. In the light of various decisions relied on by the Appellant and the provisions of IT Act, I allow the exemption claimed by the Appellant. The addition made by the Assessing Officer is deleted."*

7. Aggrieved, the Revenue is in appeal before the Tribunal.

8. Ground No. 1 relates to disallowance of Rs. 1,00,91,252/- made by the Ld. AO on account of indexed cost of house property pertaining to interest expenses which has been deleted by the Ld. CIT(A). The Ld. DR supported the order of the Ld. AO and attempted to justify his view. The Ld. AR reiterated the same arguments which were advanced before the Ld. CIT(A). He relied on the decision of Chennai Tribunal in ACIT v.

Ramabrahamam (2012) 27 taxmann.com 104 (Chennai-Trib) in which it was held that interest on housing loan which was claimed as a deduction under section 24(b) while computing income from house property was also deductible under section 48 as cost of acquisition. Several judgments were cited in support of the proposition that where property is purchased from borrowed funds, the interest paid therein constitute 'cost' to the assessee. It was also submitted by the Ld. AR that Mumbai Tribunal in its later decision in DCIT vs. Shri Fritz D. Silva in ITA No. 236/Mum/2010 dated 8.5.2015 overruled its earlier decision in Macintosh Finance Estates Ltd. (supra) relied upon by the Ld. AO, following the judgment of Hon'ble Madras High Court in CIT vs. Trishul Investments Ltd. (2008) 305 ITR 434 (Mad.). The Ld. AR further submitted that Explanation 8 to section 43 of the Act is not at all applicable to the facts of the assessee's case.

8.1 On careful consideration of the rival submissions and perusal of the material on records, we have come to the conclusion that this issue is squarely covered by the decision of Delhi SMC Bench of the Tribunal in Ashok Kumar Shahi vs. ACIT in ITA No. 5155/Del/2018 dated 30.10.2019 in which decision of Chennai Bench of the Tribunal in ACIT vs. Shri C. Ramabrahmam in ITA No. 943/Mds/2012 dated 31.10.2012 has been quoted wherein the Tribunal in para 8 held as under:

*"8. We have considered submissions of both parties at length and also perused the relevant findings of the Assessing Officer as well as CIT(A). Regarding the issue of capital gains, it transpires that there is hardly any dispute that the assessee had availed the loan for purchasing the property in question. Since the assessee had shown the income under the head 'house property', he preferred to raise the claim of deduction under section 24(b) of the "Act", which reads as under:*

*"(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital: "*

*There is no quarrel that since the assessee's claim of deduction was under the statutory provisions; therefore, he succeeded in getting the same. However, after the property was sold, he also chose to include the interest amount while computing capital gains under section 48 of the "Act", which reads as under:*

*“48. The income chargeable under the head “Capital gains” shall be computed, by deducting from the full value of the consideration<sup>43</sup> received or accruing as a result of the transfer of the capital asset the following amounts, namely :—*

- (i) expenditure incurred wholly and exclusively in connection with such transfer;*
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto.”*

*After perusing the above said provisions, we are of the opinion that deduction under section 24(b) and computation of capital gains under section 48 of the “Act” are altogether covered by different heads of income i.e., income from ‘house property’ and ‘capital gains’. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, a deduction under section 24(b) is claimed when concerned assessee declares income from ‘house property’, whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. We do not have even a slightest doubt that the interest in question is indeed an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee in the instant case is certainly entitled to include the interest amount at the time of computing capital gains under section 48 of the “Act”. Therefore, the CIT(A) has rightly accepted the assessee’s contention and deleted the addition made by the Assessing officer. Hence, qua this ground, we uphold the order of the CIT(A).”*

Accordingly, we uphold the order of the Ld. CIT(A) and reject this ground of the Revenue.

9. Ground No. 2 relates to denial of exemption under section 54 by the Ld. AO which has been allowed by the Ld. CIT(A). The Ld. DR supported the order of the Ld. AO whereas the Ld. AR submitted that the solitary ground on which the Ld. AO disallowed the claim of the assessee is that the residential house is constructed on agricultural land. The impugned disallowance is not valid on this ground alone as ITAT Jaipur Bench has held in *Shyam Sunder Makhija vs. ITO 38 ITD 125* that the Farm House is also a residential house. The Ld. AR submitted that section 54 does not put any rider that deduction in respect of investment in acquisition of land appurtenant to the building will not qualify for exemption.

9.1 We have given our careful thought to the submissions of the parties and perused the orders of the Ld. AO/CIT(A) as also the material on records. It is not in dispute that the assessee has purchased agricultural land and constructed in the said land residential house, guest house, staff quarters, swimming pool & shed for parking etc. The Ld. CIT(A) has observed and

rightly so that the assessee has made investment in the residential house and land appurtenant thereto and that the Act does not limit the size of appurtenant land. In Addl. CIT vs. Shri Narendra Mohan Uniyali, the Delhi Bench of the Tribunal held in ITA No. 1624/Del/2009 dated 31.08.2009 in para 10 as under:

*“10. It is crystal clear from the plain reading of Section 54 & 54F that exemption is allowable in respect of amount invested in the construction of a residential house. There is no any rider u/s 54F that no deduction would be allowed in respect of investment of capital gains made on acquisition of land appurtenant to 5 ITA-1624/D/2009 & CO-157/D/2009 the building or on the investment on land on which building is being constructed. When the land is purchased and building is constructed thereon, it is not necessary that such construction should be on the entire plot of land, meaning thereby a part of the land which is appurtenant to the building and on which no construction is made, there is no denial of exemption on such investment.”*

9.2 We are, therefore, of the opinion that the impugned disallowances of exemption under section 54 is not based on any solid foundation and the Ld. CIT(A) was perfectly justified in deleting the disallowance. There being no substance in this ground of the Revenue, we reject it.

10. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 25<sup>th</sup> August, 2022.**

**sd/-**  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 25/08/2022

**Veena**

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ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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