

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA Nos.1457 & 1458/Mum/2020
(A.Y.2010-11)**

Sonalı Rajender Sethı 43, Solomon Apartments, Shriley Rajan Road, Bandra West, Mumbai – 400 050	Vs.	Income Tax Officer- 12(1)(2),5 th Floor, Earnest House, Nariman Point, Churchgate, Mumbai – 400 021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACDPT6501A		
Appellant	..	Respondent

Appellant by :	Jitendra Singh
Respondent by :	Pitta Samuel

Date of Hearing	21.09.2022
Date of Pronouncement	23.09.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these appeals filed by the assessee for the same assessment year in respect of quantum addition and penalty arising from the different order of CIT(A). Since both the issue are interconnected, therefore, for the sake convenience these appeals are adjudicated together.

ITA No. 1457/Mum/2020

- “1. The Ld. Commissioner of Income Tax (Appeals) 20, Mumbai [hereinafter referred to as "Ld CIT(A)"] erred in passing the order dated 03.12.2019

upholding the action of Ld. A.O. in denying the benefit of deduction claimed under section 24(b) of the Act amounting to Rs.13,35,231/- without appreciating the facts and circumstances of the case. The disallowance of deduction claimed under section 24(b) of the Act is unjustified and the same may be deleted

2. *The Ld. CIT(A) failed to appreciate that the Appellant is eligible to claim the benefit of deduction under section 24(b) on the interest paid on housing loans. Thus, denying the benefit of deduction under section 24(b) merely because the Appellant has not been able to furnish the original interest certificate received from the bank is against the provisions of law. The Appellant, therefore, prays that disallowance of deduction claimed under section 24(b) of the Act is unjustified and the same may be deleted.*
3. *The Assessee seeks leave to add, amend and alter any ground as and when required.”*

2. The fact in brief is that Assessing Officer on the basis of 26AS form the AO noticed that assessee had earned income of Rs.67,94,946/- which was subject to provision of TDS u/s 94C and 94I of the Act. However, AO observed that assessee had not filed her return of income as required u/s 139(1) or within the extended time limit prescribed u/s 139(4) of the Act, therefore, the A.O had initiated proceedings u/s 147 of the Act. Accordingly, a notice u/s 148 was issued on 31.03.2017, however, the assessee has not made compliance to the notice issued u/s 148 of the Act. Consequently, the A.O had invoked the provision of Sec. 144 of the Act. Thereafter the A.O observed that assessee has earned the total income of Rs.67,94,946/- which was reflected in the form no. 26AS and after allowing 10% of the said income as expenses [Rs.67,94,946/- (-) Rs.6,79,494/-] equal to Rs.61,15,452/- was taken as her income. The A.O has also initiated penalty proceedings.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). During the course of appellate proceedings before us the ld. CIT(A) submitted that she was a non-resident and residing in Hongkong and she had actually received the assessment order on 11.06.2018 which

was passed the A.O u/s 144 r.w.s 147 of the Act on 30.11.2017. The assessee has also filed copy of her passport in support of her claim. The assessee has explained before the ld. CIT(A) that she was a resident of Hongkong and during the course of assessment proceedings she was residing in Hongkong because of which she could not received notices issued u/s 148 and Sec. 142(1) of the Act, therefore required compliance could not be made before the A.O at the time of assessment. Under the aforesaid circumstances the assessee has brought to the knowledge of the ld. CIT(A) that she had received gross rent of Rs.9,41,075/- and Rs.53,80,358/- from two properties owned by her. The details of such properties are as under:-

Property No.1:	Kilfire House, Unit No.209, 2 nd Floor, Dalia Industrial Estate, off Andheri Link Road, Andheri (West), Mumbai – 400053
Property No.2:	Landmark, Juhu Tara Road, Juhu, Mumbai -400049

Therefore, she submitted before the ld. CIT(A) that she was entitled to deduction of 30% u/s 24(a) of the Act. She had also submitted that she was also eligible for deduction of interest of bank loan obtained for purchasing of the aforesaid property u/s 24(b) of the Act. Before the ld. CIT(A) the assessee has filed copies of title deeds of two properties from which she derived the rental income. The ld. CIT(A) has allowed the appeal of the assessee except the claim of deduction of interest u/s 24(b) of the Act on the ground that assessee had furnished the copies of interest paid certificate issued by the bank but not furnished the original certificate issued by the bank. Therefore, the claim of deduction to the amount of Rs.13,35,231/- u/s 24(b) of the Act was disallowed.

4. The AO had also levied penalty u/s 271(1)© of the Act which was partly sustained by the ld. CIT(A). The assessee had filed appeal against the order of ld. CIT(A) vide ITA No. 1458/Mum/2020.

5. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the ld. Counsel has brought to our notice that during the course of appellate proceedings before the ld. CIT(A) assessee had furnished copies of interest paid certificate issued by banks in support of her claim of deduction u/s 24(b) of the Act, however, no any notice or communication was made to the assessee for furnishing of original interest paid certificate issued by the bank. Therefore, being a non-resident and because of above reason the said certificate could not be produced. After taking into consideration the aforesaid facts and circumstances normally whenever any such irregularity crept in the proceedings, then after removing the irregularities proceedings is to be initiated from that stage but by remitting the issue to the ld. CIT(A), we would be multiplying the litigation because the ld. CIT(A) would call a remand report from the A.O and proceedings would commenced on two stages in order to avoid that situation we would deem it proper to set aside both the order of quantum addition and penalty levied to the file of the A.O for deciding afresh after examination of the detail and information to be furnished by the A.O and after affording due opportunity to the assessee. Therefore, both the appeals of the assessee are allowed for statistical purposes.

6. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 23.09.2022

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 23.09.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,
सत्यापित प्रति // True Copy //

(Asst. Registrar)
ITAT, Mumbai