

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.449 & 450/Chny/2018
निर्धारण वर्ष /Assessment Years: 2007-08 & 2008-09

M/s.Peevees Realtors India Pvt. Ltd., v. The Dy. Commissioner –
125/5, Third Floor, SripathyNagar, of Income Tax,
Thrid Street, Nanjundapuram Road, Corporate Circle-2,
Coimbatore-641 036. Coimbatore.
[PAN: AADCP 5388 A]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N.Arjun Raj, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 22.11.2022
घोषणा की तारीख /Date of Pronouncement : 30.11.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-1, Coimbatore, both dated 15.11.2017 and pertains to assessment years 2007-08 & 2008-09. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years and challenged disallowance of deduction

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claimed u/s24(b) of the Act, in respect of interest paid on borrowed capital while computing income from house property. Therefore, we deem it not necessary to reproduce various grounds of appeal filed by the assessee for both the assessment years.

3. The brief facts of the case are that the assessee is a domestic company, which is engaged in the business of real estate and property development. It had acquired an immovable property and constructed a building thereon with the name "Golden Mahal", at 501, Oppanakara Street, Coimbatore. The property was initially given on lease for running a retail outlet called 'Big Bazaar'. The assessee received lease rental income from the above property up to the previous year relevant to the AY 2009-10. The above said property was sold by the assessee to Dr.S.Raveendran Pillai, Sreevalsam, Thevally Post, Kollam West Village, Kollam District, Kerala. The assessee did not file return of income for the AYs 2007-08, 2008-09 & 2009-10. Therefore, a notice u/s.148 of the Act, dated 07.03.2014 was issued for the AYs 2007-08 & 2008-09. The case has been, subsequently, taken up for scrutiny assessment proceedings and during the course of assessment proceedings, the AO noticed that the assessee has claimed deduction towards interest paid on borrowed capital u/s.24(b) of the Act, towards loan availed from State Bank of India (in short "SBI"). In order to ascertain the correctness of claim of interest u/s.24(b) of the Act, the AO has issued notice u/s.133(6) of the Act, to SBI and obtained necessary information including copies of loans sanction letters and bank

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statements, etc. The AO on the basis of information furnished by the SBI, noticed that the assessee had availed term loan under 'Rent Plus Scheme' for the purpose of construction of building. The AO further noticed that since, the assessee has not offered any rental income from the property, on which, the loan was borrowed from SBI opined that interest paid on said loan is not deductible u/s.24(b) of the Act, and thus, disallowed deduction claimed towards interest paid to SBI for both the assessment years.

4. Being aggrieved by the assessment order, the assessee has preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee reiterated its arguments made before the AO and submitted that the assessee has availed loan from SBI for completing unfinished building and said construction was completed in the month of October, 2006. Further, the assessee has let out additional building to M/s.Pantaloon Retail (India) Ltd., from January, 2007 onwards. Therefore, it has rightly claimed deduction towards interest paid on housing loan u/s.24(b) of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts observed that the assessee availed term loan on 16.09.2006 and after completing construction of the building, the property tax was paid on 06.02.2007. The building was let out to M/s.Pantaloon Retail (India) Ltd., from January, 2007 onwards. Therefore, it is very clear from these facts that a portion of the building let out was completed by October, 2006, from which date enhanced building tax is charged by the Corporation of Coimbatore and tenant has occupied the

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property from January, 2007 onwards. The loan was sanctioned only on 16.09.2006 whereas the enhanced property tax on completion is levied from 01.10.2006. Hence, it is improbable to believe that the loan was utilized for the construction of the property from where the assessee has received rental income. Therefore, opined that there is no error in the reasons given by the AO to disallow interest u/s.24(b) of the Act, and thus, rejected the arguments of the assessee and sustained additions towards disallowance of interest u/s.24(b) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that there is no dispute with regard to fact that the assessee has availed term loan from SBI for construction of building. In fact, the AO accepted the fact that the purpose of loan is for construction of building. However, only reason that the AO denied deduction for interest u/s.24(b) of the Act, is no rental income derived from said property, on which, the loan was borrowed from the Bank. The facts remain that the Ld.CIT(A) had admitted the fact that the building construction was completed in October, 2006 and the same has been let out to M/s.Pantaloon Retail (India) Ltd., from January, 2007 onwards. Since, the assessee has let out the building from the AY 2007-08 onwards, it has rightly claimed deduction towards interest paid on loan borrowed for construction of building u/s.24(b) of the Act. The Ld.CIT(A) without appreciating said facts simply sustained the additions made by the AO on suspicious manner.

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6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee has availed term loan from SBI under 'Rent Plus Scheme' and normally said loan is sanctioned on the basis of future rental income of any building or property. Although, the assessee claims to have availed loan for completing unfinished building, but no details about amount incurred for construction of building, was filed. Further, no proof was filed to establish nexus between borrowed funds and construction of building. Even before the Tribunal, the assessee could not file any evidences to prove that borrowed funds from SBI has been utilized for construction of building, on which, rental income has been derived. In absence of any evidences, the AO has rightly disallowed interest paid on term loan and their orders should be upheld.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has availed term loan from SBI for the purpose of construction of building under 'Rent Plus Scheme'. In fact, the bank in reply to Notice u/s.133(6) of the Act, issued by the AO stated that the assessee has availed term loan for the purpose of construction of unfinished building. In fact, the AO had also not disputed the fact that the loan has been availed for construction of building. The only reasons for the AO to deny deduction towards interest u/s.24(b) of the Act, is that the assessee has not derived any rental income from said property, on which, loan has been borrowed from bank. It was the

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arguments of the assessee before the AO and the Ld.CIT(A) that loan has been availed for the purpose of construction of unfinished building and further, said building has been completed during the Financial Year relevant to the AY 2007-08. The assessee had also let out said building to M/s.Pantaloon Retail (India) Ltd., from the month of January, 2007 onwards. Therefore, once the building has been let out during the FY relevant to the AY 2007-08, it has rightly claimed interest paid on borrowed loan against rental income.

8. Having heard both the sides and considered relevant material on record, we find that the Ld.CIT(A) had accepted the fact that building was completed in the FYs 2006-07 relevant to AY 2007-08. It was further observed that the assessee has let out said building to M/s.Pantaloon Retail (India) Ltd., from January, 2007 onwards. Therefore, from the above, it is very clear that the assessee has borrowed loan from SBI for the purpose of construction of unfinished building and said building has been completed in the FY 2006-07 relevant to the AY 2007-08. Further, when the assessee has let out the building in the Financial Year relevant to the AY 2007-08, then, in our considered view, the assessee can claim interest paid on borrowed capital for the purpose of construction of building u/s.24(b) of the Act, against rental income while computing income from house property. In this case, since the assessee has let out the building from January, 2007 onwards in the Financial Year relevant to the AY 2007-08, it has rightly claimed interest paid on borrowed capital u/s.24(b) of the Act.

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The Ld.CIT(A), although, accepted the fact that the assessee has borrowed loan from bank for the purpose of construction of building and also said building has been let out, erred in sustaining addition made towards disallowance of interest on flimsy grounds like probability or improbability of construction of building in a short period ignoring fact that what was constructed by the assessee is unfinished building. Therefore, we are of the considered view that the AO is erred in disallowing interest claimed towards borrowed capital u/s.24(b) of the Act. The Ld.CIT(A) without appreciating the facts simply sustained additions made by the AO and thus, we direct the AO to delete additions made towards disallowance of deduction claimed towards interest paid on loan borrowed from SBI u/s.24(b) of the Act, for both the assessment years.

9. In the result, appeals filed by the assessee in ITA Nos.449 & 450/Chny/2018 are allowed.

Order pronounced on the 30th day of November, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30th November, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF