

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND**  
**SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA no.1826/Mum./2022**  
**(Assessment Year : 2016-17)**

Sameer Kishore Koticha  
2301, 23<sup>rd</sup> Floor, Raheja Princess  
S.K. Bole Road, Dadar (West)  
Mumbai 400 028 PAN – AAWPK9080A

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-6(1)(2), Mumbai

.....Respondent

Assessee by : Shri Madhur Agarwal  
Revenue by : Shri Purnesh Gururani

Date of Hearing – 13/10/2022

Date of Order – 05/01/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 20/05/2022, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], for the assessment year 2016-17.

2. In this appeal, the assessee has raised the following grounds:

*"A. DEEMED LET OUT HOUSE PROPERTY WRONGLY CONSIDERED AS SELF OCCUPIED HOUSE PROPERTY AND DEDUCTION OF INTEREST U/S 24(b) RESTRICTED TO RS. 2,00,000/-*

1. On the facts and in the circumstances of the case and in law, the Honorable Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [the CIT (A)] has erred in confirming the adjustments made in the Order u/s 143(1) of the Income Tax Act, 1961 (the Act) by treating the commercial premises of the Appellant being Unit 3C, Cynergy. Prabhadevi, Mumbai 400 028 (said premises') as self-occupied property as per Section 23(2) of the Act.

2. In doing so, the learned CIT(A) has erred in concluding that since the Appellant does not have any self-occupied property in the captioned year, the said premises is to be treated as self-occupied; ignoring the claim of the Appellant in the return of income filed that said property is deemed let-out property.

3. The CIT (A) failed to appreciate the fact that the said premises is a commercial premises which was already on Departmental records of earlier and subsequent Assessment Years Le Assessment Year 2015-16 and Assessment Year 2017-18 wherein the Appellant was subjected to scrutiny assessment, and the said premises was accepted as deemed let out property.

4. The learned CIT(A) has also erred in restricting the deduction of Interest paid for acquisition of the said premises at Rs.2,00,000/- as per second proviso to Section 24(b) of the Act, as against Rs.1,31,39,560)- claimed by the Appellant, without proper application of mind to the facts, submissions and law on the subject.

5. In view of the above, the CIT(A) be directed to delete the treat the said premises as deemed let out property and allow deduction for interest paid Rs.1,31,39,560/-.

#### **B. CHANGING CHARACTER OF PROPERTY FROM DEEMED LET OUT TO SELF-OCCUPIED PROPERTY, WITHOUT AUTHORITY**

6. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in confirming action of the Deputy Commissioner of Income Tax, CPC (the DCIT) in altering the nature of the said premises from Deemed Let out to Self-occupied, which is beyond the scope of adjustment permitted by Section 143(1)(a) of the Act.

7. In view of the above, the Order of the CIT(A) be quashed, by holding it to be bad in law.

#### **C. CONFIRMING ADJUSTMENT MADE IN THE ORDER U/S.143(1) WITHOUT EXAMINING WHETHER THE PRESCRIBED PROCEDURE SET OUT IN THE INCOME TAX ACT 1961 WAS FOLLOWED OR NOT**

8. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in confirming the adjustment made by the Deputy Commissioner of Income Tax, CPC (the DCIT") without examining whether the procedure set out in first and second proviso to Section 143(1Xa) of the Act was followed in the case of the Appellant.

9. *In view of the above, the Order u/s 143(1) and Order u/s 154 be quashed, by holding it to be bad in law to the extent of adjustments made to the return of income of the Appellant.*

**D. FAIR AND PROPER OPPORTUNITY OF BEING HEARD NOT GRANTED**

10. *On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in treating the said premises as self-occupied property and also erred in restricting deduction of interest u/s 24 of the Act to Rs 2,00,000- without giving the Appellant fair and proper opportunity of being heard and without following the principles and rules of natural justice*

11. *Despite making timely submissions and specific requests for obtaining opportunity of personal hearing through video conferencing, the Appellant was neither asked to show cause as to why said premises claimed to be deemed let out property should not be treated as self-occupied property, nor was personal hearing granted, before disposal of the appeal by the CIT(A).*

12. *In view of the above, the Order of the CIT (A) be quashed, by holding it to be bad in law*

**E. NOT ALLOWING CARRY FORWARD OF HOUSE PROPERTY LOSS TO SUBSEQUENT YEARS RS.1,08,81,242/-**

13. *On facts of case, the learned CIT (A) erred in not allowing carry forward of loss under the Head Income from House Property to subsequent years Rs.1,08,81,242/- u/s.71B of the Act, as claimed by the Appellant.*

14. *In view of above, the learned CIT(A) be directed to allow the carry forward of loss under the Head Income from House Property to subsequent years Rs.1,08,81,242/- as claimed by the Appellant.*

**F. GENERAL**

15. *All the above Grounds of Appeal are independent of and without prejudice to each other.*

16. *The learned CIT (A)'s Order being contrary to the law, evidence and facts of the case should be set aside, quashed or modified on the grounds deduced above.*

17. *The Appellant craves leave to add, modify or delete any ground at or before the hearings."*

3. The only grievance of the assessee is against denial of complete deduction of interest paid on the loan under section 24(b) of the Act and thereby not allowing carry forward of loss under the head 'income from house property'.

4. The brief facts of the case as emanating from the record are: The assessee is an individual. For the year under consideration, the assessee filed his return of income on 30/07/2016, declaring a total loss of Rs. 1,09,61,771. Thereafter, the assessee filed a revised return of income on 23/02/2017, declaring a total loss of Rs. 1,08,81,242, after setting off and carrying forward of loss from house property. The revised return of income filed by the assessee was processed under section 143(1) of the Act vide intimation dated 28/05/2017, whereby the total income of the assessee was computed at Rs. 20,58,230 and set off of current year loss was restricted to Rs.2 lakh and carry forward of balance loss under the head '*income from house property*' amounting to Rs.1,08,81,242, was denied.

5. Separately, vide application dated 28/11/2017, filed under section 154 of the Act, the assessee sought rectification of intimation issued under section 143(1) of the Act on the basis that interest under section 24(b) of the Act was allowed only to the extent of Rs.2 lakh, however, the assessee does not have any self-occupied property for the year under consideration. The Assessing Officer, CPC, vide order dated 17/04/2019, passed under section 154 of the Act dismissed the rectification application filed by the assessee.

6. In the appeal against the intimation issued under section 143(1) of the Act, the learned CIT(A) vide impugned order dismissed the appeal filed by the assessee, by observing as under:

*"4 Decision:*

*4.1 There are 5 grounds of appeal. However the main issues are:-*

1. Treating let-out property as SOP and thereby restricting deductions of interest u/s 24(5) to Rs. 2,00,000/- per annum.

2. Not allowing carry forward of balance loss under the head House Property income amounting to Rs. 1,08,81,242/-.

The rest of the grounds are pertaining to 234 B & C and interest & 244A.

4.2 Appellant's submissions are duly considered. Appellant submitted bank loan statement as proof of taking housing loan, on which interest is being paid.

Appellant claims it is "deemed let-out property". As per income tax law, when an assessee has more than one house property, he can live in one property and all other properties are deemed let-out.

Appellant claims he has no self occupied property in the relevant A.Y. This very claim would empty that one property should be considered to be self-occupied. Therefore the AO proceeded correctly and no interference is called for. The restriction of Rs. 2,00,000/- in my considered view, is on right lines. Therefore, appeal is liable to be dismissed on this ground.

4.2.2 As regards the issue of carry forward of loss from House Property, since the loss is restricted to Rs. 2,00,000, carry forward of balance loss under the head "House Property" does not arise."

Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ('learned AR') submitted that the restriction on the allowability of interest payable on capital borrowed under 2<sup>nd</sup> proviso to section 24(b) of the Act is only applicable in case of residential property, however, in the present case the loan was taken by the assessee in respect of the commercial property. The learned AR further submitted that in assessment years 2015-16 and 2017-18, the Revenue has allowed the claim of deduction of interest under section 24(b) of the Act.

8. On the other hand, the learned Departmental Representative by vehemently relying upon the orders passed by the lower authorities submitted that since the assessee had only one property the same should be considered as self-occupied.

9. We have considered the rival submissions and perused the material available on record. At the outset, it is pertinent to note the provisions of the Act, which are relevant for the determination of the issue raised in the present appeal. Section 24 of the Act, during the relevant year, read as under:

*"24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—*

*(a) a sum equal to thirty per cent of the annual value;*

*(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 first 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 three 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 part 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 years:*

*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."*

10. Thus, under section 24(b) of the Act interest paid on capital borrowed for the purpose of acquisition, construction, repair, renewal, or reconstruction of

property is allowable as a deduction. The 2<sup>nd</sup> proviso to section 24(b) of the Act restricts such deduction to Rs.2 lakh, in case of the property referred to in the 1<sup>st</sup> proviso. Further, the 1<sup>st</sup> proviso to section 24(b) of the Act deals with the property as referred to in section 23(2) of the Act. Section 23(2) of the Act reads as under:

*"(2) Where the property consists of a house or part of a house which—*

*(a) is in the occupation of the owner for the purposes of his own residence; or*

*(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, the annual value of such house or part of the house shall be taken to be nil."*

11. Thus, from the reading of section 23(2) of the Act, it is evident that the property as referred to therein is only the residential property and the same cannot be the commercial property. In the present case, as per the agreement dated 30/12/2013, forming part of the paper book from pages No. 106-143, for the purchase of the property being Unit 3C, Cynergy, Prabhadevi, Mumbai - 400028, we find from clause no. (mm) that the said property can only be used for the purpose of setting up the IT office as per the IT Park Policy of the Government of Maharashtra. Thus, it is evident that the property in respect of which the assessee claimed interest under section 24(b) of the Act is only a commercial property, and therefore the restriction on deduction as provided in 2<sup>nd</sup> proviso to section 24(b) of the Act shall not be applicable. Therefore, we are of the considered view that the AO has erred in restricting the deduction of interest paid on the loan to Rs.2 lakh vide intimation issued under section 143(1) of the Act. We further find from the assessment orders for assessment years 2015-16 and 2017-18, forming part of the paper book from pages No.

77-91, that the AO while computing the annual letting value of the aforesaid property had granted deduction of interest paid on loan under section 24(b) of the Act. Accordingly, we direct that the interest of Rs.1,31,39,560, paid on the loan for acquiring the above property be allowed as a deduction under section 24(b) of the Act. Since the assessee is entitled to claim the entire interest paid during the year on loan for acquiring the above property, therefore, the amount of loss under the head '*income from house property*', which is not set off against the income under the other head of income be allowed to be carried forward as per provisions of section 71B of the Act. Accordingly, grounds no. A, B and E raised in assessee's appeal are allowed. Further, grounds no. C and D were not pressed during the hearing.

12. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 05/01/2023

**Sd/-**  
**GAGAN GOYAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 05/01/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai