

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 130/KOL/2023  
Assessment Year: 2014-2015**

***Padmalochanan Radhakrishnan..... Appellant  
Maya Apartments,  
55, Lake Place, Kolkata-700029  
[PAN: AAOPR4248M]***

***-Vs.-***

***Assistant Commissioner of Income Tax,....Respondent  
Circle-62, Kolkata,  
Bamboo Villa,  
169, Acharya Jagadish Chandra Bose Road.  
Kolkata-700014***

**Appearances by:**

*Shri Akkal Dudhwewala, FCA, appeared on behalf of the  
assessee*

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on  
behalf of the Revenue*

**Date of concluding the hearing : March 30, 2023**

**Date of pronouncing the order : April 17, 2023**

**O R D E R**

**Per Dr. Manish Borad, Accountant Member:-**

This appeal at the instance of assessee for assessment year 2014-15 is directed against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 09.01.2023, which is

arising out of the order under section 143(3) of the Act on 30.12.2016 framed by DCITACIT, Circle-62, Kolkata.

2. The grounds raised by the assessee are as under:-

*(1) For that on the facts and in the circumstances of the case, the ld. CIT(Appeals), NFAC grossly erred in denying the corrected figure of loss of Rs.6,59,639/- claimed under the head 'Income from House Property'.*

*(2) For that on the facts and in the circumstances of the case, the appellant having furnished the relevant housing loan interest certificates in support of the interest claimed as deduction while computing the loss of Rs.6,59,639/- under the head 'Income from House Property', the Ld. CIT(A), NFAC ought not have denied the aforesaid claim on indecisive considerations that the claim originally made was based on estimates and not the correct figures.*

*(3) For that on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC was wholly unjustified in not allowing the set-off claimed in terms of Section 71 r.w. 7IB of the Act in respect of the loss incurred under head House Property amounting to Rs. 6,59,639/-.*

*(4) For that on the facts and in the circumstances of the case, the findings recorded by the Ld. CIT(A), NFAC for directing initiation of penalty/ prosecution proceedings were perverse and misplaced and therefore deserves to be vacated/ quashed.*

*(5) For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before".*

3. Brief facts of the case are that the assessee is in individual and earns major income from salary. Income of Rs.50,24,690/- declared in the e-return for A.Y. 2014-15 was filed by the

assessee on 31.07.2014. The case of the assessee was selected for scrutiny under CASS followed by serving of notice under section 143(2) of the Act. The ld. Assessing Officer while carrying out the assessment proceeding noticed that the assessee has claimed set off of interest on housing loan at Rs.8,17,358/- against the salary income. The said interest includes the interest paid on one property used for self-occupied purpose and other two properties given on rent. The ld. Assessing Officer firstly observed that provision of section 71(4) of the Act does not permit to adjust the loss of house property otherwise than for self-occupied purpose and the same was also not allowed since the assessee has not produced the interest certificate. The ld. Assessing Officer also held that the assessee is not entitled to set off the interest on house property not used for self-occupied purpose against the salary income. Thus the claim of set off of interest on loan in respect of house property at Rs.8,17,358/- was denied and similarly deduction under section 80TTA was also disallowed for want of evidence of interest income. Aggrieved, the assessee preferred appeal before the ld. CIT(Appeals) and made a detailed submission and partly succeeded. Aggrieved, the assessee is now in appeal before the Tribunal.

4. Ld. Counsel for the assessee referring to the written submission filed before the ld. CIT(Appeals) submitted that firstly ld. Assessing Officer failed to correctly apply the provisions of section 71 and sections 23 & 24 of the Income Tax Act and further prayed that an opportunity may be provided to place the

necessary documents in support of the claim of interest expenditure incurred towards purchase of house property before the ld. Assessing Officer for necessary verification.

5. On the other hand, ld. D.R. vehemently supported the order of lower authorities.

6. We have heard the ld. representatives and perused the relevant record placed before us. The first issue raised by the assessee for our consideration is with regard to the claim of set off of interest on borrowed capital for purchase of house property at Rs.8,17,358/- against the salary income earned during the year. The assessee owns three immovable properties of which two located at Medavakkam and Ratnam Nagar, both were given on rent and third property is self-occupied. Details of rent receipt and interest paid on the housing loan produced in the body of the assessment order at page 2, which reads as under:-

(1)	Property at Medavakkam	Rent Received	Rs.7500/-
		Less 30% i.e.	Rs.2250/-
		Less: HBL	Rs.5,37,208/-
		Loss	Rs.5,31,958/-

(2)	Property at Ratnam Nagar	Rent Received	Rs.8000/-
		Less 30% i.e.	Rs.2400/-

		Less: HBL	Rs.2,21,000/-
		Loss	Rs.2,15,400/-

(3)	Property treated as self-occupied	Rent Received	NIL
		Less: HBL	Rs.70,000/-
		Loss	Rs.70,000/-

7. We further noticed that the Id. Assessing Officer has observed that the assessee is not permitted to adjust the house property loss except for the self-occupied property against other income. Provision of section 71 of the Act has a direct bearing on this issue and the same reads as under:-

*"72. (1) Where in respect of any assessment year the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.*

*(2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets).*

*(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss and*

*the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income.*

*(3)Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.*

*(4)Where the net result of the computation under the head "Income from house property" is a loss, in respect of the assessment years commencing on the 1st day of April, 1995 and the 1st day of April, 1996, such loss shall be first set off under subsections (1) and (2) and thereafter the loss referred to in section 71A shall be set off in the relevant assessment year in accordance with the provisions of that section. "*

8. On perusal of sub section (1), (2), (2A) & (3) of Section 71 of the Act, we notice that 'Loss under the head Business & Profession' as well as 'Capital Gain' has restriction for set-off with any other heads of income. However, there is no such restriction per se for set-off of 'Loss under the head House Property' with any other heads of income including 'Salary income'. It is also noticed that sub-section (4) of Section 71 of the Act as referred to by AO with respect to set off of House Property loss is relevant for Assessment Year 1995-96 & 1996- 97. Hence for the relevant assessment year 2014-15 the said clause is not at all applicable. Thus we notice that the ld. Assessing Officer has not applied the provision of section 71 of the Act correctly on the facts of the instant case.

9. Further we notice that the ld. Assessing Officer has also not applied the provisions of sections 23& 24 of the Act correctly. Provisions of sections 23 & 24 read as under:-

“23. (1).....  
(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.

.....”

On conjoint reading of Section 24 & Section 23 as reproduced herein above, your kindness will appreciate the fact that interest on loan paid in relation to self - occupied house property shall be allowed as deduction upto Rs. 2 lakhs. However, there is no such restriction per se with respect to interest paid in respect of let out property for the relevant assessment year 2014-15,

It is most humbly submitted that the amendment that has been brought into the Act restricting the overall deduction on account of interest upto Rs. 2 lakhs in relation to self-occupied as well as let-out property has been brought into the Act with effect from AY 2020-21. However, for AY 2014-15 there was no restriction per se with regard to let- out properties.

“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 five 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. From the perusal of sections 23 & 23 as above, we notice that only the interest paid on the property used for self-occupied purposes cannot be claimed in excess of Rs.1,50,000/- (Rs.2,00,000/- from A.Y. 2015-16 onwards). However, there is no such restriction for the interest paid on the let out property for the year under consideration. Further during the course of hearing, Id. Counsel for the assessee referred to the details of loss claimed under the head 'house property', which reads as under:-

Property at	Nature of Property	Annual rent received or receivable	Standard deduction (30%)	Interest paid on borrowed capital (Revised Figures)	Loss claimed under head House Property
		(A)	(B)	(C)	(D) = A - B - C
Medavakkam	Let - Out	7,500	2,250	<b>3,38,708</b>	(3,33,458)
Ratnam Nagar	Let - Out	8,000	2,400	<b>2,07,710</b>	(2,02,110)
Adyar	Self - Occupied	Nil	Nil	<b>1,24,071</b>	(1,24,071)
<b>Revised Total Income / (Loss) under the head House Property</b>					<b>(6,59,639)</b>

11. We, therefore, on going through the facts and circumstances of the case and also considering the provisions of section 71, Sections 23 & 24 of the Act are of the considered view that both the lower authorities failed to apply the provisions of section 71, section 23, and section 24 of the Act correctly on the facts of the instant case. We thus restore this issue to the file of Id. Assessing Officer for fresh adjudication considering the relevant provisions of sections 23, 24 and 71 of the Income Tax Act as well as considering the documentary evidence to be placed by the assessee in support of the alleged claim of interest paid on house property loan for which reasonable opportunity of hearing to be given to the assessee. Thus Grounds No. 1 to 3 are allowed for statistical purposes.

12. Other grounds of appeal are general in nature, which do not require for any adjudication.

**13. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on 17<sup>th</sup> April, 2023.

Sd/-

**(Rajpal Yadav)  
Vice-President**

Sd/-

**(Manish Borad)  
Accountant Member**

***Kolkata, the 17<sup>th</sup> day of April, 2023***

*Copies to :(1) Padmalochanan Radhakrishnan,  
Maya Apartments,  
55, Lake Place, Kolkata-700029*

*(2) Assistant Commissioner of Income Tax,  
Circle-62, Kolkata,  
Bamboo Villa,  
169, Acharya Jagadish Chandra Bose Road.  
Kolkata-700014*

*(3) Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC), Delhi;*

*4) Commissioner of Income Tax- ;*

*(5) The Departmental Representative*

*(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***