

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 2478/Mum/2023 (A.Y. 2013-14)

Sujeev Sanjeev Kharwadkar B-1202, Redwood New Link Road Oshiwara, Jogeshwari Mumbai-400 062. PAN : ASAPK9588P (Appellant)	Vs.	ACIT, Circle 31(3) C-13/409 Pratyakshkar Bhavan, Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Sanjiv G. Brahme & Shri Jayant Bhatt
Department by	Shri Ram Prakash Rastogi
Date of Hearing	30.10.2023
Date of Pronouncement	01.11.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 23.5.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2013-14. The assessee is aggrieved by the decision of the learned CIT(A) in rejecting the revised return of income filed by the assessee and consequently not granting the deduction of interest payable on housing loan as claimed by the assessee.

2. Facts relating to the case are stated in brief. The assessee is full time employee of Jet Airways India Limited. He filed its original return of income for the year under consideration on 2.11.2013, wherein he declared salary income and income from house property. Under the head income from house property the assessee claimed only interest expenditure of Rs. 1,50,000/- and claimed set off of the same against Salary income. It is pertinent to note

that this return of income has been filed beyond the due date prescribed under section 139(1) of the Act, meaning thereby, it was filed under section 139(4) of the Act as belated return of income.

3. Subsequently, the assessee filed a revised return of income on 17.1.2014, wherein the assessee declared rental income and interest income, which were omitted to be declared in the original return of income. The assessee also revised interest expenditure under the head house property. In the original return of income, he had claimed interest expenditure of Rs.1,50,000/- and in the revised return of income, the same was claimed at Rs.18,52,481/-. The assessee declared rental income of Rs.5,50,550 and claimed interest expenditure of Rs.18,52,481/- and thus claimed loss of Rs.13,01,931 under the head income from house property. The assessee declared interest income of Rs.93,119/- under the head 'income from other sources'.

4. The Assessing Officer took the view that the assessee can file revised return of income under section 139(5) of the Act, only if he had filed original return of income within the date prescribed under section 139(1) of the Act. Since the assessee has not filed return of income under section 139(1), the Assessing Officer held that the revised return of income is not in accordance with the law. The Assessing Officer also noticed that the assessee has declared loss from house property in the revised return of the income and the same has resulted in reduction of total income vis-à-vis the original return of income. The Assessing Officer, by placing reliance on Circular No. 549 dated 31.10.1989, took the view that the Assessing Officer cannot determine income which is less than the returned income. However, that the Assessing Officer assessed rental income at Rs. 5,50,550/- and other source income of Rs. 93,119/- by taking information from the revised return of income filed by the assessee. In effect, the Assessing Officer did not allow interest

expenditure claimed by the assessee, while assessing the rental income and interest income declared in the revised return of income.

5. In the appellate proceedings, the learned CIT(A) confirmed the assessment made by the Assessing Officer and accordingly dismissed the appeal of the assessee.

6. We heard the parties and perused the record. We notice that the tax authorities have refused to recognize the revised return of income filed by the assessee on legal principles. In our view, they may be right in interpreting the provisions of sec.139(5) of the Act. However, the fact remains that the assessee has omitted to declare rental income and interest income in the original return of income filed u/s 139(4) of the Act. It is also fact that the assessee has claimed interest expenditure to the extent of Rs.1,50,000/- under the head Income from House property in the original return of income. Thus, it is not a case that the assessee did not claim interest expenditure at all under the Income from House Property.

7. Even though the assessing officer did not recognize the revised return of income on legal principles, yet he has assessed the rental income and interest income while completing the assessment. In this process, the AO has omitted to allow the interest expenditure of Rs.1,50,000/- claimed by the assessee in the original return of income. There should not be any doubt that the income has to be computed in accordance with the provisions of the Act. Hence, the AO should have allowed correct amount of interest expenditure also while assessing rental income under the head Income from House property. At this stage, we may remind the AO about the Circular issued by CBDT advising assessing officers to enlighten the assessee about the various concessions and incentives available to the assessees. (refer Circular 14 (XL-35) dated 11th April, 1955). Accordingly, we are of the view

that the AO was not justified in denying deduction of interest expenditure claimed u/s 24 of the Act.

8. The AO has expressed the view that the AO cannot determine total income lesser than that returned by the assessee. In this case, it is not a case of determination of assessed income lesser than the returned income. Before completion of assessment itself, the assessee has brought to the attention of the AO about the mistakes and omissions committed by him. The information furnished by the assessee in the revised return of income was clear case of omission and mistake. The omission made by the assessee was omission of rental income and interest income not initially declared, while the mistake committed by the assessee was non-deduction of correct amount of interest expenditure. We noticed that the AO has taken into account only income that were omitted, but failed to allow deduction of interest expenditure. In our view, he should have deducted the correct amount of interest expenditure also while determining income under the "house property".

9. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of the AO with the direction to compute income under the head Income from House property in accordance with the law after examining the claim of the assessee with regard to the interest expenditure. We also direct the assessee to furnish the relevant details before the AO.

10. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced on 01.11.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 01/11/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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