

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 349/MUM/2024 (A.Y: 2014-15)

Anand Agarwal B-34, Naporel Tower Condominium Off. RA Ahmed Kidwai Marg Wadala (West), Mumbai-400031 PAN: ADDPA3442L (Appellant)	v.	DCIT–CIRCLE 2(1) Jalpaigur, West Bengal- 735101 (Respondent)
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Assessee Represented by	:	Shri Lalit Mohan
Department Represented by	:	Shri Sunny Kachhwaha
Date of conclusion of Hearing	:	30.05.2024
Date of Pronouncement	:	05.06.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the assessee is preferred against the order dated 30.11.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y. 2014-15.

2. At the very outset, the counsel stated that he is not pressing Ground No. 2(i), 2(ii) and Ground No. 3 of grounds of appeal, therefore, all these grounds are dismissed as not pressed.

3. Briefly stated the facts of the case are that the, assessee electronically filed his return of income on 31.03.2015 declaring a total income of ₹.56,87,980/-. The return was selected for scrutiny assessment through CASS and accordingly statutory notices were issued and served upon the assessee. The assessee has filed computation of Long Term Capital Gain in respect of flat situated at Kalpataru Aura Complex, Ghatkopar (W), Mumbai, which is as under: -

2.1 Computation Long Term Capital Gain on sale of flat at Kalpataru Aura Complex:-

Purchase Price:		
Flat Cost		97,37,750/-
Registration & Stamp Duty		5,04,488/-
Society Charges	4,00,515/-	
Less: Advance Maintenance	<u>1,21,440/-</u>	2,79,075/-
Water connection charges		36,000/-
VAT on purchase		1,26,591/-
Interest Cost till possession:		
2007-08		
2008-09		6,08,587/-
2009-10	7,15,330/-	
Less: Interest from Jan 8, 2010 to March 31, 2010.	<u>1,60,704/-</u>	<u>5,54,626/-</u>
Total Cost of Acquisition		1,18,47,117/-
Index for 2009-10 (year of Possession)	632	
Index for 2010-11 (year of sale of flat)	939	
Indexed Cost of Acquisition		1,76,01,996/-
Interest Cost for 2009-10 Jan 8, 2010- March 31, 2010	1,60,704/-	
Interest for 2010-11	9,13,561/-	
Interest for 2011-12	10,49,042/-	
Interest for 2012-13	11,24,424/-	
Interest for 2013-14	7,28,363/-	39,76,094/-
Total Cost of Flat		2,15,78,060/-
Sale consideration (Flat):		
Sale Price	2,06,00,000/-	
Less: Transfer Charge	<u>1,25,000/-</u>	2,04,75,000/-
Long Term Capital Gain		NIL

4. The Assessing Officer observed that assessee has capitalised housing bank loan interest of ₹.11,63,213/- till the date of possession of the flat i.e., 08.01.2010 and has also capitalised interest of ₹.39,76,094/- being for the period 08.01.2010 till the date of sale of the flat. The Assessing Officer was of the firm belief that the assessee is not entitled for any claim of interest mentioned hereinabove and recomputed the Long Term Capital Gain from sale of the flat at Kalpataru Aura Complex, Ghatkopar (W), Mumbai as under: -

Sale Consideration-----	Rs. 2,06,00,000/-	
Less: Transfer Charge----	<u>Rs. 1,25,000/-</u>	Rs. 2,04,75,000/-
Less: Cost of acquisition: -		Rs. 97,37,750/-
Registration and stamp duty-		Rs. 5,04,488/-
Society charges -	Rs. 4,00,515/-	
Less: Adv. Maintaince -	<u>Rs. 1,21,440/-</u>	Rs. 2,79,075/-
Water connection charge-		Rs. 36,000/-
Vat on purchase -		<u>Rs. 1,26,591/-</u>
	Total -	Rs. 1,06,83,904/-
Index cost of acquisition:-		
Rs. 1,06,83,904/-x 939/551		<u>Rs. 1,82,07,234/-</u>
Long Term Capital Gain -		Rs.22,67,766/-

5. And accordingly, made the addition of ₹.22,67,766/-

6. Assessee carried the matter before the Ld. CIT(A) and strongly contended its claim. After considering the facts and submissions, the Ld. CIT(A) was of the opinion that interest of ₹.11,63,213/- has been

paid by the assessee for the period prior to taking the possession of the flat. Therefore, the said interest should form part of the cost of the property and since it has not been claimed as deduction elsewhere the Ld. CIT(A) directed the Assessing Officer to allow the claim as cost of the property. However, in so far as interest expenses of ₹.39,76,094/- is concerned the Ld. CIT(A) was of the firm belief that since the assessee has claimed the same under section 24(b) of the Act in earlier assessment years assessee is not eligible for the claim of such interest expenses and confirmed the disallowance of ₹.39,7,6094/-.

7. Having heard the rival submissions, we have carefully perused the order of the authorities below. It is true that the assessee has paid interest of ₹.11,63,213/- prior to taking the possession of the impugned flat. Therefore, there is no dispute that such interest forms part of the cost of the acquisition. To this extent, we do not find any error or infirmity in the findings of the Ld. CIT(A). But, at the same time, while giving benefit of indexation for computation of Long Term Capital Gain the assessee is very much eligible for the benefit of indexation on the interest amount of ₹.11,63,213/- also. We therefore direct the Assessing Officer to allow the benefit of indexation on this amount.

8. Coming to the claim of interest of ₹.39,76,094/- we find that the only reason for denying the claim is that the assessee must have claimed the deduction under section 24(b) of the Act in earlier assessment years. We have carefully perused the copies of the returns for earlier assessment years filed in the form of Paper Book. A perusal of the same clearly show that the assessee has never claimed interest on the impugned flat of Kalpataru Aura Complex in Ghatkopar (W), Mumbai. Therefore, the allegation of the revenue authorities is factually incorrect. Therefore, we direct the Assessing Officer to allow the claim of interest of ₹.39,76,094/- also.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 05th June, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 05.06.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum