

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1199/Mum/2024 (A.Y. 2013-14)

Sunil Ramesh Gupta 31, Sahakar Building B Road, Churchgate Mumbai-400 020.  PAN : AABPG3465A  (Appellant)	Vs.	ITO-17(3)(4) Room No. 123 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Smt. Madhura Karpe
Department by	Shri R.R. Makwana
Date of Hearing	13.06.2024
Date of Pronouncement	24.06.2024

ORDER

Per Prashant Maharishi AM

1. This appeal is filed by Mr. Sunil Ramesh Gupta for assessment year 2013 – 14 against the appellate order of joint Commissioner of income tax (appeals) – 5, Kolkata (the learned CIT – A) dated 17/1/2024 wherein the appeal filed by the assessee against the assessment order dated 18<sup>th</sup>/3/2016 passed under section 143 (3) of the income tax act, 1961 (the act) by the income tax officer – 17 (3) (4), Mumbai was partly allowed.
2. The assessee is aggrieved by the appellate order and has preferred appeal for the solitary ground that the learned CIT – A confirmed denial of deduction of Rs. 1,936,390/- of interest under section 24 (b) of the income tax act 1961 to the assessee.
3. Assessee is an individual proprietor of two proprietary concerns, carrying on job works of axle India Ltd, filed his return of income on 5/8/2013 at total income of Rs. 710,760/-. Return was picked up for scrutiny and notice under section 143 (2) was issued on 5/9/2014.

4. Assessee has shown in the computation of total income business loss of Rs. 34,757/- and net profit as per the profit and loss account was Rs. 1,247,643/-. While computing the business income is as claimed further expenses of Rs. 1,282,402/- in the computation of total income and arrived at the business loss of Rs. 34,757. When questioned, it was found that the assessee has claimed in the computation deduction of interest expenditure of Rs. 1,119,449. The loan liability of the business of the assessee was only Rs. 2,299,890 and therefore the assessee was asked to justify the interest deduction claimed. Assessee revised its computation and stated that interest expenses towards business activity is only Rs. 107,172 and the remaining interest is related to acquiring house property and other activities. Accordingly, the business income of the assessee was now offered at Rs. 1,027,520 against original loss of Rs. 34,757.
5. In the revised computation the assessee has stated that he is entitled to deduction under section 24 (b) of the act of interest expenditure of Rs. 1,936,390/-. It was submitted that the claim of the assessee is based on the decision of CIT (A) in assessee's own case for assessment year 2010 - 11 wherein it was held that assessee would be eligible for deduction of interest under section 24 (b) after possession of the property. The learned AO rejected the explanation of the assessee and held that as assessee has claimed the deduction in the revised computation of income but has not revised his return of income, the AO has no power to allow additional claim during the assessment proceedings without revising the return following the decision of honourable Supreme Court in case of *Boyd's India Ltd versus CIT 157 taxman 1*.
6. After discussing the other issues in the assessment proceedings AO passed an assessment order under section 143 (3) of the act on 18 March 2016 determining the total income of the assessee at Rs. 1,918,350.

7. AO aggrieved with the order preferred an appeal on the issue of disallowance of deduction under section 24 (b) of the act before the learned CIT – A and submitted that circular number 14 dated 11 April 1955 issued by CBDT provides that deduction is available to the assessee should be granted by the AO. The learned CIT appeal held that the learned AO has correctly disallowed the deduction as assessee has not revised his return of income. Accordingly, on this ground of appeal of the assessee was dismissed by the appellate order. Assessee is aggrieved and appeals before us.
8. The learned authorized representative referred to the facts and stated that assessee should be allowed the deduction of interest under section 24 (b) of the act. The learned departmental representative vehemently supported the orders of the lower authorities stating that there is no claim in the return of income as well as revised return is not filed therefore no fault can be found with the orders of the lower authorities.
9. We have carefully considered the contentions and perused the orders of the lower authorities. The brief facts show that in earlier assessment years 2009 – 10 the assessee obtained a loan for acquiring house property at 401, Savoy chambers, Santacruz West Mumbai. This interest was claimed in earlier years. It was disallowed by the AO however the learned CIT – A those years held that the disallowance is correctly made in those years, but it was held that such interest is allowable as it is a pre-acquisition interest. The total interest paid was Rs. 2,462,575/- which is allowable as deduction in five equal instalments of Rs 492,515/- from the year in which the possession of the property is received and further the current year's interest of Rs. 1,443,875/-. Thus, the assessee's claim for deduction of interest under section 24 (b) of the act was 19,36,390. Assessee did not claim this deduction in the original return of income but made the claim by revised computation before the assessing officer. The AO correctly

disallowed by following the decision of the honourable Supreme Court. However, the decision of the honourable Supreme Court was applicable in case of assessment and does not apply in proceedings. In appeal, this was the main ground. Therefore, the learned CIT – A should have considered the claim of the assessee and decided on the merits. The learned CIT – A has not decided the issue on the merits and therefore this ground of appeal is restored back to the file of the learned CIT – A to decide on the merits. Assessee is also directed to put forth the claim with the evidence. This is the only ground in appeal.

10. In the result appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24<sup>th</sup> June, 2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 24.06.2024

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.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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