

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**

**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA No. 82/Nag./2020**  
**(Assessment Year : 2015-16)**

Deputy Commissioner of Income Tax,  
Circle-2, Nagpur-440001

..... Appellant

v/s

M/s. SAS Developers & Engineers,  
6<sup>th</sup> Floor, Landmark, Ramdaspath,  
Nagpur-440010  
PAN – AAEFM7920M

..... Respondent

Assessee by : Shri Manoj Moriyani, Advocate  
Revenue by : Shri Surjit Kumar Saha, Sr.DR

Date of Hearing – 18/06/2024

Date of Order – 18/06/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been preferred by the Department challenging the impugned order dated 30/03/2020, passed under section 143(3) of the Income Tax Act, 1961 ("*the Act*") by the learned CIT (A)-2, Nagpur, [*learned CIT (A)*"], for the assessment year 2015-16.

2. The Department has raised following grounds of appeal:–

*“1] Whether in the facts and circumstances of the case and in law, the CIT (A)-2, Nagpur was justified deleting the disallowance by the A.O. on account of interest expenditure claimed by the assessee u/s 24(b) of the I.T. Act, 1961?*

*2] Any other grounds of appeal at the time of hearing of the appeal.”*

3. Additionally, on 14<sup>th</sup> June 2024, an additional ground was also preferred, which is reproduced below.

*“1] Whether the Ld. CIT (A) was justified in allowing the deduction u/s. 24(b) though the assessee has failed to prove nexus between loans raised and amount utilized for construction of Land Mark building?*

4. The facts of the case as culled down from the appellate order are reproduced below;

4.1 The assessee had obtained the loans from various banks from time to time and shown in the books of account of the assessee. The assessee had taken loans from State Bank of India in 2008 and Tata Capital Ltd in 1012. The assessee firm paid interest of Rs.5,02,35,661/- to Tata Capital and interest to HDFC Bank at Rs.9,77,592 i.e. total Rs.5,12,13,253/-, out of which a sum of Rs.2,57,21,914/- was debited to Shri S.K.Banerjee (Partner) and balance of Rs.2,54,91,339/- was claimed in return of income. Interest claimed by the assessee firm was exclusively used for the purpose of assessee firm. The assessee had claimed the same u/s 24(b) of the Income Tax Act. The building was let out to various tenants part by part in stages. The assessee had taken loans from banks at various stages of construction. Then whenever the assessee came to know favourable terms of loans, the assessee had switched loan from one bank to another bank. Where a fresh loan had been raised to repay the original loan if the second borrowing had really been used merely to repay the original loan. The interest paid on the second loan would

also be allowable as a deduction as provided in Circular No. 28 dated 20/08/1969, which is on Page-175 of the paper book.

4.2 The assessee firm had taken loan from SBI in 2008. Thereafter the assessee had taken loan of Tata Capital of Rs. 4.1 Cr., in 2012 for repayment of State Bank of India. A part of loan amount of M/s.Tata Capital Ltd., was used by Shri S.K.Banerjee (Partner). The proportionate amount of interest (Rs.2,57,21,914/-) was debited to Shri S.K.Banerjee and balance amount of interest was claimed in the return of assessee firm.

4.3 The learned assessing officer had not considered the contention of the assessee and disallowed the interest amount at Rs.2,54,91,339/- and made the total addition of Rs.2,64,54,673/-. The assessee encloses herewith details of copy of account of interest on loan which is on Page-148 to 150 of the Paper Book. The assessee also encloses herewith interest certificate of Tata Capital Financial Services Ltd., which is on Page-93 of the Paper Book. The assessee also encloses herewith details chart of Chronology of loan, which is on Page-92 of the Paper Book. The assessee respectfully submitted that the loan of the assessee will be allowable on account of following reasons :

1. The assessee respectfully submitted that construction of the building Landmark was started in the year 2002-03 and was continued upto financial year 2009-10. The building was also let out to various tenants part in stages. To complete the building, the assessee had taken loans from banks at various stages. Then, whenever assessee came to know favourable terms of loan, the assessee have been switched from one bank to another bank. The claim on interest on subsequent loan's is in terms of Circular No. 28 of dtd. 20/08/1969. This circular specifically provides that interest on loan taken for repayment of earlier loan is allowed from property income.
2. The assessee respectfully submits that total interest paid by the assessee is Rs.5,19,05,580/- which is duly reflected in the confirmation certificate for the interest paid to Tata Capital Ltd., submitted during the course of assessment proceedings which is on Page-93 of the paper book.

3. The assessee also respectfully submitted that out of the total interest paid, Rs.2,54,91,339/- was debited to interest account and remaining was debited to Shri S.K.Banerjee (Partner of SAS Developers and Builders). This is so because proportionate amount of loan from Tata Capital Ltd was used by Shri S.K.Banerjee for his personal purposes. The same were duly accepted by the Assessing Officer in the case of Subir Kumar Banerjee during the course of assessment proceedings for the previous year relevant to Asstt. Year 2015-16. The assessee encloses herewith copy of assessment order in case of S.K.Banarjee, which is on Page-170 to 174 of the Paper Book.

4.4 The assessee also respectfully submitted that the assessee had taken term loan of Rs.7.36 Cr in financial year 2003-04 from HDFC. It was increased by Rs.2,99,80,000/- in financial year 2004-05. It was further increased by Rs.5,70,80,000/- in financial year 2006-07. All these loans were term loans given to assessee by HDFC by mortgaging some floors of Landmark building. The assessee encloses herewith copies of Supplemental Deed of Mortgage dtd. 24<sup>th</sup> August, 2004, which is on Page-112 to 115 of the Paper Book and Indenture of Mortgage dtd. 1<sup>st</sup> November 2006, which is on Page-118 to 134 of the Paper Book. In both these documents the term used is “term loans”.

4.5 In addition loan from HDFC, the assessee had also taken some smaller loans, the details of the same is as under;

Financial Year	Name of Bank	Loan Amount
2001-2002	Gandhibagh Sahkari Bank	1,80,00,000/-
2001-2002	Akola Urban Co-Op. Bank	3,75,00,000/-
2001-2002	HDFC Bank	98,00,000/-
2003-2004	NG Vyasya Bank	56,40,000/-
2004-2005	Gandhibagh Sahakari Bank	1,10,00,000/-
2005-2006	Tirupati Urban Co-op Bank	1,00,00,000/-
2007-2008	Bank of India	1,00,00,000/-

4.6 All these loans alongwith HDFC loans were repaid fully along with interest in financial year 2007-08 after taking loan of Rs.25 Crore from State Bank of India. The assessee encloses herewith copy of sanction letter of SBI dtd. 5/3/2008, which is on Page 132 to 134 of the Paper Book and Closure letter of HDFC dtd. 17<sup>th</sup> March 2008, which is on Page-143 of the Paper Book.

4.7 The assessee drawn attention that in the sanction letter of SBI dtd 5<sup>th</sup> March, 2008, the word used is – “RENT SECURITISATION-SANCTION OF A LOAN” of Rs.25 Crores. Further, in the first para it is conveyed to the assessee firm that – “With reference to your application dated 26/02/2008, we have pleasure in conveying sanction of loan Rs.25,00,00,000/- by way of term loan on the following terms and conditions”. The nature of loan had been clearly written as – Term Loan. The assessee encloses herewith copy of sanction letter, which is on Page-132 to 134 of the Paper Book.

4.8 The assessee further submitted regarding mortgage of the floor of Landmark building. It is most humbly submitted that no bank will give loan without mortgaging property. Even in simple Housing Loan the house which is financed in mortgaged by the bank.

4.9 The assessee also submitted that regarding the Rent Securitisation term used in the sanction letter, it is submitted that any financier (Bank) will make sure the source of income from where the repayment of their loan will come. Thus, the rent receivable in future by the assessee firm was taken into consideration and the term loan was sanctioned under the scheme of bank named – Rent Securitisation.

4.10 The assessee submitted that in the financial year 2012-2013, the assessee firm availed Term loan from Tata Capital Financial Services Limited of Rs.41 Crore. The assessing officer had pointed out that the purpose of the loan mentioned in the sanction order is – “Towards repayment of existing loans with State Bank of India (SBI) and balance for other general purpose”. This is true. The full Rs.41 Crore was not used for the assessee firm. The total interest debited to interest account was under;

Interest to Tata Capital S. Ltd.                      Rs. 5,02,35,661

Interest to HDFC Bank                                      Rs.     9,77,592

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Total Rs. 5,12,13,253

4.11 Since the interest paid as per repayment schedule were Rs.5,12,35,661/- and as per bank certificate the same were taken at Rs.5,19,15,580/- which is less than the interest claimed by the assessee.

4.12 Out of this amount, the assessee had debited Rs.2,57,21,914/- to Shri S.K.Banerjee and balance of Rs.2,54,91,339/- was claimed in the return.

4.13 It is also submitted that the assessee are maintaining a loan account of Shri S.K.Banerjee (partner) for sharing of interest. This loan account is merged in the Capital account of Shri S.K.Banerjee at the end of every year. The assessee was submitted copy of loan account during the course of assessment proceeding before the assessing officer. The assessee encloses herewith copy of the assessment order in case of S.K.Banerjee, which is on Page-170 to 174 of the Paper Book.

4.14 So far as loan taken against property (LAP) and loan against Rent Receivable (LARR) is concerned, as submitted above and as per the sanction letter and loan document of SBI and Tata Capital Services Ltd., the assessing officer wants to verify that the loans are terms loans and not LAP and LARR during the course of assessment proceeding. The loan were taken for the repayment of earlier loans, availed for construction of the building.

4.15 The assessee drawn attention to section 24(b) of the Income Tax Act, 1961, which reads 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 percent of the annual value;
- (b) where the property had been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such on capital.”

4.16 As per the above provision, the assessee had rightly claimed the interest and same is allowable expenses in the eye of law.

4.17 The assessee draw attention that actual interest was paid by the assessee during the previous year relevant to Asstt. Year 2015-2016 and the assessee had already submitted letter of bank regarding interest payment which is on Page-93 of the Paper Book. Since the amount was actually paid by the assessee, the same were allowable as per provisions of section 24(b) of the Income Tax Act, 1961.

4.18 On the above mentioned preposition, assessee placed reliance on following judgments –

1. **(2009) 313 ITR 0340 (Bom. HC)**  
Commissioner of Income Tax -Vs- Reliance Utilities & Power Ltd.
2. **(2013) 88 DTR 0151 (Mum. ITAT)**  
Windermere Properties (P) Ltd. –vs- Deputy Commissioner of Income Tax.
3. Judgment of Hon'ble ITAT, Delhi Bench "C" New Delhi, dated 30/08/2017 vide ITA No. 5654/Del./2014 in case of M/s.DLF Emporio Limited -Vs.- The Deputy Commissioner of Income Tax 15(1), New Delhi.
4. **(2007) 108 ITD 0095 (ITAT Mum.)**  
Income Tax Officer -Vs.- Makrupa Chemicals (P) Ltd.
5. **(1993) 200 ITR 0146 (All. HC)**  
Commissioner of Income Tax -vs.- Devendra Bros. & Co.
6. Judgment of Hon'ble ITAT, SMC-C Bench "C" Bangalore dated 31/08/2017 vide ITA No. 2282 to 2286/Bang/2016 in case of of Shri Akulu Nagraj Gupta Subbaraju -Vs.- The of Income Tax Officer, Ward 1(1), Bangalore.

4.19 In view of above, the assessee had claimed the interest rightly and request that addition made by the assessing officer may kindly be deleted and appeal filed by the assessee may kindly be allowed.

5. Upon consideration of the submissions, materials and evidences on record and judicial precedents, the appeal of the assessee was allowed. His conclusion in Para 5.2.7 of his order is reproduced below.

*“5.2.7 The reply of the Ld. Counsel is duly considered and it is found that prima facie it has merit in it. Even if the income is assessable as business income, expenses incurred for the purpose of business including interest on borrowed capital will have to be allowed. However, this item of business income / income from house property of appellant must have been assessable for more than one year including the AY under consideration i.e. AY 2015-16. Therefore, the Ld. AO is directed to allow the relief to the appellant for which the appellant firm is entitled to. Therefore, Ground No. 4 to 7 are allowed.”*

6. Before us, the assessee has further submitted an utilisation of the loan availed from Tata Capital to the extent of Rs. 41 Crore as tabulated below.

Sr.No.	Loan amount	Amount utilized
1	41,00,00,000/-	Total loan taken by the assessee
2.	15,72,06,709/-	The assessee firm has been repaid to State Bank of India during the previous year relevant to Asstt. Year 2013-14 against existing loan taken from State Bank of India by firm SAS Developers, which is duly reflected in the Books of Account. Page No.128
3.	1,12,36,000/-	Processing fees paid to Tata Capital for 41 Cr. Page No.127
4.	3,95,91,291/-	Amount has used by the firm in the existing building of SAS Developer for reconstruction and renovation of Business as per specification of Tenants duly sown in the audited books of account.
5.	20,19,66,000/-	49.26% i.e. has been utilized by Mr. Subir Kumar Banerjee & Surya Banerjee, the details are as under 27/04/2012 Rs.11,25,00,000/- (PN-127) 11/05/2012 Rs. 5,24,64,418/- (PN-133) 11/05/2012 Rs. 3,97,90,910/- (PN-133)

		<p style="text-align: center;">----- Total A   Rs.20,47,55,328/- -----</p> <p>Mr. Sudhir Kumar Banerjee had returned the amount, the details are as under</p> <p>09/06/2012   Rs.   1,19,328/- 26/06/2012   Rs.  13,20,000/- 27/07/2012   Rs.  13,50,000/-</p> <p style="text-align: center;">----- Total B   Rs.   27,89,328/- i.e. Total A-B Rs. 20,19,66,000/-</p> <p>On the said amount interest has been debited to Mr. Subir Kumar Banerjee at Rs.2,57,21,914/- during the previous year relevant to Asstt.Year 2015-2016. The assessee draw attention hat assessee has not claimed deduction interest in the return of income of Subir Kumar Banerjee. Copy of A.O. of Subir Kumar Banerjee – Pg-103 to 107 of Paper Book .</p>
	41,00,00,000/-	

Since 50.74% has been utilized by the firm, therefore, the firm has claimed interest exp0enses on amount utilized by the firm interest amount shown in the Profit and Loss Account of Landmark Rent Account, which is on Page-18 of the Paper Book and remaining 49.26% amount has been utilized by the partner Mr. Subir Kumar Banerjee and same were claimed by him.

7. The assessee has further placed reliance on the following judgments;

- 1] **195 ITD 0366 (Nag Trib.)**  
S.K.Banerjee -Vs.- Assistant Commissioner of Income Tax
- 2] Judgment of Hon'ble Income Tax Appellate Tribunal, "B" Bench, Bangalore dated 16/12/2020 vide ITA No. 2597/Bang/2019 in case of M/s. Indraprashtra Shelters Pvt. Ltd. –Vs.- The Deputy Commissioner of Income Tax.

- 3] **(1993) 200 ITR 0146 (All. HC)**  
Commissioner of Income Tax -Vs.- Devendra Bros & Co.
- 4] Judgment of Hon'ble Income Tax Appellate Tribunal, Delhi Bench "C" New Delhi, dated 30/08/2017 vide ITA No. 5654/Del/2014 in case of DLF Emporio Limited -Vs- Deputy Commissioner of Income Tax.
- 5] **(2007) 108 ITD 0095 (ITAT Mum.)**  
Income Tax Officer -Vs.- Makrupa Chemicals (P) Ltd.
- 6] Judgment of Hon'ble Income Tax Appellate Tribunal, "SMC-C" Bench, Bangalore, dated 31/08/2017 vide ITA No. 2282 to 2286/Bang/2016 in case of Shri Akulu Nagaraj Gupta Subbaraju -Vs.- The Income Tax Officer.
- 7] Circular of CBDT dated 20/08/1969 vide Circular No. 028 instruction regarding Section-24(1)
- 8] **(2016) 386 ITR 0500 (SC)**  
Rayala Corporation Pvt. Ltd. -Vs.- Assistant Commissioner of Income Tax
- 9] **2023 TaxPub(DT) 1493 (Ahd.Trib)**  
Oceanic Vehicles (P) Ltd. -Vs.- Deputy Commissioner of Income Tax.

8. Upon personal of the entire facts as well as the documents and evidence on record, the sole grievance of the Department revolves around a single fact i.e. the deduction of interest on housing loan, where the clear nexus of utilisation towards the house property is missing. At the time of hearing before us, the Departmental Representative vehemently argued that in terms of third proviso to Section 24(b), there is no certificate from the lender, specifying the amount of interest for the purpose of acquisition or construction of property. However, we do not find any such averment in the ground of appeal. However, without dwelling into much technicalities, it is apparent that the issue is covered in favour of the assessee vide the order in

Subir Kumar Banerjee -vs.- Assistant Commissioner of Income Tax, reported in (2022) 195 ITD 0366 passed by the very same coordinate Bench. In paragraph-10 of the order, there is a clear finding that the assessee has shown income under the head “Income From House Property” and also deriving income from business and that had it been interest on business loan, the assessee has right to claim it from business income and computed total income (loss) would have been the same. The aforesaid issue was also discussed and covered by the decision of the coordinate Bench of Tribunal, Bangalore Bench in Indraprastha Shelters Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, [2021] 187 ITD 306 (Bang). We find that in paragraph 5.2.7, the CIT(A) has clearly opined as below :

*“5.2.7 The reply of the Ld. Counsel is duly considered and it is found that prima facie it has merit in it. Even if the income is assessable as business income, expenses incurred for the purpose of business including interest on borrowed capital will have to be allowed. However, this item of business income / income from house property of appellant must have been assessable for more than one year including the AY under consideration i.e. AY 2015-16. Therefore, the Ld. AO is directed to allow the relief to the appellant for which the appellant firm is entitled to. Therefore, Ground No. 4 to 7 are allowed.”*

9. The departmental representative fairly accepted that the case is exactly covered by the coordinate Bench judgement in case of Subir Kumar Banerjee who happens to be the partner of the firm. Moreover, it has been brought on record that the loan has not been taken during the year but it has been rather continuing for number of years and in the past such interest u/s. 24(b) was regularly allowed. The Ld. AR, on the other hand, prayed that judicial consistency may be followed.

10. Upon careful and meticulous consideration of all the facts as enunciated above, we feel that the order of the CIT (A) need not be interfered with. Accordingly, the departmental appeal is dismissed.

11. In the result, the appeal filed by department is dismissed.

Order pronounced in the open Court on 18/06/2024.

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 18/06/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Rajesh V. Jalit*  
*PS (on contract)*

True Copy  
By Order

Sr.Private Secretary  
ITAT, Nagpur