

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri B R Baskaran, Hon'ble Accountant Member &
Shri Anikesh Banerjee, Hon'ble Judicial Member

ITA No. 2564/Mum/2024
(Assessment Year : 2018-19)

Sumit Niranjankumar Shah A-1101, Quantum Park, Near Union Bank, Gulab Nagar, Khar (West), Mumbai 400 052.		CIT (IT)-4, Mumbai
PAN AAHPS1841E (Appellant)		(Respondent)

For the Assessee : Shri Anuj Kisnadwala
For the Revenue : Ms. Madhu Malati Ghosh (CIT. DR)

Date of Hearing : 01.08.2024	Date of Pronouncement : 07.08.2024
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ORDER

Per B R Baskaran, Accountant Member:

The assessee has filed this appeal challenging the revision order dated 30-03-2024 passed by Ld CIT(IT)-4, Mumbai u/s 263 of the Act and it relates to the assessment year 2018-19.

2. The original assessment in this case was completed on 22.11.2021. The Ld CIT examined the assessment record and took the view that the AO did not examine properly the interest expenditure claimed u/s 24(b) of the Act against the house properties and further, the AO did not compute Annual letting Value in respect of one of the properties. Accordingly, he

took the view that the assessment order is rendered erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings u/s 263 of the Act. After hearing the assessee, the Ld CIT set aside the assessment order dated 22.11.2021 and direct the AO to re-do assessment after examining the facts properly and in accordance with law.

3. The facts relating to the properties held by the assessee are discussed in brief. The assessee is a non-resident. The assessee held following three properties in India:-

- (a) Flat at Quantum park (Self occupied property)
- (b) Flat at Gabion Property (Deemed to be let out)
- (c) Flat at Cresset property (Lying Vacant)

The quantum park and Gabion property were purchased in the immediately preceding year. The Cresset Property was purchased during the year under consideration.

4. The assessee had availed bank loans for purchasing Gabion property and Cresset Property. During the year under consideration, the assessee claimed interest expenditure of Rs.2,85,10,291/- in respect of Gabion property and Rs.1,61,51,928/- against Cresset property. The assessing officer allowed interest expenditure fully in respect of Gabion property. The AO noticed that the assessee did not declare any Rental income against Cresset property. The explanation of the assessee was that the said property was bought during the year under dilapidated condition and hence could not be let out. The AO accepted the same, but restricted the interest claim to Rs.2.00 lakhs. The Ld A.R submitted that the assessee has filed appeal before Ld CIT(A) challenging the partial disallowance of interest claim.

5. The case of the Ld CIT is that the AO did not examine the loan documents before allowing the claim of interest expenditure u/s 24(b) of the Act. However, we notice from the various queries raised by the AO during the course of assessment proceedings that the AO had specifically asked questions relating to interest claim. The assessee has also furnished interest certificate obtained from bank before the AO. In respect of Gabion property, the loan was taken in the preceding year and not during the year under consideration. There is no dispute with regard to the fact that the interest expenditure was allowed in the immediately preceding year. The Ld CIT has stated one more point, i.e., the interest certificate describes the loan as "Loan against property" and not loan for purchase of property. In our view, the nomenclature given by the bank is not determinative factor. So long as the assessee has availed loan for purchase or construction of property, the related interest is allowable as deduction u/s 24(b) of the Act. If the AO has examined the issue properly during the course of assessment proceedings, then the revision order is liable to be quashed. We notice from the documents furnished by the assessee that the AO has allowed interest claim of the assessee after carrying out due verification. On the contrary, we notice that the Ld CIT has initiated revision proceedings on flimsy reasons. In view of the above discussions, we are of the view that the Ld CIT was not justified in initiating revision proceedings on interest issue. Accordingly, we set aside his order on the issue of interest expenditure.

6. With regard to determination of ALV for Cresset Property, we noticed earlier that the assessee has taken the ALV as NIL. We noticed earlier that the assessee has held "Quantum park property as "self occupied property" and Gabion property as 'Deemed to be let out property'. With regard to Cresset property, it is the submission of the assessee that it was lying vacant since the date of its purchase and hence its ALV should be taken as NIL u/s 23(c) of the Act.

7. We notice that sec.23(c) shall apply only to let out properties. We notice that Cresset property was purchased by the assessee during the year under consideration only. Further, it is not let out at all. We further notice that the AO has accepted the ALV as NIL without carrying out any verification and without examining the law applicable to this type of cases. Accordingly, we are of the view that the Ld PCIT was justified in initiating revision proceedings on this issue and accordingly confirm the same.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 7th August, 2024.

Sd/-

(Anikesh Banerjee)
JUDICIAL MEMBER

Mumbai, Dated : 7th August, 2024
SA

Sd/-

(B R Baskaran)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT,
4. The CIT
5. The DR, 'C' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai