

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 520/KOL/2023
Assessment Year: 2014-2015**

***Bani Broto Banerjee,.....Appellant
Sanskriti, Flat - 3A,
148, Rashbehari Avenue,
Near Deshapriya Park,
Kolkata-700029
[PAN:ABPPB0424P]***

-Vs.-

***Commissioner of Income Tax (Appeals),.....Respondent
Aayakar Bhawan Dakshin,
2, Gariahat Road (South),
Kolkata-700031***

Appearances by:

*Shri Akshay Ringasia, C.A., appeared on behalf of the
assessee*

*Smt. Ranu Biswas, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

**Date of concluding the hearing : September 24, 2024
Date of pronouncing the order : November 18, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 16th March, 2023 passed for Assessment Year 2014-15.

2. Originally this appeal was heard on 08.08.2024, but when the Bench commenced the dictation, then it revealed, it is time barred by eight days. Therefore, it was re-fixed for hearing. The assessee has filed an application for condonation of delay, wherein it has been pleaded that an appeal against the impugned order dated 16.03.2023 was filed electronically on 13.05.2023. This appeal was within limitation but thereafter assessee has filed physical appeal on 24.05.2023. In this way, this appeal has become time barred, whereas due date was 15.05.2023. Considering the above fact, we condone the delay and proceed to decide the appeal on merit.

3. The assessee has taken three grounds of appeal, out of which Ground No. 2 is the substantial ground of appeal. In this ground, the grievance of the assessee is that Id. CIT(Appeals) has erred in confirming the order of Id. Assessing Officer vide which deduction of interest expenditure amounting to Rs.1,90,78,228/- was disallowed to the assessee while computing the long-term capital gain on sale of building.

4. Brief facts of the case are that the assessee has filed his return of income on 30.07.2014 declaring total income of Rs.33,67,460/-. The return was selected for scrutiny assessment and a notice under section 143(2) and questionnaire under section 142(1) were issued and served upon the assessee. On perusal of

the record, it revealed to the Id. Assessing Officer that the assessee was holding 99% share of Rainey Park Limited. The Guest House/Hotel was being run by the assessee and ultimately on account of losses faced by him, he has sold the property. The Id. Assessing Officer has worked out the capital gain assessable in his hand. He has claimed two amounts in the long-term capital gain calculated by him, namely-

(a) written down value of the cost of furniture aggregating to Rs.1,30,23,709/-;

(b) interest expenditure of Rs.1,90,78,228/-.

These two expenses have been claimed by the assessee while calculating the long-term capital gain on sale of this property. The Id. Assessing Officer has disallowed both these claims to the assessee and he computed the long-term capital gain as under:-

Computation of Long Term Capital Gain

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs._</i>
<i>Sale Consideration (12241 sq.ft.)</i>		<i>16,39,39,402/-</i>
<i>Less: Indexed Cost of acquisition</i>	<i>6,02,30,791/-</i>	
<i>Less: Indexed cost of improvement</i>	<i>30,81,426/-</i>	
<i>Less: Brokerage @ 1%</i>	<i>16,39,394/-</i>	
<i>Less: legal charges</i>	<i>97,239/-</i>	
<i>Less: Miscellaneous</i>	<i>2,715/-</i>	<i>6,50,51,565/-</i>
<i>Add: Unexplained adjustment of interest (refer para 2 above)</i>		<i>2,12,857/-</i>
<i>Long Term Capital Gains</i>		<i>9,91,00,694/-</i>

5. Dissatisfied with this working, the assessee carried the matter in appeal before the Id. CIT(Appeals). The Id. CIT(Appeals) has accepted the contention of the assessee with regard to admissibility of expenditure incurred for furniture and fixtures. The finding of the Id. CIT(Appeals) on this aspect is available on page no. 11 of the impugned order. Therefore, to that extent, there is no dispute in the present appeal.

6. The sole dispute is whether interest expenditure incurred by the assessee on the loans taken by him for acquiring this property is admissible to the assessee or not. A perusal of the finding of Id. 1st Appellate Authority would reveal that Id. CIT(Appeals) was of the view that cost of interest expenditure ought to have been claimed by the assessee against house rent property income or rent taken by him while leasing out this property. In other words, Id. CIT(Appeals) was of the view that this interest expenditure should have been adjusted under section 57 of the Income Tax Act and it is not admissible to the assessee in the computation made under section 48 of the Income Tax Act. The Id. Counsel for the assessee while impugning the finding of Id. CIT(Appeals) submitted that this issue in dispute is covered by the decision of various judgments of the Tribunal on this point. He first made reference to the order of ITAT, Chennai Bench reported in 27 taxmann.com 104 rendered in the case of ACIT -vs.- C. Ramabrahmam. In this judgment, we find that Tribunal has discussed an identical issue and recorded the following finding:-

“8. We have considered submissions of both parties at length and also perused the relevant findings of the Assessing Officer as well as CIT(A). Regarding the issue of capital gains, it transpires that

there is hardly any dispute that the assessee had availed the loan for purchasing the property in question. Since the assessee had shown the income under the head 'house property', he preferred to raise the claim of deduction under section 24(b) of the "Act", which reads as under:

b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:"

There is no quarrel that since the assessee's claim of deduction was under the statutory provisions; therefore, he succeeded in getting the same. However, after the property was sold, he also chose to include the interest amount while computing capital gains under section 48 of the "Act", which reads as under:

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:"

After perusing the above said provisions, we are of the opinion that deduction under section 24(b) and computation of capital gains under section 48 of the "Act" are altogether covered by different heads of income i.e. income from 'house property' and 'capital gains'. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, a deduction under section 24(b) is claimed when concerned assessee declares income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. We do not have even a slightest doubt that the interest in question is indeed an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee in the instant case is certainly entitled to include the interest amount at the time of computing capital gains under section 48 of the "Act". Therefore, the CIT(A) has rightly accepted the assessee's contention and deleted the addition made by the Assessing officer. Hence, qua this ground, we uphold the order of the CIT(A).

7. Subsequently this judgment and certain other judgments have also been considered by the Hon'ble ITAT, Delhi in ITA No. 6620/DEL/2019, order dated 15.03.2023 in the case of ACIT -vs.-

Smt. Sadhna Aggarwal. In this case, ld. CIT(Appeals) has allowed such interest expenditure to the assessee. The Tribunal reproduced the well-reasoned finding of the ld. CIT(Appeals) and thereafter concurred with it. We deem it appropriate to take note the complete discussion in this order, which reads as under:-

“5. The CIT(A) found substantial merit in the plea of the assessee on all counts and thus reversed the action of the Assessing Officer and restore the position taken by the Assessee. The relevant operative paragraph of the order of the CIT(A) dealing with the issues are reproduced herein:

“3.2. I have carefully considered the assessment order and written submissions furnished by the Ld. AR. The AO had disallowed the interest paid on the housing loan amounting to Rs.1,82,53,834/- stating that such interest needs to be claimed u/s. 24 of the Act and does not qualify as deduction us 48 of the Act. It was submitted by the appellant that they had never claimed any interest paid on the housing loan u/s. 24 of the Act.

3.3. In respect of allowing housing loan interest as the part of the cost of acquisition. It was submitted that the interest was paid directly for the purchase of the flat. Assessee had taken a housing loan and the disbursement of the loan was made directly to the builder. There is a direct nexus of the payment of the housing loan interest and the acquisition of the flat. It was submitted that the cost of the acquisition is the amount paid to the builder and also the cost of the borrowing made by the assessee for the purpose of paying to the builder without the money borrowed, the assessee would not have been in a position to buy the property. Payment of consideration for the purchase of flat is indisputably having been made with borrowed funds and the borrowing directly related to the acquisition and interest paid there on would form part of the cost of acquisition.

3.4. In the case of CIT Vs. Mithilesh Kumari (92ITR 9), the Honourable High Court has held as under:-

(13) We are in respectful agreement with the observations of the Calcutta and the Bombay High Court in the decisions referred to above. In the present case, we find that the assessed in

order to purchase the land had not only to borrow the amount of Rs. 95,000.00 which was the consideration for the purchase of the land but also had to pay interest of Rs. 16, 878.00 on the amount borrowed by her. The amount of Rs. 95,000.00 plus the interest paid by the assessed constitutes the actual cost to the assessed of the land. The fact that the amount of Rs. 95,000.00 was paid by the assessed to the vendor and the amount of interest of Rs. 16,878.00 was paid to a different person, namely her mother-in-law, does not make any difference so far as the assessed is concerned in respect of the actual cost of the land to her It will not also make any difference whether the interest was paid on the date of the purchase or whether it is paid subsequently. To exclude the interest amount from the actual cost of the assets would lead to anomalous results. Supposing she had purchased the land for Rs. 1,00,000.00 by raising a loan of that amount and had paid interest of Rs. 20,000.00 on the said loan and had sold the land for Rs. 1,20,000.00. It would be unreasonable to hold under such circumstances by excluding the interest amount from the actual cost of the land that she had made a capital gain of Rs. 20,000.00 when, as a matter of fact, she had not made any profit at all by the transaction. Applying the said observations of the Calcutta and the Bombay High Courts to the present case, we hold that the Tribunal was right in adding the interest amount of Rs. 16,878.00 towards the actual cost of the land.

3.5. Further In the case of CIT Vs. Sri Hariram Hotels (Purchase) Ltd. (2010) 188 Taxman 170 (Kar), the Honourable Karnataka High Court has held as under:-

“7. We are unable to agree with the arguments advanced by the learned counsel for the revenue for the simple reason on facts that even the Commissioner of Income Tax (Appeals) has held that interest had accrued as on 31/3/2003 and therefore, the Tribunal is justified in granting the relief to the assessee since the property has been purchased out of the loan borrowed from the Directors and any interest paid thereon is to be included while calculating the cost of acquisition

of the asset. Therefore, question No. 1 has to be answered against the revenue.

3.6. In the case of ACIT Vs C. Ramabrahmam, the ITAT Chennai Bench 'C' in ITA No. 943/Mds/2012 has held that the assessee had purchased house property, availing loan. The house property was subsequently sold and assessee included interest paid on housing loan while computing capital gains u/s 48. The Assessing Officer was of opinion that since interest in question on housing loan, had already been claimed as deduction us 24(b), the same could not be taken into consideration for computation u/s 48 and interest amount was added to income of assessee. The CIT(A) reversed the findings of A and held deduction u/s. 24(b) and computation of capital gains us 48 were altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. None of them excludes operative of the other. The interest in question was indeed expenditure in acquiring asset. Since both provisions were altogether different, assessee was entitled to include interest paid on housing loan for computation of capital gains us 48 despite the fact that same had been claimed us 24(b) while computing income from house property. The revenue's appeal was dismissed by the ITAT, Chennai Bench and the order of the Id. CIT(A) was upheld.

3.7. From these judicial pronouncements, it is very much clear that if the property is purchased from borrowed funds then consideration for the purchased amount, the interest on borrowed fund also has to be paid. The amount of interest paid by the assessee constitutes the actual cost to the assessee for that property. To exclude the interest amount from the actual cost of the assets/ property would lead to anomalous result. The interest amount should be definitely added to the actual cost of the property. Respectfully following these legal propositions and on basis of observations as held herein the addition on this account is deleted.

4. Ground No. 3, 4 & 5 are directed against disallowance of basic cost as Rs.2,79,96,771/- and has taken the basic cost as 2,75,00,000/- and disallowance of interest paid to the builder on the late payment. The assessee had claimed interest of Rs.4.56.744/- whereas the AO had allowed interest of Rs.3,95,321/-.

4.1. On this ground, the AR of the appellant submitted as under:

"The Ld. AO had reduced the cost of the acquisition from Rs.2,79,96,770/- to Rs.2,75,00,000/-even though the confirmation of builder dated February 2016 was submitted. The ld. AO had taken the cost as per allotment letter dated 21.12.2004 which is always a provisional allotment and which is subject to the changes. The assessee was originally allotted flat measuring 6500 sq. ft which was subsequently increased to 6610.84 sq.ft. As alleged by the Ld AO there is no area written in the agreement to sell and further no sale deed was executed as alleged by the LD AO, only the flat number 702 on the seventh floor is mentioned in the agreement to sell. So the cost of the flat paid by the assessee amounting to Rs.2,79,96,770/- should be taken as the cost and the proportionate disallowance of interest amounting to Rs.61,423/- should be allowed as cost of acquisition. The interest paid by the assessee to the builder was Rs.4,56,744/- and the proportionate interest allowed by Ld. AO is Rs 3,95,321/-.

4.2. I have carefully considered the assessment order and written submissions furnished by the Ld. AR. The AO had disallowed the cost of stamp papers purchased for the registration of the flat and it was to be cancelled due to death of the husband of the assessee and 10% cost of the stamp paper amounting to Rs. 1,35,930/- should be allowed u/s 48 of the Income Tax Act. As stamp paper were purchased specifically for the registration of the flat therefore any amount spent for the flat is to be allowed as part of the acquisition.

4.3. The AO had reduced the cost of the acquisition from Rs.2,79,96,770/- to Rs.2,75,00,000/- even though the confirmation of builder dated February 2016 was submitted. The AO had taken the cost as per allotment letter dated 21 12.2004 which is always a provisional allotment and which is subject to the changes. The assessee was originally allotted flat measuring 6500 sq. ft. which was subsequently increased to 6610.84 sq. ft. The papers submitted by the appellant clearly indicate the final area to be 6610.84 sq. ft. and payments were made and confirmed accordingly. Hence, the addition on this ground does not stand. The proportionate disallowance of interest is consequential also therefore deleted. These grounds of appeal are ruled in favour of the appellant.

5. Ground No. 6 & 7 are general in nature, which require no specific adjudication.

6. In the result, the appeal is allowed."

6. *Aggrieved by the relief, the Revenue is in appeal before the Tribunal.*

7. *We have considered the rival submissions on the various points in issue.*

7.1 *At the outset, we observe that the CIT(A) has reversed the disallowance of Rs.1,82,53,834/- on account of interest on borrowed funds and held that such interest cost will form part of the cost of acquisition placing reliance upon the judgment rendered by the Hon'ble Jurisdictional High Court in CIT vs. Mithlesh Kumari (1937) 92 ITR 9 (Del) and other judgments as noted in earlier paragraphs.*

7.2 *We find that the reasons cited by the CIT(A) are sound and is in consonance with the judgment rendered by the Hon'ble High Courts as well as the Co-ordinate Bench of Tribunal. We thus see no reason to interfere.*

7.3 *Significantly, the Finance Bill, 2023 has proposed certain amendment in this regard. On a reading of the Finance Bill, it appears that as per the existing position of law, some assessee claims deduction towards interest paid on borrowed capital utilized for acquisition of the property under Section 24(b) of the Act. The same amount of interest is also being claimed under Section 48 of the Act as part of cost of acquisition. In order to prevent double deduction, the Finance Bill, 2023 has proposed to insert a proviso after clause (ii) of Section 48 so as to provide that cost of acquisition or the cost of improvement shall not include the amount of interest claimed under Section 24 of the Act. The amendment is proposed to take effect from Assessment Year 2024-25 prospectively. Thus, the proposed amendment in Section 48 to prevent double taxation makes the existing position of law loud and clear. As a corollary, as per the existing position, the assessee is entitled to claim interest on borrowed capital used for acquisition of property as part of its cost of acquisition for the purposes of determination of capital gains. For this reason also, there appears to be no infirmity in the conclusion drawn by the CIT(A). Hence, we decline to interfere”.*

8. It is also pertinent to observe that Tribunal made reference to the Amendment carried out in section 48 vide Finance Bill, 2023, which is applicable from A.Y. 2024-25. In this amendment, it has been provided that from A.Y. 2024-25, the interest expenditure will not be admissible to the assessee.

9. The above discussion in the order of ITAT, Delhi passed in ITA No. 6620/DEL/2019 would reveal that the issue in dispute is squarely covered in favour of the assessee. Therefore, respectfully following the order of the Coordinate Bench, we allow the appeal of the assessee and delete the addition.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18/11/2024.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 18th day of November, 2024

*Copies to :(1) Bani Broto Banerjee,
Sanskriti, Flat – 3A,
148, Rashbehari Avenue,
Near Deshapriya Park, Kolkata-700029*

*(2) Commissioner of Income Tax (Appeals),
Aayakar Bhawan Dakshin,
2, Gariahat Road (South), Kolkata-700031*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.