

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
ITA No.2280/M/2023
Assessment Year: 2018-19

Hitesh Navinchandra Mehta C-52, 2 nd floor, Ganjawala Apartments, S.V.P. Road, Borivali (W.), Mumbai- 400060. PAN: AABPM0243Q	Vs.	ITO Ward 42(1)(2) Room No. 942, 9 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E.), Mumbai.
Appellant	:	Respondent

Present for:

Assessee by

: Shri Jitendra Singh

Revenue by

: Ms. Pradnya Gholap (Sr. DR)

Date of Hearing

: 05.12.2024

Date of Pronouncement

: 10.12.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 11/05/2023 passed by NFAC Delhi/ Ld. CIT(A) for assessment year 2018-19 on following grounds of appeal:

1. *“The Ld. National Faceless Appeal Centre (NFAC) Delhi (hereinafter referred to as the ‘Ld. CIT(A)’) erred in passing the order dated 11.05.2023 upholding the action of the Ld. National e-Assessment Centre, Delhi [hereinafter referred to as ‘Ld. A.O.’] in passing the assessment order dated 09.04.2021 under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’] determining the total income of the Appellant at Rs.32,41,675/- as against returned income of Rs. 19,57,560/- without appreciating the facts and circumstances of the case.*

Thus, the order dated 11.05.2023 passed by Ld. CIT(A) is bad in law and the same may be quashed.

2. The Ld. CIT(A) erred in upholding the action of the Ld. A.O. in making addition of Rs.9,91,378/- being interest paid on capital borrowed for the purposes of purchase of house property without appreciating that the Appellant has furnished all documentary evidences during the course of appellate proceedings to substantiate the claim of interest paid. Hence, addition of interest paid amounting to Rs.9,91,378/- is unjustified and the same may be deleted.
3. The Ld. CIT(A) further erred in upholding the action of the Ld. A.O. in making addition of Rs.90,934/- being surrender value of Insurance Policy taken for securing the payment of housing loans without appreciating the fact that the same is exempt from tax. Hence, addition of Rs.90,934/- to the total income of the Appellant is against the provisions of law and the same may be deleted.
4. The Ld. CIT(A) further erred in upholding the action of the Ld. A.O. making addition of Rs.1,89,750/- being interest expenditure incurred by the Appellant for purchasing the immovable property without appreciating the facts and circumstances of the case. Hence, addition of interest expenditure amounting to Rs.1,89,750/- is without any basis and the same may be deleted.
5. The Appellant denies any liability to pay interest under section 234A, 234B and 234C of the Act. Hence, the same are not leviable.
6. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove.”

2. At the outset, the Ld.AR submitted that **Grounds no. 3-4** are not pressed at the instructions of the assessee.

Accordingly, Grounds no. 3-4 stands dismissed as not pressed.

Brief facts of the case are as under:

3. The assessee filed its return of income on 26/10/2018 declaring the total income at Rs.20,47,560/-. Subsequently on 22/11/2018 a revised return was filed declaring the total income

at Rs.19,57,560/-. The case of the assessee was selected for scrutiny and notice u/s. 143(2) and 142(1) was issued to the assessee calling upon to furnish various details/information that was informed through ITBA Portal.

3.1. On perusal of the details, the Ld.AO noticed that assessee is a partner in firm of name M/s. Mira Construction and M/s. Mira Dharti Buildwell from where he received remuneration which was shown in the computation of income under the head 'business'.

3.2. Assessee had also shown rental income from office premises under the head 'house property' and interest on FDR, saving, etc. under the head 'income from other sources'. Apart from the above, the assessee had showed exempt income received from firm as share of property, PPF interest and interest on ICICI prudential Mutual Fund. The Ld.AO noticed that assessee claimed deduction amounting to Rs.1,26,276/- u/s. 80C-(LIC/PPF) and mediclaim of Rs.9,498/- u/s. 80D of the act. All the details as called for by the assessee in respect of the exemption claimed under chapter 6 were furnished and verified by the Ld.AO and necessary disallowance were made in accordance with law.

3.3. The Ld.AO further noted that, the assessee claimed deduction of Rs.9,91,378/- u/s. 24(b) of the act, on account of interest on borrowed capital out of the rental income from house property. The assessee was asked to furnish documentary evidence in support of the claim on interest and copy of the rent

agreement alongwith municipal taxes paid. The Ld.AO observed from the details furnished that the interest on borrowed capital was for the purpose of other than purchase/construction of house property claimed to be paid to ICICI Bank and HDFC Bank that was taken as loan against property.

3.4. The Ld.AO was of the opinion that, no documentary evidences were furnished by the assessee except given statement that he had paid interest on borrowed capital for purchase of properties and the same was expanded wholly and exclusively for the purpose of loan taken. The Ld.AO thus made addition of Rs.9,91,378/- in the hands of the assessee.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld. CIT(A).

4. The Ld. CIT(A) after considering the submissions of the assessee observed and held as under:-

“13. I have considered the facts of the case, written submission of the appellant, virtual hearing and the order of AO. In Ground No. 2, the appellant has contended that the AO has erred in making addition on interest paid on borrowed capital against purchase of house property at Rs.9,91,378/-. The appellant was asked to furnish the documentary evidence and copy of rent agreement. It appeared to AO that it was taken as loan against property for the purpose other than purchase/construction of house property and it appeared that it was 'loan against property on mortgage of properties at (i) shop no. 4, Borivali office at Borivali. The replies dated 09.02.2019 and 07.04.2021 were perused and found not tenable. The claim of interest on ICICI Bank loan at Rs.8,02,005/- and for shop at Rs.1,89,373/- is found correct. However, these properties have been let out and benefit of interest paid on borrowed capital cannot be given unless the property is a self-occupied property. The appellant has relied upon decision of M/s Indraprastha Shelter Pvt. Ltd. vs. DCIT, ITA No. 2597/Bang/2019 dated 16.12.2020 it says that the expression used in Section 24(b) is

'property' and not residential or commercial property and it does not curtail the right of an assessee to get deduction on interest paid on loans borrowed for the purpose of constructing commercial property.

14. The appellant furnished details of date of purchase, date of loan taken, rent agreements, interest repayment, bank statements however, despite AO specifically asking evidence for using the said loan for the purpose of purchase / construction of both shop and office, could not be complied. The appellant simply stated that loan was borrowed and utilized exclusively for the purposes of purchase/ construction of the above properties but any cash flow statement with supporting bills and vouchers and ledger account of expenditure made to establish the purpose was not furnished. The onus was on appellant to prove the claim of expenditure is wholly and exclusively incurred for the purpose for which loan was taken. This was the main query of the AO, which was not replied. In the above situation, the disallowance made is upheld."

Aggrieved by the order of the Ld. CIT(A) assessee is in appeal before this *Tribunal*.

5. The Ld.AR in the paper book filed before this *Tribunal* has placed copy of working of the house property, the details of the loan schedule with ICICI Bank and HDFC Bank. He relied on Page 46 of the paper book, which is the loan sanctioned by ICICI Bank and computation of EMI on monthly basis towards the purchase of property.

5.1. Similarly, the loan taken from HDFC Bank and the EMI computed by the said bank towards purchase of the property is placed at page 72 of the paper book.

5.2. He submitted that, the entire payment schedule has been placed in the paper book pertaining to the loan taken by both the banks at Pages 42-79. The Ld.AR thus submitted that all these details were already filed before the authorities below. However, they were ignored and due benefit of the interest paid

against the loan for acquisition of the immovable properties for under consideration was not granted to the assessee u/s. 24(b) of the act.

5.3. On the contrary, the Ld.DR submitted that, there is no evidence that the assessee had furnished all these details before the authorities below and therefore the issue may be remanded to the Ld.AO for necessary verification.

We have perused the submission advanced by both sides in light of records placed before us.

6. It is submitted that the assessee has purchased following two properties:

- (i) Shop No. 4, Vibhyor Habitat, Om Dongari CHS, Shantivan Borivali (East), Mumbai- 400066.
- (ii) Office No. 105, Neelkanth Nagar, CHS, S. V. Road, Borivali (West), Mumbai-400092.

6.1. It is submitted that the assessee purchased these properties against loan taken from ICICI Bank and HDFC Bank, details pertaining to the EMI calculated by the banks are already placed in the paper book submitted to be filed before the authorities below.

6.2. From the observations of the Ld. CIT(A) it is noted that, there is no denial of the fact that interest is paid against the loan taken for purchase of properties. However, the same is denied only on the premise that it has been letout and not self occupied by the assessee.



6.3. There is no denial of fact that, these documents were not furnished before the Ld. CIT(A), however, the same was not verified by the first appellate authority and rejected the claim of the assessee on surmises that these were not filed before the Ld.AO.

7. I am of the opinion that the details pertaining to the loan and computation of interest available for deduction in the hands of the assessee need to be verified by the Ld.AO and the claim of assessee has to be considered in accordance with law for the year under consideration. I, therefore, remit this issue back to the Ld.AO to consider the claim based on the evidences filed by the assessee in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly Ground No. 2 raised by the assessee stands partly allowed for statistical purposes.

Ground No. 1, 6 is general in nature and therefore do not require any adjudication.

Ground No. 5 is consequential in nature.

In the result, the appeal filed by the assessee stands partly allowed as indicated herein above.

Order pronounced in the open court on 10/12/2024

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**



Place: Mumbai,

Dated: 10/12/2024

Snehal C. Ayare, Stenographer/ Dragon

Copy of the order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai