

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.1903/Mum/2014 for Assessment Year: 2007-08**

Dr Mukesh Shantilal Daftary, 49, Madhuban Apartments, Worli Hills Road, Worli, Mumbai -400061 PAN: AABPD2633B	Vs.	Income tax officer -11(3)(1), Aayakar Bhavan , MK road Mumbai 400020
(Appellant)		(Respondent)
Assessee represented by	Sh. Hiro Rai - Advocate	
Revenue represented by	Sh. Suman Kumar -DR	
Date of hearing	12.04.2017	
Date of order	28.04.2017	

Order under section 254(1) of income Tax Act

Per Pawan Singh Judicial Member;

1. This appeal by assessee under section 253 of Income Tax Act (Act) is directed against the order of Commissioner (Appeals) dated 16 December 2013 for assessment year 2007 -08.
2. Brief facts of the case are that assessee filed return of income for relevant assessment year on 31 July 2007 declaring income of Rs. 9,99,780/- . The assessment was completed under section 143(3) on 16 December 2009. The Assessing Officer while passing the assessment order besides the other addition and disallowance disallowed interest expenses of Rs. 8,18,239/-. The Assessing Officer disallowed interest expenses holding that housing loans were obtained from different institutions on the same property. There is no nexus between all the loans and the house property concerned. On appeal before Commissioner (Appeals) the action of Assessing Officer was sustained. Aggrieved, by the order of Commissioner (Appeals) the assessee has filed present appeal before us. The assessee has raised following grounds of appeal;

- (i) *The learned Commissioner (Appeal) erred in confirming the disallowance of interest of Rs. 8,18,239/- claimed in relation to income from 'House property'.*
- (ii) *The learned Commissioner (Appeals) failed to consider the evidence filed before him showing the connection between the loans taken from NKGSB and Citibank and the acquisition of property.*

3. We have heard the learned AR of the assessee and the learned DR for revenue and perused the material available on record. The learned AR of the assessee argued that during the assessment the assessee was asked to furnish the detail of interest paid to various parties. In response to the queries raised by Assessing Officer, the assessee furnished the detail of interest paid on various loans, for both secured and unsecured from various financial institution and Banks viz Kotak Bank, HDFC Bank etc. No further clarification was sought by the Assessing Officer. The Assessing Officer disallowed the interest expenses of Rs.8,18,239/-. The disallowance was made without giving sufficient and adequate opportunity for explaining the nexus of loan qua the house properties. During the first appellate stage the assessee furnished the details of various loans along with sanctioned letter from various banks and institutions. The assessee explained that assessee owned three residential properties, one house at Devlali, Nasik and two flats at Madhuban Apartments Co-operative Housing Society Ltd at Worli Mumbai. The residential property at Devlali was considered as self occupied property and the other two flats are considered to be let out properties. In addition to the above the assessee also owns a Commercial property ie. 207 Marthanda Worli Mumbai. The assessee incurred interest expenses of Rs.95,222/- against the house property income from flat number 53A Madhuban Apartments Co-operative Housing Society Ltd at Worli. The assessee purchased this let by availing two loans from NKGSB Bank of Rs. 9,75,450/- , repairs and renovation loan of Rs. 2,50,000/-. The documentary evidence was filed before Assessing Officer. The Commercial property was purchased in the year 2003 for consideration of Rs. 73,26,250/-. The Commercial property was purchased by availing home loan of Rs. 63,00,000/- from Citibank and the balance consideration was paid out of the overdraft facilities availed from HDFC bank.

The assessee in subsequent financial year had availed funds from various entities such as Kotak Mahindra Bank, M.S. Daftary (HUF), Ms. Rekha Bedani and Dr Bharat Kamdar at lower interest rate to pay the higher floating-rate interests availed from Citibank. The learned CIT(A) referred those documents and information to the Assessing Officer for his remand report. The Assessing Officers furnished his remand report; however, the said remand report was not discussed by Id Commissioner (Appeals) in his order. It was further argued that in the subsequent years in assessment years 2009-10 and in 2013-14, the similar interest expenses was allowed by the Revenue/ Assessing Officer in the assessment order passed under section 143(3) of the Act. The copy of in the assessment orders for those assessment year 2009 -10 and in 2013 -14 were placed on record.

4. On the other hand the learned and DR for the revenue supported the order of authorities below. The learned DR for the revenue further argued that Id Commissioner (Appeals) considered all the facts of the remand report. It was further argued that sanction and disbursement are two different things. The Bank is issuing the details of the Bank interest, there is no certificate that any interest was paid by the assessee. The learned DR for the revenue further submitted that matter may be sent to the Assessing Officer/ learned Commissioner (Appeals) for verification of fact, if any interest was paid by the assessee during the relevant year under consideration.
5. We have considered the rival submission of the parties and with the assistance of the Id representative gone through the orders of the authorities below. We have seen that after seeking details of the interest expenses from the assessee the Assessing Officer has not given further opportunity to explain the purpose and the nexus of the loan. The learned Commissioner (Appeals) during the appellate proceedings, on filing additional evidences called the remand report from Assessing Officer. The Assessing Officer filed his remand report on 11 February 2013. In the remand report the Assessing Officer disclosed that the interest expenses of Rs.95,222/-paid to NKGSB should not be allowed as the assessee

has not produced any documentary evidence that such loan was utilised for acquiring flat No.53A Madhuban Apartments, this flat was offered as security. The Assessing Officer further stated that there is nexus between unsecured loan for the repayment of Citibank loan, but the assessee has not furnished any evidence to show that Citibank loan was taken and utilised for acquisition of Marthanda property and the interest expenses of Rs. 9,08,701/-should not be allowed. The Assessing Officer further stated that a loan of Rs.4,00,000/-was appearing since beginning of 1st April 2006 and as such not new loan introduced during the year and hence the addition may be deleted. Before the Tribunal the assessee has filed a copy of assessee's application/ letter dated 11 Feb 2011 along with its Annexure. The Id AR for the assessee certified about filing this application before Ld Commissioner (Appeal). Along with the application dated 11 Feb 2011 the assessee filed copy of the sanction of loan from NKGSB, wherein the purpose of loan is specifically mentioned "Housing" and "upgradation of flat", The assessee deposited the title deed of the said Flat as security. The assessee has also filed copy of receipt of Rs.23,00,000/- acknowledging the sale consideration by seller for flat No. 23A Madhuban Apartments through the Bankers Cheques (finance amounts), copy of loan disbursement letter dated 29.10.2002 and sanction letter dated 28.10.2002 from by City Bank for Rs. 63,00,000/-. The Id Commissioner (Appeals) has not given any finding on all these evidences. As per our considered view the Id Commissioner (Appeals) totally ignored the evidentiary value of this documents. Considering, the circumstances of the facts and the documents filed by the assessee we find that the assessee had filed sufficient evidence to prove the nexus of the funds availed from the financial institutions in acquiring the property against which the interest expenses was claimed by assessee. In our considered view the assessee has proved the nexus and the purpose of housing loan qua the properties in respect of which the interest expenses was claimed. Even otherwise the similar claim of assessee was accepted by revenue in assessment in AY-2009-10 and again in AY -2013-14 in the assessment order

passed under section 143(3) of the Act. Hence, the Ground No. 1 and 2 raised by the assessee in this appeal are allowed.

6. In the result appeals of the assessee is allowed.

Order announce in the open court on 28th day of April 2017.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 28/04/2017

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai