

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

ITA No.6252/Mum/2014
(A.Y:2008-09)

ITA No.6253/Mum/2014
(A.Y:2010-11)

M/s Anagha Estates Ltd., 5 th Floor, Times Tower, Kamala Mills Compound, S.B. Marg, Lower Parel (W), Mumbai-400013	Vs.	Dy. Commissioner of Income Tax, 1(1), Aayakar Bhavan, M.K. Road, Mumbai
PAN No.AAFCA6682G		
Appellant	..	Respondent
Assessee by	..	Shri. S Venkataraman, AR
Revenue by	..	Shri. M.V. Rajguru, DR
Date of hearing	..	05-01-2017
Date of pronouncement	..	05-01-2017

ORDER

PER MAHAVIR SINGH, JM:

These appeals by the assessee are arising out of the different order of CIT(A)-1, Mumbai, in appeal No. CIT(A)-I/IT-763 & 70 /2010-11 & 2012-13 both of even date 31-07-2014. The Assessments were framed by DCIT Circle-1(1), Mumbai for the A.Y. 2008-09 & 2010-11 vide orders of even date 03-11-2010 u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) in confirming the action of the AO in disallowing the claim of deduction of interest u/s 24 b of the Act on the amounts borrowed and used for the purpose of acquisition of commercial properties and further not allowed the carry forward of the said loss under Section 71B of the Act. The grounds raised in both the years relates to the same issue and hence, the grounds as raised in A.Y. 2008-09, reads as under: -

“1. On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in not allowing deduction of interest amounting to Rs.3,25323,7071- under Section 24(b) of the I.T. Act, 1961 on amounts borrowed and used for the purpose of acquisition of the premises.

2. *On the facts and circumstances of the case and in law, the Appellant submits that since the acquisition of the premises was completed in May 2006 and / November 2006 respectively, the entire amount of interest of Rs.3,25,23,707/- qualifies for deduction under Section 24(b) of the I.T. Act, 1961 and the Ld. Commissioner (Appeals) erred in not allowing the same.*

3. *On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in not directing the Assessing Officer to compute loss of Rs.3,21,65,827/- under the head "Income from House Property" and further erred in not allowing the carry forward of the said loss under Section 71B of the IT Act, 1961."*

3. Briefly stated facts are that the assessee company was incorporated on 31-03-2006 with the aim and objective of making investment in immovable properties and letting out such properties to earn rental income. For this purpose, the assessee for the year ended 31-03-2007 purchased the following properties by investing borrowed moneys also:

"(a) In May 2006, 5th Floor in the building "Times Tower" at Kamala Mills Compound, Lower Parel, Mumbai for Rs.15,15,71,395 by borrowing monies from its holding company Bennett, Coleman & Co. Ltd. carrying interest at 8% per annum.

(b) In November 2006, 12th Floor in the building "Times Tower" at Kamala Mills Compound, Lower Parel, Mumbai for Rs.30,32,74,000 by borrowing monies from its holding company Bennett, Coleman & Co. Ltd. carrying interest at 8% per annum."

It was contended that the transaction of both the premises were completed before 31-03-2007 and occupation certificate was obtained by the builder on 28-12-2006 from the municipal Corporation of greater Mumbai for occupying the buildings "Times Tower" and builder forwarded the same to the assessee company in January 2007. The assessee tried to let out the property but could not do in these two assessment years as there was slum in rental market. The assessee company paid interest to its holding company Bennett, Coleman & Co. Ltd. at Rs.3,25,23,707/- at the rate of 8% on the total unsecured loan and advance of Rs.40,65,46,342/- for the A.Y. 2008-09. The assessee claimed the deduction of this interest u/s 24b of the Act amounting to Rs.3,25,23,707/- and consequently loss arising out of this deduction amounting to Rs.3,21,65,827/- is claimed to be allowed as carry forward u/s 71B of the Act. The AO noted that the assessee has not let out these properties as only purchased the same as incomplete, the deduction u/s 24b of the Act is not allowable. The AO disallowed this interest by observing as under: -

" I have carefully considered the submissions of the AR of the assessee, however, I am not inclined to accept the same, in view of the fact that deduction u/s 24 in respect of borrowed funds is allowable only in respect of properties let out. Since the assessee has neither let out these properties nor has shown any annual value on these properties, the interest claimed on these properties is not allowable. The AR of the assessee, on being

questioned as to why the property has not been let out, it has been submitted that the structured premises, which has not been furnished for letting out, only has been purchased. Since the basic structures have not been completed, the said premises have not been let out, meaning thereby is that though the assessee has acquired the property with borrowed funds, interest as per section 24 is allowable to the assessee. However, since the premises is yet to be put to use and under construction stage, it is a case of preconstruction period and at the most the assessee is entitled to 1/5 of interest only i.e. period commencing and the date of borrowing and ending 31st March immediately prior to the date of completion of construction/date of acquisition or date of repayment of loan, whichever is earlier. Since these basic details have not been furnished, interest claimed is disallowed. Accordingly, the interest of Rs. 3,25,23,707/- (81,65,710+ 2343,57,997) is disallowed and added to the total income.”

Aggrieved assessee preferred appeal before CIT(A), who also confirmed the action of the AO exactly on identical grounds. Aggrieved, now, assessee is in second appeal before Tribunal.

4. Before us, the learned Counsel for the assessee, Shri S. Venkataraman taken us through the facts and he contested the findings of the lower authorities and stated that the assessee has actually acquired these properties and transactions for purchase of both the properties were completed in the F.Y. 2006-07 i.e. the year ending 31-03-2007. He also contested the findings of the lower authorities that the occupation certificate dated 28-12-2006 was obtained by the builder from the Municipal Corporation of Greater Mumbai for occupying the building ‘Times Tower’ which was forwarded by the builder to the assessee in January 2007. The Learned Counsel for the assessee argued that the board of Directors at the meeting on 15-12-2007 passed a resolution that steps to be taken to let out the properties without making any further investment in terms of renovations, furnishing etc. Accordingly, efforts were made for potential tenant but due to slump in the market could not find any good tenant. It was accepted by the leaned Counsel that since the assessee company paid interest to Rs.3,25,23,707/- on the borrowings taken for acquiring the premises, this amount was claimed as deduction u/s 24b of the Act while computing the income under the head of income from house properties. Consequently, the loss of Rs. 3,21,65,827/- was computed under the head of income from house property and claimed to be carry forward u/s 71B of the Act while filing the return of income for A.Y. 2008-09. The learned Counsel for the assessee stated that the view of the AO and that of the CIT(A) is factually erroneous that the premises was under construction. He stated that explanation u/s 24b of the Act is applicable. On the other hand, the learned Sr. DR heavily relied on the orders of the lower authorities.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. The admitted facts are that the assessee has purchase these two properties mentioned above and both the premises were completed as on 31-03-2007. Admittedly, the assessee purchased these two properties by borrowing the funds from its holding company Bennett, Coleman & Co. Ltd. amounting to Rs.40,65,46,342/-, on which assessee has paid interest amounting to Rs. 3,25,23,707/-. Admittedly, these premises were complete and factually the builder obtained occupation certificate dated 28-12-2006 from the Municipal Corporation of Greater Mumbai for occupying this building 'Times Tower'. Admitted facts are that no rental income was declared by the assessee from these two premises as these were not let out during the relevant F.Y. 2007-08 relevant to this A.Y. 2008-09. Even the assessee has not computed any ALV from these premises u/s 22 of the Act. It is a fact that these properties were complete and occupation certificate issued by Municipal Corporation of greater Mumbai for both the commercial buildings vide dated 28-12-2006. From the computation of income filed by assessee it is noted that the assessee has claimed deduction u/s 24 of the Act on account of interest of borrowing capital for these two commercial properties without declaring any ALV or any rental income and computed the loss of Rs.3,21,65,827/- under the heard of income from house property and further claimed the same for carry forward u/s 71B of the Act. Factually, we agree with the arguments of learned Counsel that both the premises were ready for occupation and complete. Only issue remains, whether the assessee can claim deduction u/s 24b of the Act without declaring any ALV from these two commercial properties which remain vacant throughout the year?

6. First of all we have to go through the provision of section22 of the Act, which reads as under:-

"22. Income from house property 1The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income- tax, shall be chargeable to income- tax under the head" Income from house property".

From the reading of section 22 of the Act one can gather that for computing "Income from House Property" first of all annual value has to be known. The annual value of property consisting of any land or building of which assessee is the owner shall be chargeable to income-tax under the head income from house property. Section 23 of the Act provides how annual value is to be determined. As in the present case, these two commercial

properties are vacant during the relevant F.Y. relevant to this A.Y. and not let out due to slump in the market. As per section 23(1)(a) of the Act the ALV of these two commercial properties of the assessee are to be determined. The relevant Section 23(1) (a) reads as under:-

“23. Annual value how determined

(1)² For the purposes of section 22, the annual value of any property shall be deemed to be-

(a) the sum for which the property might reasonably be expected to let from year to year; or

.....”

Section 23 explains the concept of ALV and sub-section 1(a) explain the annual value being the sum for which the property might reasonably be expected to let from year to year i.e. annual letting value (ALV). Section 23(1)(a) of the Act provides for the purposes of Section 22 of the Act, the ALV of any property and the word used is ‘might’ and not ‘can’ or ‘is’. In view of the above provisions we are of the view that in notional income is to be gathered from what a hypothetical tenant would pay which is to be objectively ascertained on a reasonable basis irrespective of the fact whether the property is let out or not. The applicability of the above provisions does not depends on the power or capacity of the owner to let the property out or on its own power to receive rent or income from bonafide ALV. It means that it is provided in the section 23 Act that the assessee has to pay tax in respect of bonafide ALV determined in accordance with the provisions of these Sections. What is charged u/s 22 of the Act is the annual value of the ownership of the property irrespective of the fact whether or not any income was either actually received or had accrued to the assessee. Therefore, it cannot be stated that by reason of the fact that the property is not let out, the assessee will escape income tax. Here, in the present case also, in case the assessee determines the ALV of the property and offer the same for assessment, assessee will be eligible for the claim of deduction u/s 24b of the Act on account of interest on borrowed capital which has been utilized in the acquisition, construction, repairs, renewal or reconstruction of the property the income wherefrom is being computed for charge of income tax. The learned Counsel for the assessee before us conceded the position that as per section 23(1) (a) of the Act, for the purpose of section 22 of the Act, ALV of these commercial properties shall be determined by the assessee and only then the claim of deduction u/s 24b of the Act will be allowed. In the present case, we set aside this issue to

the file of the AO to first determine the ALV of these two commercial properties as per Section 23 (1) (a) of the Act for the purposed of Section 22 of the Act, i.e. the annual value shall be deemed to be the sum for which property might reasonably be expected let from year to year. Then, the AO will allow the claim of deduction u/s 24b of the Act on account of interest on borrowed capital, which is not in dispute. In term of the above, we remand the matter back to the file of the AO for fresh adjudication. Needless to say, the AO will allow reasonable opportunity of being heard to the assessee. As regards to carry forward of loss under the head income from house property, same is to be allowed u/s 71B of the Act and will be set off against incomes of future years under the heard income from house property. In term of the above, the orders of the lower authorities are set aside and matter remanded back to the file of the AO for both the years.

7. **In the result, both the appeals of assessee are allowed for statistical purposes.**

Order pronounced in the open court on 05-01-2017.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 05-01-2017

Sudip Sarkar /Sr.PS

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.

//True Copy//

BY ORDER,
Assistant Registrar
ITAT, MUMBAI