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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH `F' NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

I.T.A.No.4455/Del/2013
Assessment Year : 2009-10

Income Tax Officer, Ward 25(1), Room No. 1707, 17th Floor, E-2 Block, Civic Centre, Minto Road,J.L.N. Marg, New Delhi.	vs	Rekha Bansal, A-7, Pushpanjali Enclave, Pitampura, Delhi. (PAN: AEFPB0239M)

C.O. No. 43/Del/2014
(IN I.T.A.No.4455/Del/2013)
Assessment Year : 2009-10

Rekha Bansal, Delhi. (Appellant)	vs	ITO, Ward 25(1), New Delhi. (Respondent)

Appellant by: Shri Vikram Sahay, Sr. DR
Respondent by : Shri R.R. Singla, CA

O R D E R

PER CHANDRAMOHAN GARG, J.M.

The appeal of the revenue as well as C.O. of the assessee have been filed against the order of CIT(A)-XXIV, New Delhi dated 30.05.2013 in Appeal No. 347/11-12 /120 for AY 2009-10.

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Revenue's appeal in ITA No. 4455/Del/2013 for AY 2009-10

2. The Revenue has raised following grounds in this appeal:-

> *"On the facts and circumstances of the case and in law CIT(A) has erred in-*
>
> 1. *Deleting the addition of Rs. 28,75,000/- made by AO u/s 68 of the Income Tax Act, 1961 as the assessee failed to prove the genuineness of the unsecured loan.*
>
> 2. *Deleting the addition when no confirmation has been filed either before the AO and the CIT(A) .*
>
> 3. *Deleting the addition on the basis merely that payment has been made through banking channel when no other evidence has been filed to establish the genuineness of the transaction."*

3. Ld. DR also pressed application dated 5.3.2015 for admission of additional ground which reads as under:-

> *"1. Allowing the interest of Rs.12,82,571/- paid on loan taken from the bank to be capitalized and reduced from the sale consideration of the property while computing the capital gain by the AO."*

4. We have heard arguments of both the sides on admissibility of additional ground of the revenue. Ld. DR submitted that the AO made disallowance of interest of Rs.12,82,571/- paid on loan taken from the bank which was deleted by the CIT(A) with the conclusion that the interest paid by the assessee on loan taken from the bank is to be capitalized and rates from the sale consideration of the property while computing the capital gains. Ld. DR submitted that against the relief granted by the CIT(A) to the assessee on this issue, ground could not be raised while filing the original appeal, therefore, the same may kindly

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admitted as additional ground of the revenue being mixed with the ground of fact and law. Ld. AR objected to the admissibility of additional ground and submitted that the CIT(A) was right in granting relief and when the revenue has not raised this ground at the time of filing original appeal, then the same can not be submitted as additional ground at late stage of hearing.

5. On careful consideration of above submissions, we are of the considered view that that the additional ground proposed to be admitted by the revenue deserves to be admitted being ground arising from the relief granted by the CIT(A) to the assessee and we admit the same.

Ground no. 1, 2 & 3 of the revenue

6. We have heard arguments of both the sides apropos this ground of the revenue and also perused the relevant material placed on record before us. Ld. DR submitted that the CIT(A) has erred in law and on facts in deleting the addition of Rs.28,75,000 made by the AO u/s 68 of the Income Tax Act 1961 as the assessee failed to prove the genuineness of unsecured loan. Ld. DR further contended that the CIT(A) was not justified in deleting the said addition when no confirmation has been filed either before the AO or before the CIT(A) and the addition was deleted merely on the basis that payment has been made through banking channel, specially when no evidence has been filed to establish the genuineness of the transaction. Ld. Counsel lastly submitted that the impugned order may be set aside by restoring that of the AO on this issue.

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7. Ld. AR strongly supported the impugned order and submitted that the AO made addition u/s 68 of the Act without any basis. Ld. AR further submitted that as per details filed by the assessee on 17.10.2011, the assessee very well established that she has taken a loan of Rs. 15,75,000 from one Shri Manoj Kumar and of Rs.13 lacs from one Shri Uttam Singh in addition to other unsecured loans along with details/confirmation. Ld. DR further submitted that the assessee vide her letter dated 31.10.2011 requested the AO to summon these creditors and inform their address but instead of making any further verification or examination or calling the respective creditors, the AO proceeded to make addition without any basis and wrongly held that these loans are not genuine. Ld. AR further submitted that the CIT(A) rightly considered confirmation and other relevant evidence submitted by the assessee and rightly held that both Shri Manoj Kumar and Shri Uttam Singh had sufficient bank balance before issuing cheques to the assessee, therefore, impugned addition was deleted by the first appellate authority. Ld. DR also placed rejoinder to the above submissions by the assessee and submitted that the assessee has deliberately concealed particulars of her income and despite summons issued to these creditors nobody attended nor the required details/confirmations, bank account and ITRs were filed, therefore, the assessee did not discharge her onus to prove genuineness and creditworthiness of these creditors therefore, addition made by the AO u/s 68 of the Act is sustainable and in accordance with law.

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8. On careful consideration of above submissions from bare reading of the impugned order of the CIT(A), we note that the CIT(A) granted relief for the assessee with following observations and conclusion:-

> *"4.2 In Ground No. 2, the appellant has impugned the addition of Rs.28,75,000/- as her income from as her income from undisclosed sources u/s. 68 of the Act. She submitted that temporary loans had been taken by her from Sh. Manoj Kumar and Sh. Uttam Singh and since, she was not on good terms with them as on today, she requested that these persons may be summoned u/s. 131 of the Act. Accordingly, summons were issued to both Sh. Manoj Kumar and his father Sh. Uttam Singh. The appellant also informed that the present address of both Sh. Manoj Kumar and Sh. Uttam Singh was F -191, Prashant Vihar, Delhi - 110 085. Summons were again issued to both of them at this new address. Summons sent by speed post were served on them and acknowledgements were placed on record. However, neither of them attended the proceedings. Accordingly, after serving them with a show-cause notice, penalty was imposed on them u/s. 272A(l)(c) of the Act. Simultaneously, notices u/s. 133(6) were issued to Karur Vysya Bank, Prashant Vihar, Sector-14, Rohini, Delhi - 110 085 to supply authenticated copies of front and back side of cheques no. 648361 and 648362 issued by the appellant Mrs. Rekha Bansal from her account no. 4104155000012813 to Sh. Manoj Kumar and Sh. Uttam Singh for Rs.15,75,000/- and Rs.13 lacs respectively. These copies, duly authenticated by the bank were provided by Karur Vysya Bank and have been placed on record. These cheques were deposited in the bank accounts of Sh. Manoj Kumar and Sh. Uttam Singh in HDFC Bank, A-24, Pushpanjali Enclave, Ring Road, Pitampura, New Delhi - 110034. Notice u/s. 133(6) was issued to HDFC Bank for giving copy of the bank account of both Sh. Manoj Kumar and Sh. Uttam Singh being a/c number 07111000008105 and 02851570001060 respectively. These copies were received and it was noticed therefrom that both Sh. Manoj Kumar and Sh. Uttam Singh had sufficient bank balance in their accounts before issuing cheques to the appellant Smt. Rekha Bansal. In the light of the above evidence, the addition of Rs.28,75,000/- to the income of the appellant becomes untenable and the same is hereby deleted."*

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9. As per submissions of both the sides, it is amply clear that the AO made impugned addition in absence of details, confirmation, bank accounts and ITR copies of the alleged creditors Shri Manoj Kumar and Shri Uttam Singh. During first appellate proceedings, the CIT(A) granted relief to the assessee on the basis of information received from the respective banks of the creditors in compliance to the notice issued to these banks u/s 133(6) of the Act wherein the first appellate authority found that the alleged creditors had sufficient bank balance in their accounts before issuing cheques to the assessee. It is also pertinent to note that prior to calling bank statement copies by way of notice u/s 133(6) of the Act, the CIT(A) also issued summons to the respective creditors which were not complied and the CIT(A) also served a show cause notice proposing to impose penalty u/s 272A(1)(c) of the Act. In this situation, the CIT(A) was right in holding that the assessee discharged her onus by way of filing required details, confirmation and other relevant documentary evidence and also by filing PAN Number and addresses of the respective creditors. However, the alleged creditors did not comply with the notice u/s 131 of the Act and did not appear either before the AO or before the CIT(A) but the first appellate authority adopted course of verifying the genuineness of the transaction and creditworthiness of the respective creditors from their respective banks by issuing notice u/s 133(6) of the Act. On the basis of information received therefrom the CIT(A) has drawn a logical conclusion that Shri Manoj Kumar and Shri Uttam Singh had sufficient bank balance in their accounts

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before issuing cheques to the assessee which shows genuineness of the transaction as well as creditworthiness of the alleged creditors. In this situation, the addition made by the AO u/s 68 of the Act could not be held as sustainable and the same was rightly deleted by the CIT(A). Accordingly, ground no. 1, 2 and 3 of the revenue being devoid of merits are dismissed.

Additional ground of the revenue

10. Apropos additional ground of revenue, ld. DR submitted that the CIT(A) has grossly erred in allowing the interest of Rs.12,82,571 paid on the loan taken from the bank to be capitalized and reduced from the sale consideration of the property while computing the capital gain. Ld. DR vehemently pointed out that property no. 163, Deepali, Pitampura, Delhi was purchased at Rs.63,68,450 and the assessee paid interest to the bank amounting to Rs.12,82,571 and the amount of interest was capitalized and deducted from sale consideration for calculation of capital gain which is not a proper approach. Ld. DR further submitted that the assessee took loan of Rs. 85 lakh against which the impugned interest was paid, therefore, capitalization of this amount was not permissible in accordance with provisions of the Act. Ld. DR completed his argument on this issue by submitting that the impugned order may be set aside by restoring that of the AO.

11. Ld. AR strongly supported the impugned order and submitted that when the assessee paid interest on the loan taken for purchase of property, then the

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amount of interest should be capitalized for calculation of capital gains accrued to the assessee on sale of such property. Ld. AR further pointed out that the AO was not justified in denying the benefit of interest to the assessee which was paid from the bank account of the assessee in Karur Vysya Bank. Ld. AR submitted that the CIT(A) was right in directing the AO to delete the addition to the income of the assessee under the head 'capital gains'.

12. On careful consideration of above submissions, at the very outset, the AO denied the capitalization of the interest by holding that the interest claimed by the assessee is not an allowable expenditure as the properties in the names of the assessee's husband and the loan has been taken in the name of assessee's husband Shri Ajay Kumar Bansal. The CIT(A) granted relief to the assessee by observing that the evidence gathered u/s 133(6) of the Act from ICICI Bank, Home Loan Branch with regard to home loan given to the assessee and her husband explains that the repayment of loan has been made from the assessee's account with Karur Vysya Bank, Rohini Branch. From the statement of authorized representative of ICICI Bank, the CIT(A) also noticed that in the case of loan taken by ladies, bank has a policy of including names of their husband which appear first and the name of the female assessee appears later in the loan document. The CIT(A) also observed that the loan taken by the assessee from ICICI Bank was of Rs. 85 lakh and impugned interest of Rs.12,82,571 was paid to the bank from her bank account in Karur Vysya Bank,

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therefore, the benefit of capitalization of this interest cannot be denied. The main contention of the revenue is that when the property was purchased much earlier at the cost of Rs.63,68,450, then the interest paid by the assessee on subsequent loan from ICICI Bank on loan amount of Rs. 85 lakh cannot be allowed to be capitalization while deducting capital gain on sale of said property.

13. From the first appellate order in para 4.4 at page 5-6 we note that the CIT(A) granted relief for the assessee by observing as under:-

> *"4.4 In the fourth ground of appeal, the appellant has impugned the addition of Rs.12,82,571/- being interest paid to bank on loan taken by the appellant against property bearing no. 163, Deepali, Pitampura, Delhi on the grounds that the loan was taken by assessee's husband Sh. Ajay Kumar Bansal, PAN No. AEIPB 2506A for A.Y. 2009-10. The Id. AR .of the appellant submitted an affidavit from Sh. Ajay Kumar Bansal, husband of the appellant in support of the fact that he had not claimed the benefit of this interest made to the bank in his Return of Income. Further, as proof, he submitted a copy of his return of income along with his assessment order u/s 143(3) for A.Y. 2009-10 passed by ITO Ward 21(3), New Delhi. Further, evidence was also gathered u/s 133(6) of the Act from ICICI Bank, Home Loan Branch with regards to Home Loan given to Sh. Ajay Bansal and Smt. Rekha Bansal, wherein, the Authorised Representative of ICICI Bank Ltd. has stated that "The repayment of the loan has been made from the Rekha Bansal account with the Karur Vysya Bank Ltd., Rohini Branch" and that "it is generally true that in case of the loan taken by ladies "if the property is in the name of ladies", the bank has a policy of including the names of their husbands and the names of the husbands appears first and the names of their wives appear later in the loan document." In the light of the above evidence, it is clear that the loan was taken by the appellant from ICICI Bank for an amount of Rs.85 lacs and that the interest of Rs.12,82,571/- was paid to the bank from her*

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> *account in Karur Vysya Bank Ltd. Therefore, she cannot be denied the benefit of capitalizing this interest and reduce it the same from the sale consideration of the property. Accordingly, this addition to the income of the appellant under the head Capital Gains is hereby deleted. Although, the AO has correctly charged the Short Term Capital Gains on purchase and sale of properties under the appropriate head "Capital Gains" rather than under the head "Other Sources" as returned by the appellant, by showing her income of Rs.3,56,169/- as miscellaneous Income."*

14. In view of above, we observe that the AO denied capitalization of the interest while calculating capital gain because perhaps there was a confusion regarding name of the home loan account wherein the name of assessee's husband appeared first which created doubt in the mind of the AO, however, the CIT(A) called and gathered required evidence and information by invoking provisions of section 133(6) of the Act from ICICI Bank wherein it was revealed that the loan was taken jointly by the assessee and her husband amounting to Rs. 85 lakh and impugned interest was paid to the bank from the assessee's bank account in Karur Vysya Bank Ltd. At this juncture, we respectfully take cognizance of the ratio laid down by the **Hon'ble Jurisdictional High Court of Delhi in the case of CIT vs Mithilesh Kumar reported in 92 ITR 09 (Del)** wherein it was held that the assessee in order to purchase the land had not only to borrow the amount of Rs.95,000 which was the consideration for the purchase of the land but also had to pay interest of Rs.16,878/- on the amount borrowed by her, therefore, the amount of

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consideration plus the interest paid by the assessee constitutes the actual cost of the land.

15. When we consider the facts and circumstances of the present case, respectfully following the dicta laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs Mithilesh Kumar (supra), we hold that the assessee is entitled for capitalization of interest actually paid by the assessee on the loan taken for purchase of said property provided the interest so proposed to be capitalized is not claimed as deduction under the head of income from house property. We are also of the considered view that the calculation and verification of the interest for the period between date of acquisition and date of sale of property has to be done at the end of AO. Therefore, we reach to a logical conclusion that the AO was not correct in denying the capitalization of interest pertaining to the amount which was actually invested towards purchase of property for the period between the date of acquisition and date of sale of property. At the same time, we further hold that the CIT(A) was also not justified and correct in directing the AO for capitalization of entire amount of interest and to reduce it from the sale consideration of property at the time of calculating capital gains because the assessee obtained loan of Rs.85 lakh jointly with her husband , a part therefrom which was utilized for repayment of home loan which was originally obtained at the time of purchase of property. In view of above conclusion of the AO as well as findings of the CIT(A) being not

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completely sustainable and in accordance with law, this issue is restored to the file of AO for a fresh adjudication in the light of relevant provisions of the Act and in accordance with the facts and circumstances of the case. The AO is directed to allow the interest on the loan raised for purchase of property and repayment of property loan which was utilized for the purpose of acquisition of property in question subject to verification of following facts:-

i) The calculation and verification of interest for the period between the date of acquisition of property and date of sale of said property, actually pertains to the amount of consideration/cost of acquisition at the time of purchase of property by the assessee.

ii) The AO would allow the capitalization of interest subject to condition that the same was not claimed by the assessee as deduction during the relevant financial periods for calculation of income under the head of "income from house property".

Accordingly, additional ground no. 2 of the revenue is deemed to be allowed for statistical purposes for the limited purpose as indicated above.

C.O. No. 43/Del/14 of the assessee

16. At the outset, ld. AR submitted that CO No. 1 and 4 are general in nature and assessee does not want to press CO No. 3, therefore, the same are dismissed as not pressed. The remaining sole CO NO. 2 of the assessee reads as under:-

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> *"2. The ld. AO has erred in law and facts while confirming the addition of Rs.3,92,000/- to the returned income and not allowing the claim of vacancy allowance."*

17. Apropos sole CO of the assessee, we have heard argument of both the sides and carefully perused the material placed on record inter alia findings and observations of the AO as well as conclusion of the CIT(A) in the impugned first appellate order. Ld. AR vehemently contended that the CIT(A) has erred in law and facts while confirming the addition of Rs.3,92,000/- to the returned income and not allowing the claim of vacancy allowance. Ld. AR has also drawn our attention towards copy of the rent agreement between the assessee and the tenant M/s Cross Road Logistics Pvt. Ltd. dated 1.11.2008 and submitted that the property was rented out only for the period of five months i.e. from 1.11.2008 to 31.3.2009 and for the remaining seven months, the property was lying vacant as the same was not ready for use prior to this period. Ld. AR also submitted that the AO made addition on the basis of pure guesswork, surmises and conjectures which was not sustainable but the CIT(A) upheld the said addition without application of mind and for want of proper evidence which could only be submitted in the form of negative evidence. Ld. AR submitted that the impugned addition may kindly be directed to be deleted as the property had remained vacant for first seven months of the financial year i.e. 1.4.2008 to 31.10.2008.

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18. Ld. DR supporting the action of the AO and impugned order submitted that the assessee was allowed repeated opportunity to produce any kind of evidence to prove that the property had actually remained vacant for the period of seven months but the assessee failed to produce any cogent evidence to support vacancy of seven months, therefore, the AO was right in making addition which was rightly upheld by the CIT(A).

19. On careful consideration of above submissions, from the copy of the rent agreement, admittedly and undisputedly, we note that the property was rented by the assessee to M/s Cross Road Logistics Pvt. Ltd. for the period starting from 1.11.2008 to 31.3.2009 and the assessee offered to tax the rental income arising therefrom. The dispute arose when the AO noted that the property was kept vacant for seven months and asked the assessee to submit evidence to support vacancy of seven months. The AO made impugned addition by holding that the annual rental value of the property might reasonably be expected to let out from year to year. The AO granted deduction @30% u/s 24(a) of the Act and calculated the net property income at Rs.6,72,000 and after deducting rental income shown by the assessee from house property at Rs. 2,80,000/-, the AO made impugned addition of Rs.3,92,000 to the returned income of the assessee. On appeal by the assessee, the CIT(A) upheld and confirmed the addition for want of proper evidence. About the fact of vacancy of seven months, on careful consideration of observations and findings of the authorities below, we note that

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tax can only be imposed on the rental income actually earned by the assessee. The rental income from house property cannot be admitted for want of negative evidence about the vacancy period of the property under consideration. In this situation, we are of the considered view that the issue requires proper verification and examination at the end of AO and we restore this issue to the file of AO with a direction that the AO shall verify and examine the issue afresh after affording due opportunity of hearing for the assessee and without being prejudiced from the earlier assessment and impugned order on this issue. Accordingly, cross objection no. 2 of the assessee is deemed to be allowed for statistical purposes.

20. In the result, ground no. 1, 2 and 3 of the revenue are dismissed and the additional ground of the revenue as well as CO NO.2 of the assessee is deemed to be allowed for statistical purposes in the manner as indicated above.

Order pronounced in the open court on 14.8.2015.

Sd/-	Sd/-
(R.S. SYAL) ACCOUNTANT MEMBER	(CHANDRAMOHAN GARG) JUDICIAL MEMBER

DT. 14th AUGUST 2015
'GS'

Copy forwarded to:-
1. Appellant
2. Respondent
3. C.I.T.(A)
4. C.I.T. 5. DR

By Order

Asstt.Registrar