

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Saini, AM And Sh. A. T. Varkey, JM

ITA No. 3117/Del/2015 : Asstt. Year : 2010-11

Mrs. Samiksha Mahajan, 2, Avenue Cassia, Westend Greens, Rajokari, New Delhi	Vs	Assistant Commissioner of Income Tax, Central Circle-22, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AKDPM4000H		

ITA No. 3118/Del/2015 : Asstt. Year : 2010-11

Mrs. Anita Rani, 2, Avenue Cassia, Westend Greens, Rajokari, New Delhi	Vs	Assistant Commissioner of Income Tax, Central Circle-22, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAEPR2569P		

**Assessee by : Sh. Salil Kapoor, Adv. & Sambhav Rastogi
Revenue by : Sh. K. K. Jaiswal, Sr. DR**

Date of Hearing : 18.11.2015	Date of Pronouncement : 05.02.2016
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ORDER

Per N. K. Saini, AM:

These appeals by the assessees are directed against the separate orders dated 12.03.2015 & 18.03.2015 of Id. CIT(A)-IV, New Delhi.

2. The issue involved is common in these appeals which are heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. First we will deal with ITA No. 3117/Del/2015, the grounds raised in this appeal read as under:

“1. That the Learned CIT(A) has erred in law as well as on facts of the case in holding that the provisions of section 24(b) are not applicable if the loan funds are used in purchasing the land and such funds are not used for construction of the property on that land.

2. That the Learned CIT(A) has erred in law as well as facts of the case in rejecting the claim of the interest on house loan of Rs.1,42,347/- u/s 24 of the Income Tax Act, 1961 on above presumption.

3. That the Learned CIT(A) has erred in law as well as on facts of the case disallowing the claim of Rs.49,000/- u/s 80C of the Income Tax Act, towards repayment of housing loan on the basis of presumption that loan funds are used in purchasing the land and such funds are not used for construction of the property on that land.

4. The appellant carves leave to add to, alter, vary, modify or otherwise amend the grounds of appeal before the appeal is finally disposed of.”

4. From the above grounds, it is clear that the grievance of the assessee vide ground nos. 1 & 2 relates to the rejection of the claim

of the assessee on account of interest on housing loan u/s 24 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. Facts of the case in brief are that the assessee e-filed the return of income on 30.03.2011 declaring an income of Rs.7,03,420/-. Later on, the case was selected for scrutiny. The AO observed that the assessee had declared income at Rs.10,22,171/- under the head income from house property in respect of property no. 3, Jacranda, Westend Greens, Rajokari, New Delhi. He also observed that the assessee was the co-owner of the farm land with Smt. Anita Rani Mahajan, both having the equal share and entered into an agreement with M/s Nimitya Properties Ltd. who will construct the farm house on the land, bearing all the expenditure incurred on the development and construction of the said farm house and that on the completion of the project, the developer i.e. M/s Nimitya Properties Ltd. will be entitled to 50% share out of the total consideration to be received after selling the said farm house and in case the property is rented out, the developer will receive 70% of the rent, the remaining 30% will go to the owners of the land. Thus, the assessee alongwith Smt. Anita Rani Mahajan was entitled to receive 30% of the rent. The individual share of the assessee being 15% of the total rent which came to Rs.11,79,375/- whereas the assessee had declared rent of Rs.10,22,171/-. According to the AO, the assessee had declared rent

short by Rs.1,10,043/- which was added to the income of the assessee.

6. During the course of assessment proceedings, the AO also noticed that the assessee claimed deduction u/s 24(a) of the Act for a sum of Rs.1,42,123/- and had not spent any amount on construction of the farm house, therefore, he was of the view that the deduction could not be allowed. The AO also observed that the assessee claimed deduction of Rs.1,00,000/- u/s 80C of the Act, which was restricted to the sum of Rs.51,000/- and remaining amount of Rs.49,000/- was added to the income of the assessee.

7. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the addition of Rs.1,42,347/- made by the AO on account of disallowance of claim u/s 24(a) of the Act and Rs.49,000/- u/s 80C of the Act. The assessee submitted that Section 24(b) of the Act does not prohibit to take loans for acquisition of the property and clearly defines that the interest payment on borrowed fund for the purpose of the acquisition of the property from which the rental income is derived, is an allowable expense. It was further stated that the AO failed to consider the documentary evidence and the case law provided by the assessee during the course of assessment proceedings and that no justifiable reason had been cited for disallowing the claim of interest on the borrowed capital.

8. The Id. CIT(A) after considering the submissions of the assessee observed that the assessee had purchased land by taking the loan from Indian Overseas Bank, however, the property was constructed by M/s Nimitya Properties Ltd. and not by the assessee. He further observed that Section 24(b) of the Act provides for deduction in respect of acquisition of property consisting of any buildings or land appurtenant thereto. Thus, the land appurtenant thereto is to be understood in the context of the building and not independently. The reliance was placed on the decision of the Honøble Supreme Court in the case of G. Claridge and Co. Ltd. (1991) 2 SC Cases 229 and Dr. Devendra M. Surti AIR (1969) SC 63. The Id. CIT(A) further observed that the assessee had not spent any amount on the construction of the building, therefore, she was not entitled for deduction u/s 24(b) of the Act. He, accordingly, upheld the disallowance made by the AO. As regards to the disallowance of Rs.49,000/- u/s 80C of the Act, the Id. CIT(A) held that the assessee had not incurred any amount for construction of farm house as construction cost was made by M/s Nimitya Properties Ltd. Accordingly, the said disallowance was also upheld.

9. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee raised a housing loan for purchasing the property in question and acquired the right in the

property. It was stated that the income from the said property was assessed under the head 'income from house property' and even the addition was made by the AO in the income under the head 'income from house property'. It was further stated that the ld. CIT(A) cited the wrong decision, facts of which were not applicable to the facts of the assessee's case because in the said case the loan was taken for eviction and the money was utilized for paying the tenant for handing over the possession of the property or in other words, for surrendering the tenancy rights in the property while in the assessee's case, the loan was raised for acquiring the property, the income generated from which was assessed under the head 'income from house property'. Therefore, the interest paid by the assessee was allowable u/s 24(b) of the Act.

10. In his rival submissions the ld. DR supported the orders of the authorities below.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee raised home loan of Rs.22,50,000/- from Indian Overseas Bank against the property no. 3, Jacranda, Westend Greens, Rajokari, New Delhi and entered into an agreement with M/s Nimitya Properties Ltd. with an arrangement that the said company will construct the farm house on the land by

incurring all the expenditure on the development and construction of the said farm house on completion of the project. The said developer company was entitled for 50% shares out of the total consideration to be received after selling the said farm house and in case the said property was to be rented out, the developer company would receive 70% of the rent and the remaining 30% will go to the owners of the land. The assessee along with Smt. Anita Rani Mahajan is the owner of the land on which construction was done by M/s Nimitya Properties Ltd. However, the assessee was the co-owner in the constructed property alongwith Smt. Anita Rani Mahajan having 50% share and remaining 50% share was of the developer company M/s Nimitya Properties Ltd. The income generated from the said property was shared by M/s Nimitya Properties Ltd. and the assessee alongwith Smt. Anita Rani Mahajan. In the instant case, it is an admitted fact that the assessee acquired the property by raising the loan. To resolve the present controversy, it is relevant to discuss, the provision contained in Section 24 of the Act which read as under:

“24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

- (a) a sum equal to thirty per cent of the annual value;*
- (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:*

***Provided** that in respect of property referred to in*

sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees :

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed [within three years from the end of the financial year in which capital was borrowed], the amount of deduction under this clause shall not exceed [two lakh rupees].

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:]

[Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.—For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the

purpose of repayment of such capital.”

12. From the above provisions, it is crystal clear that deduction is allowable on account of interest paid on the borrowed capital within three years from the end of the financial year in which capital was borrowed and in the relevant assessment year, the deduction allowable was of Rs.1,50,000/- which has been enhanced to Rs.2,00,000/- by the Finance Act (No. 2), 2014 w.e.f 01.04.2015. As per the explanation appended to the proviso of the aforesaid section, it is also clear that the property either be acquired or constructed with the borrowed capital. It is nowhere mentioned that the property must be acquired as well as constructed with the borrowed capital. The use of the word *or* in between acquired and constructed makes it clear that the property can either be acquired or constructed with the borrowed capital and if the income is earned which is assessed under the head *income from house property*, the deduction to the maximum extent of Rs.1,50,000/- is allowable on account of interest paid on the loan raised to acquire the property. In the present case, the assessee raised loan of Rs.22.50 lacs from the Indian Overseas Bank and acquired the property, income of which was assessed under the head *income from house property*. Therefore, the interest paid amounting to Rs.1,42,123/- was deductible u/s 24(b) of the Act. In that view of the matter we set aside the impugned order and direct the AO to allow the claim of the assessee.

13. As regards to the issue relating to the deduction u/s 80C of the Act is concerned, it is noticed that the assessee claimed the deduction of Rs.49,000/- with regard to the repayment of home loan but the AO did not allow the same on the ground that the assessee herself did not construct the property but only acquired the land. As we have already noted in the former part of this order that the assessee purchased the land alongwith Smt. Anita Rani Mahajan on which the construction was done by M/s Nimitya Properties Ltd. and both the parties i.e. the assessee alongwith Smt. Anita Rani Mahajan and the developer company became co-owner of the constructed property. Therefore, it is clear that the assessee made the repayment of the home loan taken for acquiring the property whose income was assessed under the head -income from house property. To resolve the present controversy, it is relevant to discuss the provision contained under sections 80C(1), 80C(2)(xviii) and 80C(7)(d) of the Act applicable for the relevant assessment year under consideration which read as under:

“80C. (1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in sub-section (2), as does not exceed [one hundred and fifty thousand rupees].

(2) The sums referred to in sub-section (1) shall be any sums paid or deposited in the previous year by the assessee—

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.....

- (xviii) for the purposes of purchase or construction of a residential house property the income from which is chargeable to tax under the head "Income from house property" (or which would, if it had not been used for the assessee's own residence, have been chargeable to tax under that head), where such payments are made towards or by way of—*
- (a) any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or*
 - (b) any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him; or*
 - (c) repayment of the amount borrowed by the assessee from—*
 - (1) the Central Government or any State Government, or*
 - (2) any bank, including a co-operative bank, or*
 - (3) the Life Insurance Corporation, or*
 - (4) the National Housing Bank, or*
 - (5) any public company formed and registered in India with the main object of carrying on the*

business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under clause (viii) of sub-section (1) of section 36, or

- (6) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or*
 - (7) the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or*
 - (8) the assessee's employer where such employer is a public company or a public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society; or*
- (d) stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee,*

but shall not include any payment towards or by way of—

- (A) the admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or*
- (B) the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property or any part thereof has either been occupied by the assessee or any*

- other person on his behalf or been let out; or*
- (C) *any expenditure in respect of which deduction is allowable under the provisions of section 24;*
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(7) *For the purposes of this section,—*

- (a) *the insurance, deferred annuity, provident fund and superannuation fund referred to in clauses (i) to (vii);*
- (b) *unit-linked insurance plan and annuity plan referred to in clauses (xii) to (xiiia);*
- (c) *pension fund and subscription to deposit scheme referred to in clauses (xiiic) to (xiva);*
- (d) *amount borrowed for purchase or construction of a residential house referred to in clause (xv),*

of sub-section (2) of section 88 shall be eligible for deduction under the corresponding provisions of this section and the deduction shall be allowed in accordance with the provisions of this section.

(8) *In this section,—*

- (i) *"Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);*
- (ii) *"contribution" to any fund shall not include any sums in repayment of loan;*
- (iii) *"insurance" shall include—*
- (a) *a policy of insurance on the life of an individual or the spouse or the child of such individual or a member of a Hindu undivided family securing the payment of specified sum on the stipulated date of maturity, if such person is alive on such date*

notwithstanding that the policy of insurance provides only for the return of premiums paid (with or without any interest thereon) in the event of such person dying before the said stipulated date;

- (b) a policy of insurance effected by an individual or a member of a Hindu undivided family for the benefit of a minor with the object of enabling the minor, after he has attained majority to secure insurance on his own life by adopting the policy and on his being alive on a date (after such adoption) specified in the policy in this behalf;*
- (iv) "Life Insurance Corporation" means the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956);*
- (v) "public company" shall have the same meaning as in section 3 of the Companies Act, 1956 (1 of 1956);*
- (vi) "security" means a Government security as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);*
- (vii) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);*
- (viii) "transfer" shall be deemed to include also the transactions referred to in clause (f) of section 269UA.]”*

14. In the present case, the assessee borrowed the amount for acquiring the property whose income was assessed under the head income from house property and made the repayment of the said loan. Therefore, the said repayment was eligible for claiming the deduction u/s 80C of the Act. In that view of the matter, we set aside

the impugned order and direct the AO to include the amount claimed by the assessee while working out the deduction u/s 80C of the Act.

15. As regard to the case of Smt. Anita Rani Mahajan in ITA No. 3118/Del/2015 is concerned, the issues are similar having identical facts and even the counter arguments were similar. Therefore, our findings given in the former part of this order relating to the case of Smt. Samiksha Mahajan in ITA No. 3117/Del/2015 shall apply with the same force.

16. In the result, the appeals of the assesseees are allowed.

(Order Pronounced in the Court on 05/02/2016)

Sd/-

(A. T. Varkey)

JUDICIAL MEMBER

Dated: 05/02/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. K. Saini)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR