

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.976 & 977/Hyd/2016
(Assessment Years: 2009-10 & 2011-12)

Shri Isola Srinivas Vs Addl. Commissioner of
Prop: White Star Industries Income Tax, Range-11
Plot No.106 Phase-1 IDA Hyderabad
Jeedimetla, Hyderabad
PAN: ABMPS 7058 K

For Assessee : Shri K.C. Devdas
For Revenue : Shri A. Sitarama Rao, DR

Date of Hearing: 30.01.2017
Date of Pronouncement: 08.02.2017

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both are assessee's appeals for the A.Ys 2009-10 and 2011-12 respectively. The common issue in these two appeals is the assessment of income from house property and allowing of deduction of interest on the housing loan therefrom.

2. Brief facts of the case are that the assessee, an individual and the proprietor of M/s White Star Industries and also the Managing Director of M/s. Sreepathi Pharmaceuticals Ltd, filed his return of income on 30.09.2009 declaring a total income of Rs.87,78,156. During the assessment proceedings u/s 143(3) of the Act, various information was called for, which was

filed by the assessee. The assessee also produced his books of account, bills and vouchers etc.

3. On verification of the return of income and also the details filed by the assessee, the AO noticed that the assessee has received rental income of Rs.23,82,480 from a property situated at Banjara Hills, Hyderabad which has been let out to M/s. Sreepathi Pharmaceuticals Ltd in which the assessee is the Managing Director and that in the computation of income, the assessee has claimed interest of Rs.40,41,000 on house loan taken from State Bank of India and has arrived at the loss of Rs.20,58,179 from house property. On examination of the sale deed dated 2nd January, 2008, the AO observed that the property is co-owned by the assessee along with his wife and son and also that all the 3 persons have availed the home loan of Rs.4.40 crores from the SBI. In view of these facts, the AO was of the opinion that the assessee is entitled to only 1/3rd of the rental income and is also eligible for set off interest proportionately. The assessee submitted that though the assessee is the sole owner of the property, he has included his wife and son as co-owners in the sale deed only to avoid succession problems in future and that they were also included as co-obligants in the loan agreement on insistence by the SBI to avoid legal litigation in future. He also submitted that in his return of income, he alone has offered the rental income. The AO, however, was not convinced with the assessee's contentions and assessed the income from house property by taking into consideration only 1/3rd of the rental income and also allowing proportionate interest on the housing loan in his hands. Aggrieved, the assessee preferred an appeal

before the CIT (A), who confirmed the order of the AO and the assessee is in 2nd appeal before us.

4. The learned Counsel for the assessee reiterated the submissions made by the assessee before the authorities below and has also drawn our attention to various documents filed in the paper book to demonstrate that the assessee is the sole owner of the property.

5. The learned DR however, relied upon the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we find that the assessee is earning remuneration as Proprietor of M/s White Star Industries which is engaged in the manufacture of chemical products and is also receiving remuneration from M/s. Sreepathi Pharmaceuticals Ltd as its Managing Director. It is also seen that his wife and son are shown as co-owners of the property in the sale deed. It is also seen that the property has been purchased by availing a housing loan of Rs.4.40 crores from SBI and the assessee's wife and son are also co-obligants to the loan. It is not in dispute that assessee's wife is a teacher and his son was only a student at the time of purchase of the house property. Therefore, it cannot be accepted that they have the financial capacity independently to invest equal share in the property. Thus, it is evident that the assessee's income is the major chunk which has been taken into consideration by the Bank for grant of such a huge loan. The fact that the wife and the son of the assessee are also party to the loan agreement as co-

obligants and co-owners of the property is the only consideration for treating them as the equal owners of the property. However, we find that the assessee and the other co-owners have entered into an agreement which is placed at pages 34 and 35 of the paper book, wherein the other two parties have agreed that the assessee is a sole owner of the property and that the income from the house property shall accrue to him only and he alone shall be eligible for claiming deduction under the Income Tax Act. It is also seen from the computation of income of the assessee that he has offered the entire income in his hands and has accordingly claimed the deduction of interest on the housing loan. Further, it is also seen from the bank a/c of the assessee that the advance payment for the house property has been made by the assessee alone. Thus, it is clear that it is the assessee who has paid the advance payment and is also paying EMI's from his bank a/c. Therefore, we have no doubt in holding that the assessee is the real owner of the property even though his wife and son are also shown as co-owners of the property in the sale deed.

7. We are also supported by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ravinder Kumar Arora reported in (2011) 15 taxmann.com 307(Del.), wherein the Hon'ble Delhi High Court has held that where an assessee independently invested in the purchase of a new residential house, in his name along with the name of his wife also, and where it was the assessee who paid the stamp duty and the corporation tax at the time of the registration of the house property, then he is the real owner of the residential house in question. The Coordinate Bench of this Tribunal in the case of ITO vs. Dr. Vandana Bhulchandani

reported in (2016) 72 Taxmann.com 281 (Mumbai Trib.) has also held on similar lines.

8. Having regard to the judicial precedents on the issue, we hold that it is the assessee who is the real owner of the property and the entire rental income is to be taxed in the hands of the assessee and the interest on home loan is also to be allowed in his hands only. Thus, the assessee's grounds of appeal 1 to 5 for the A.Y 2011-12 are allowed and the assessee's grounds of appeal No.3.1 to 3.1.5 for A.Y 2009-10 are allowed.

9. As regards Ground 1 and 2 in the assessee's appeal for the A.Y 2009-10, we find that they need factual verification. In view of the same, these two grounds are remitted to the file of the AO for due verification after giving the assessee a fair opportunity of hearing. These two grounds are therefore treated as allowed for statistical purposes.

10. In the result, assessee's appeal for A.Y 2009-10 is partly allowed for statistical purposes and the assessee's appeal for the A.Y 2011-12 is allowed.

Order pronounced in the Open Court on 8th of February, 2017.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 8th February, 2017.

Vinodan/sps

Copy to:

- 1 Shri Isola Srinivas, Prop: White Star Industries Plot No.106 Phase-1 IDA
Jeedimetla, Hyderabad
- 2 Addl. Commissioner of Income Tax, Range-11, Hyderabad
- 3 CIT (A)-5 Hyderabad
- 4 Pr. CIT – 5 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order