

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH, JODHPUR  
BEFORE: SHRI BHAGCHAND, AM & SHRI PARTHA SARTHI CHAUDHARY, JM

ITA No. 208/Jodh/2017  
Assessment Year: 2013-14

Gayatri Maheshwari, 122, Patrakar Colony, New Power House Road, Jodhpur.	Vs.	I.T.O., Ward-1(2), Jodhpur.
PAN /TAN No.: AFIPM 1955 P		
Appellant		Respondent

Assessee by: Shri Rajendra Jain (Adv)  
Revenue by: Shri S.K. Meena (JCIT D.R.)

Date of Hearing: 04/05/2017  
Date of Pronouncement: 05/05/2017

ORDER

PER: PARTHA SARTHI CHAUDHARY, J.M.

This is an appeal filed by the assessee emanates from the order dated 29/03/2017 passed by the Id. CIT(A)-1, Jodhpur for the assessment year 2013-14, wherein the assessee has taken following grounds of appeal:

- "1. *That on the facts and in the circumstances of the case, the Id CIT(A) erred in upholding the validity of order passed by the AO.*
2. *That on the facts and in the circumstances of the case, the Id CIT(A) erred in sustaining disallowance of Rs. 5,42,877/- on account of the cost of improvement while computing the capital gain.*
3. *That on the facts and in the circumstances of the case, the Id CIT(A) erred in sustaining capital gains of Rs. 5,47,465/- as computed by the Id AO. Further holding that the interest paid to*

*bank for acquired capital assets would not have eligible for part of cost of acquisition.*

4. *That on the facts and in the circumstances of the case, the Id CIT (A) erred in disregarding the judicial decisions relied by the assessee and relying on the decisions which has no application on the facts of the case of the assessee.*
5. *That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.*
6. *The petitioner prays for justice & relief."*

2. Though, the assessee has taken multiple grounds of appeal. The main grievance is with regard to sustaining the disallowance of Rs. 5,52,877/- on account of cost of improvement while computing the capital gain.

3. The brief facts arising herein are that the assessee is an individual, derived income from interest and capital gains. She filed the return of income for A.Y. 2013-14 on 31-03-2014 admitting the total income at Rs. 3,92,310/-. The return was selected for scrutiny under CASS and notice u/s 143(2) of the Income Tax Act, 1961 (in short the Act) was issued on 03-09-2014. After hearing the assessee, the assessment was completed u/s 143(3) of the Act on 23-11-2015 determining the total income at Rs. 9,39,780/- by making additions / disallowances.

4. Before the Id. CIT(A), the issue to be decided as regards the computation of capital gain in respect of property sold by the assessee during the year. In this connection, the AO discussed as under:-

"The assessee's source of income is interest -income and income from capital gain. The assessee is partner in firm M/s Yashoma Exports. During the year under consideration the assessee sold two properties one property which is a plot No. 118, Massuria, a part portion of this plot was sold by assessee alongwith one co-sharer to the tune of Rs. 44,00,000/-. Another property sold by the assessee alongwith two other partners on behalf of firm M/s Yashoma Exports, plot No. G- 564, 565 at Borlanada, Jodhpur. The details of capital gain exemptions and copy sale and purchase of property were submitted during the course of assessment proceedings. On going through the computation of income it reveals that the assessee claimed the exemptions on property i.e. cost of acquisition and cost of improvement and indexed the same. The plot No. 118 Massuria is a residential plot which was purchased in the year 2008 and part portion of this plot was sold during the relevant asstt. Year. The assessee's half share in this plot.

The assessee taken over loan from bank on the above property and claimed cost of index and cost of improvement on the payment of interest. So far as cost of acquisition is concerned, it is stated that the assessee invested a sum of Rs. 11,80,684/- in the year 2008 and after indexing this amount a sum of Rs. 17,28,424/- comes as cost of acquisition after indexing. This seems correct and liable to be deducted from the cost of sale of property. As regards interest paid in the year 2008-09 to 2011-12 and indexing the same (i.e. interest), the same is not admissible. As there is no improvement on the plot and no constructions is made on plot hence, the cost of improvement and indexing the same is not allowable. Furthermore, the assessee has taken over loan from the ICICI Bank for the purchase of house property which is admissible under the head income from house property, whereas the

assessee is claiming the same under the head Income from Capital Gain, hence, the same is not admissible.

The case laws cited by the AR of the assessee was examined and it is stated that the fact of the case narrated in the case laws is different from the present case. As regards case laws cited by the assessee of Hon'ble Delhi High Court it is stated that the issue involved in this case is "Whether on the facts and in the circumstances of the case the interest amount of Rs. 16,878/- and the ground rent of Rs. 3793/- constituted part of the actual cost of the plot to the assessed for the purpose of determining the capital gain?"

Whereas in the present case the assessee is indexing the amount of interest paid as a cost of improvement which is not relevant from the cited case laws.

As regards case laws cited by the assessee of Hon'ble Andhra High Court it is stated that the issue involved in this case is "Whether on the facts and in the circumstances of the case the interest amount of Rs. 11,344/- constituted part of the actual cost of the plots to the assessee for purposes of determining the capital gains for the assessment year 1967-68.?"

Whereas in the present case the assessee is indexing the amount of interest paid as a cost of improvement which is not relevant from the cited case laws.

As regards case laws cited by the assessee of Hon'ble Karnataka High Court it is stated that the issue involved in this case is "Whether the Tribunal was correct in holding that interest payment of a sum of Rs.

37,45,042/- to the Director by the assessee company towards loan availed for purchase of the property (asset) should be added to the cost of acquisition of the asset when computing long term capital gains by quantification of the interest after sale of the property ?"

Whereas in the present case the assessee is indexing the amount of interest paid as a cost of improvement which is not relevant from the cited case laws.

Hence, the case laws submitted by the AR of the assessee are not relevant in the present case."

Accordingly, the AO adopted the sale consideration of plot as Rs. 22,75,889/- and computed the capital gains as below:-

Sale consideration of plot at Massuria	Rs. 22,75,889/-
Less; cost of acquisition as claimed by Assessee in computation 1180684/582*812	<u>Rs.(-) 17,28,424/-</u>
	Capital Gain Rs. 5,47,465/-

5. The assessee filed written submissions before the Id. CIT(A) at the time of hearing. The relevant portions of the written submissions are reproduced as under:-

1. *That disallowances of Rs. 5,42,877/- in respect of disallowing the cost of improvement in respect of interest paid on borrowed fund for purchase of capital assets while computing the capital gain is totally erroneous as the assessee has capitalized the interest paid on the borrowing fund for purchase of such property and the benefit of indexation u/s 48 was claimed accordance with provision of the law.*
2. *It is undisputed fact that the expenditure in respect of interest paid to bank on account of purchase of property being related to such property and as such*

while computing the amount of capital gain such expenditure must be deducted as held by Hon'ble Delhi Court in the case of CIT Vs Rohtak Textile Reported in 138 1TR 195, and same was followed in following cases:

- a. 150 1TR 80 (MADRAS)
- b. 152 ITR 247 (KARN.)
- c. 152 1TR 482 (MADRAS)
- d. 107 1TR 557 (KARN.)
- e. 107 ITR 840 (MADRAS)
- f. CIT v. K. Raja Gopala Rao (2001) 252 ITR 459 (Mad)

*"4. Here, there can be no doubt that the cost of acquisition to the assessee was not merely the amount that he had paid to the vendors but also the cost of the borrowing made by him for the purpose of paying the vendor and obtaining the sale deed... Without the money borrowed, the assessee would not have been in a position to buy the property... Payment of consideration for the sale indisputably having been made with the borrowed funds, the borrowing directly related to the acquisition and, interest paid thereon would form part of the cost of acquisition." (emphasis supplied)*

- g. CIT and ITO v Hariram Hotels (P) Ltd. (2010) 229 CTR 455 (Kar)

*"The Tribunal is justified in granting the relief to the assessee since the property has been purchased out of the loan borrowed from the Directors and any interest paid thereon is to be included while calculating the cost of acquisition of the asset."*

- h. The Karnataka High Court in the case of CIT v Maithreyi Pai (1985) 152 ITR 247 (Kar) observed as under:

*"Mr. Bhat, however, submitted that section 48 should be examined independently without reference to section 57. Section 48 provides for deducting from the full value of consideration received the cost of acquisition of the capital asset and the cost of improvements, if any. The interest paid on borrowings for the acquisition of a capital asset must fall for deduction under section 48.*

3. It is submitted that interest on such loan is a part of acquisition of cost and the computation of capital gain is provided in section 48 of the Act. According to the section, the only deductions which are allowable are - (1) the cost of acquisition of the asset, (2) the cost of any improvement thereto and (3) expenditure incurred wholly and exclusively in connection with the transfer of the asset. The assessee added that interest to the cost of investment which is

*accordance with law. The observation of the Id AO that claim of the assessee was not allowable under head of capital gain which is totally erroneous as the assessee has sold the land and interest paid to bank for acquiring of such land. In this regards I rely on the decision Chennai Tribunal (AC IT v C.Ramabrahmam) in 2012,*

*"After perusing the above said provisions, we are of the opinion that deduction under section 24(b) and computation of capital gains under section 48 of the "Act " are altogether covered by different heads of income i.e., income from 'house property' and 'capital gains '. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, a deduction under section 24(b) is claimed when concerned assessee declares income from 'house property', whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed under section 48. We do not have even a slightest doubt that the interest in question is indeed an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee in the instant case is certainly entitled to include the interest amount at the time of computing capital gains under section 48 of the "Act".*

*In view of above, the disallowance made by AO may kindly be deleted. "*

6. The Id. CIT(A) on consideration of the assessment order, assessee's submissions and the case laws relied upon by the assessee, has held as under:-

*"The only dispute in the instant case is whether the interest paid by the assessee to the bank on loan availed for purchase of property could be allowed as deduction in computing the capital gains income. The charge of income-tax is created by virtue of the provisions contained in section 4 according to which the income-tax is charged for the relevant assessment year in accordance with and subject to the provisions of Act in respect of the total income of the relevant previous year of every person. As per the scheme of the Act, income is broadly classified under five different heads and the income chargeable to tax under these heads has to be computed as per the relevant provisions applicable to respective heads of income. Section 45 to section 55A falling under Chapter IV- E deal with assessment of income under the head 'capital gains' and section 48 in particular prescribes the mode of computation of*

*capital gains. As provided in section 48, expenditure incurred wholly and exclusively in connection with transfer and the cost of acquisition of the asset and cost of any improvement thereto are deductible from the full value of the consideration received or accruing to the assessee as a result of transfer of the capital assets. In the instant case, the deduction on account of interest paid to bank has been claimed by the appellant as deduction in computing capital gains. The appellant, however, has failed to explain as to how the said interest could be considered as cost of acquisition of the land or the cost of any improvement thereto. She has also failed to explain as to how the interest paid could be treated as expenditure incurred wholly and exclusively in connection with sale of land. On the other hand, the basis on which the interest was paid by the appellant showed that it had no direct nexus with the purchase and sale of land and as rightly contended by the AO, the interest paid was allowable as deduction against income under the head "income from house property". Having regard to all these facts of the case, I am of the opinion that the interest paid by the appellant could not be treated as expenditure incurred wholly and exclusively in connection with sale or the cost of acquisition/improvement of the land being sold so as to be eligible for deduction in computing capital gains under section 48."*

The Id. CIT(A) opined that the interest amounts paid by the assessee to the bank with the F.Y. 2007-08 to 2012-13 were not deductible in computing he capital gains as rightly held by the Assessing Officer and the order of the Assessing Officer was upheld.

7. Being further aggrieved, the assessee is in appeal before us. The Id AR of the assessee has reiterated the submissions as made before the Id. CIT(A) and also relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Mithlesh Kumari (1973) 92 ITR 9 (Delhi).



8. On the other hand, the Id. D.R. has relied on the orders of the authorities below.

9. We have perused the case records, analysed the facts and circumstances of the case and considered the judicial pronouncements, which was placed before us. In the case of CIT Vs. Mithilesh Kumari (supra), the Hon'ble High Court has held as under:-

*“(13) We are in respectful agreement with the observations of the Calcutta and the Bombay High Court in the decisions referred to above. In the present case, we find that the assessed in order to purchase the land had not only to borrow the amount of Rs. 95,000.00 which was the consideration for the purchase of the land but also had to pay interest of Rs. 16, 878.00 on the amount borrowed by her. The amount of Rs. 95,000.00 plus the interest paid by the assessed constitutes the actual cost to the assessed of the land. The fact that the amount of Rs. 95,000.00 was paid by the assessed to the vendor and the amount of interest of Rs. 16,878.00 was paid to a different person, namely, her mother-in-law, does not make any difference so far as the assessed is concerned in respect of the actual cost of the land to her. It will not also make any difference whether the interest was paid on the date of the purchase or whether it is paid subsequently. To exclude the interest amount from the actual cost of the assets would lead to anomalous results. Supposing she had purchased the land for Rs. 1,00,000.00 by raising a loan of that amount and had paid interest of Rs. 20,000.00 on the said loan and had sold the land for Rs. 1,20,000.00. It would be unreasonable to hold under such circumstances by excluding the interest amount from the actual cost of the land that she had made a capital gain of Rs. 20,000.00 when, as a matter of fact, she had not made any profit at all by the transaction. Applying the said observations of the Calcutta and the Bombay High Courts to the present case, we hold that the Tribunal was right in adding the interest amount of Rs. 16,878.00 towards the actual cost of the land.”*

In the case of CIT Vs. Sri Hariram Hotels (Purchase) Ltd. (2010) 188 Taxman 170 (Kar), the Hon'ble Karnataka High Court has held as under:-

"7. *We are unable to agree with the arguments advanced by the learned counsel for the revenue for the simple reason on facts that even the Commissioner of Income-tax (Appeals) has held that interest had accrued as on 31/3/2003 and therefore, the Tribunal is justified in granting the relief to the assessee since the property has been purchased out of the loan borrowed from the Directors and any interest paid thereon is to be included while calculating the cost of acquisition of the asset. Therefore, question No. 1 has to be answered against the revenue.*"

In the case of ACIT Vs C.Ramabrahmam, the ITAT Chennai Bench 'C' in ITA No. 943/Mds/2012 has held that the assessee had purchased house property, availing loan. The house property was subsequently sold and assessee included interest paid on housing loan while computing capital gains u/s 48. The Assessing Officer was of opinion that since interest in question on housing loan, had already been claimed as deduction u/s 24(b), the same could not be taken into consideration for computation u/s 48 and interest amount was added to income of assessee. The CIT(A) reversed the findings of A and held deduction u/s. 24(b) and computation of capital gains u/s 48 were altogether covered by different heads of income i.e., income from 'house property' and 'capital gains'. None of them excludes operative of the other. The interest in question was indeed expenditure in acquiring asset. Since both provisions were altogether different, assessee was entitled to include interest paid on housing loan for computation of capital gains u/s 48 despite the fact that same had been claimed u/s 24(b) while computing income from house property. The revenue's appeal was dismissed by the ITAT, Chennai Bench and the order of the Id. CIT(A) was upheld. From these judicial pronouncements, it is very

much clear that if the property is purchased from borrowed funds then consideration for the purchased amount, the interest on borrowed fund also has to be paid. The amount of interest paid by the assessee constitutes the actual cost to the assessee for that property. To exclude the interest amount from the actual cost of the assets/property would lead anomalous result. The interest amount should be definitely added to the actual cost of the property. Respectfully following these legal propositions and on basis of our observations as held herein, we reverse the findings of the Id. CIT(A) and hold that the interest paid to bank for acquiring capital asset would be eligible as part of cost of acquisition. We hold accordingly. The grounds No. 1 to 4 of the assessee's appeal are allowed.

10. Grounds No. 5 and 6 are general in nature, requires no adjudication.

11. In the result, the appeal filed by the assessee is allowed.

Order Pronounced in the Open Court on 05/05/2017.

Sd/-  
(BHAGCHAND)  
Accountant Member

Sd/-  
(Partha Sarthi Chaudhary)  
Judicial Member

Jodhpur

Dated:- 05<sup>th</sup> May, 2017.

\*Ranjan

Copy of the order forwarded to:

1. The Appellant- Smt. Gayatri Maheshwari, Jodhpur
2. The Respondent- The ITO, Ward-1(2), Jodhpur.
3. CIT

4. The CIT(A)
5. DR, ITAT, Jodhpur
6. Guard File (ITA No. 208/Jodh/2017)

By order,

Asst. Registrar