

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.2597/Bang/2019
Assessment Year :2011-12

M/s. Indraprastha Shelters Pvt. Ltd., 4 th Floor, Prestige Corniche, No.62/1, Richmond Road, Bangalore – 560 025. PAN : AABCI 2643 B	Vs.	The Deputy Commissioner of Income Tax, Circle –11(4), Bangalore.
--	-----	--

Assessee by	:	Shri. G. S. Prashanth, CA
Revenue by	:	Shri. Priyadarshi Mishra, JCIT(DR)(ITAT), Bangalore

Date of hearing	:	14.12.2020
Date of Pronouncement	:	16.12.2020

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 23.10.2019 of CIT(A)-3, Bangalore, relating to Assessment Year 2011-12.

2. The assessee is a company engaged in the business of construction, development of real estate projects and renting of commercial building. For Assessment Year 2011-12, the assessee has filed return of income declaring total income of Rs.1,10,88,029/-. In the return so filed, the assessee has declared income under the head “Income from House Property” at Rs.1,10,64,559/-. In computing the income under the head “Income from House Property”, the assessee has claimed deduction of a sum of Rs.69,84,167/- under section 24(b) of the Income Tax Act, 1961 (hereinafter called ‘the Act’), as interest paid on capital borrowed for the purpose of

construction of the property. The breakup of the interest so claimed as deduction is as follows:

<i>“Pre Construction period interest</i>	:	<i>Rs.19,52,752/-</i>
<i>Interest on Term Loan during F.Y. 10-11</i>	:	<i>Rs.20,19,618/-</i>
<i>Interest on unsecured loan F.Y. 10-11</i>	:	<i>Rs.30,22,041/-”</i>

3. It was the plea of the assessee that it had borrowed money from Corporation Bank for the purpose of construction and letting out of commercial building project by name “Indraprastha Equinox”. Later on, the assessee borrowed monies from one Mrs. Kaveri Bai and repaid the loan that was availed by the Assessee from Corporation Bank for the purpose of construction of a commercial building project “Indraprastha Equinox”. The interest paid on the loans borrowed from Kaveri Bai was a sum of Rs.30,22,041/-. The AO disallowed the entire claim of deduction on account of interest under section 24(b) of the Act for the following reasons:

3.3 It is pertinent to mention here that the Finance Act, 2002 has inserted a new third proviso in section 24 of the Act effective from the assessment year 2003-04. The newly inserted proviso provides 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.”

4. On appeal by the assessee, the CIT(A) allowed the claim of the assessee for deduction of interest paid to Corporation Bank but did not allow the claim of the assessee for deduction on account of interest paid to Kaveri Bai. The assessee is in appeal against the order of the CIT(A).

5. In sustaining the disallowance of interest paid to Mrs. Kaveri Bai, the CIT(A) accepted the fact that originally funds were borrowed by the assessee from Corporation Bank for the purpose of construction of the property and the loan obtained from Mrs. Kaveri Bai was used for the purpose of repayment of the loan taken from Corporation Bank. Despite accepting the above factual position, the

CIT(A) did not allow the claim of the assessee for deduction for the following reasons:

“4.18 As regards allowability of interest of Rs 30,22,041/- relating to interest paid to Ms Kaveri Bai for the unsecured loan taken for repayment of the Bank loan taken for the construction of building, there is merit in the observation of the AO that the 3rd proviso read with Second Explanation to Section 24(b) of the Act is relevant only in relation to self occupied property as referred to in Section 23(2) of the Act. In the case of the appellant it is not the case of self occupied property and as such the benefit of this proviso is not available to it. The reliance of the appellant on the Circular No 28 dt 20.08.1969 is misplaced as the provisions of Section 24 have undergone change w.e.f. 01.04.2002. Earlier the provisions of Section 24(1)(vi) were applicable to all kinds of property. However w.e.f. 01.04.2002 there is a specific proviso in the Section which restricts such benefit of interest paid on new loan only to the property covered by Section 23(2) of the Act. So the disallowance of Rs 30,22,041/- as done by the AO is upheld, although for the reasons as discussed above.”

6. The assessee is in appeal against the aforesaid action of the CIT(A).
7. We have heard the rival submissions. The learned counsel for the Assessee submitted that the CBDT Circular No. .28 dated 20-8-1969 issued in the context of Sec.24(1)(vi) as it existed prior to 1.4.2002 still holds good even under the present Sec.24(b) as the nature of deduction while computing income from house property remains the same under both the provisions viz., deduction on account of interest paid for constructing or acquiring the property. His submission was that sec.24(b) applies to all properties whether commercial or residential or any other property. His further submission was that the provisos to Sec.24(b) applies to a particular category of case falling within Sec.23(2) viz., property being house used for residence. It does not in any way affect deduction of interest for construction of commercial or any other property. The learned DR relied on the order of the CIT(A).
8. The relevant statutory provisions and CBDT Circular No.28 dated 20.08.1969 referred to in the order of the CIT(A) are required to be set out. Under Sec.22 of the Act, the 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". Sec.23(1) of the Act lays down the manner of determination of Annual Value. Sec.23(2) of the Act which has been referred to by the AO and the CIT(A) lays down that the annual value of property which occupied by the Assessee and the property which the Assessee could not occupy due his occupation in some other place will be taken at Nil. The said provisions reads thus:

*“Sec.23 (2) Where the property consists of a house or part of a house which—
(a) is in the occupation of the owner for the purposes of his own residence; or
(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,
the annual value of such house or part of the house shall be taken to be nil.”*

9. Sec.24 of the Act lays down that Income chargeable under the head "Income from house property" shall be computed after making some deductions. One of the deduction allowed u/s.24(b) is as follows:

“Sec.24(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 ⁵⁰ [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 one lakh fifty thousand 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."

10. Prior to substitution of Sec.24 by the Finance Act, 2001 w.e.f. 1.4.2002 extracted in the previous paragraph of this order, the provisions of Sec.24(1) (vi) of the Act, provided for similar deduction as laid down in Sec.24(b) of the Act and the said provisions read thus:

"Deductions from income from house property.

24. (1) Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:—

(i) to (v).....

(vi) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital 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 a 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;"

11. The CBDT in Circular No.28 dated 20-8-1969 has explained that when a loan is taken to repay loan taken for construction of a property interest paid on such loan is

also deductible in computing under the head income from house property. The said Circular is reproduced below:

“Fresh loan raised to repay original loan taken for constructing/ buying property - Whether interest payable on second loan would also be admissible as a deduction under clause (vi) of sub-section (1)

1. Section 24(1)(vi) provides that where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital shall be allowed as an admissible deduction in the computation of income from the said property.

2. A question has been raised whether in a case where a fresh loan has been raised to repay the original loan taken for the above purpose, the interest payable in respect of the second loan would also be admissible as a deduction under section 24(1)(vi).

3. The matter has been considered by the Board and it has been decided that if the second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the Income-tax Officer, the interest paid on the second loan would also be allowed as a deduction under section 24(1)(vi).

Circular : No. 28 [F. No. 8/8/69-IT(A-1)], dated 20-8-1969”.

12. The CIT(A) held that this circular is not applicable because the same was issued when erstwhile Sec.24(1)(vi) of the Act was in force and that by the Finance Act, 2001 w.e.f.1.4.2002 Sec.24 of the Act was reframed. It is not correct on the part of the CIT(A) to conclude that the aforesaid circular is not applicable as it was issued under the erstwhile provisions of Sec.24 as it stood prior to 1.4.2002. The new provisions of Sec.24 are also on the same lines with regard to the scheme of determination of income under the head income from house property and in particular with regard to allowability as deduction of interest paid on loans borrowed for the purpose of constructing the property. Therefore one of the reason given by the CIT(A) for not allowing the claim of the Assessee is therefore unsustainable.

13. With regard to the other reason given by the revenue authorities for denying deduction of interest paid to Mrs.Kaveri bai is by applying the 3rd proviso to

Sec.24(b) of the Act. On perusal of the provisions of section 24(b), it is clear that the deduction is allowed on account of interest paid on any borrowed capital which is used for the purpose of acquiring, constructing, repairing, renewing or reconstructing of property. The expression used in Sec.24(b) is 'property' and not residential or commercial property. Therefore, irrespective of the nature of the property whether it is residential or commercial, deduction has to be allowed under section 24(b) of the Act. As far as the 3rd proviso to section 24(b) of the Act is concerned, all the provisos to Sec.24(b) of the Act deal with property referred to in section 23(2) of the Act which refers to a residential property. The proviso only carves out an exception to section 24(b) of the Act, in so far as it relates to property used for residential purposes and does not deal with or curtail the right of an assessee to get deduction on interest paid on loans borrowed for the purpose of constructing commercial property. Both the AO and CIT(A), in our view, fail into an error in applying the 3rd proviso to section 24(b) of the Act to the case of the assessee.

14. None of the reasons assigned by the revenue authorities for denying the claim of the Assessee for deduction of interest paid to Mrs.Kaveri Bai, while computing income under the head income from house property can be sustained. We, therefore, direct that the deduction claimed by the assessee should be allowed.

15. In the result, the appeal by the assessee is allowed.

Order pronounced in the open court on this 16th day of December, 2020.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 16.12.2020.

/NS/*

Copy to:

- | | |
|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.