

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.148/Mum./2023
(Assessment Year : 2008-09)

Shyamnarayan Trades Pvt. Ltd.
New Umesh Garments, Shop no.162
Dudh Naka Chowk, Ulhasnagar 421 005 Appellant
District Thane PAN – AAKCS2903B

v/s

Income Tax Officer
Ward-4(3)(1), Mumbai Respondent

Assessee by : Shri B.V. Jhaveri a/w
Ms. Bhargavi Raval
Revenue by : Shri Satyaprakash Singh

Date of Hearing – 12/04/2023

Date of Order – 07/07/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/12/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2008-09.

2. In its appeal, the assessee has raised the following grounds:-

"1.01 The learned CIT(A) has failed to appreciate the fact that the learned Assessing Officer has erred in not providing the reasons recorded in writing, in

spite of being asked by the Appellant, thus rendering the entire Assessment Proceedings and the consequential assessment order as null and void ab initio and illegal and bad in law. The Hon'ble CIT(A) also failed to appreciate the fact that the Hon'ble Delhi High Court in the case of Jagat Talkies Distributors [85 Taxmann.com 189] held that "merely because the Assessee did not repeat the request cannot mean that the Assessee waived its right to be provided the reasons.

2.01 The learned CIT(A) failed to appreciate the fact that the majority of the loan taken during the year have been utilized for the payment of earlier loans taken for acquiring the house property. Hence, the Interest to the tune of Rs. 3,01,980/- is allowable u/s. 24(b) of the Income Tax Act.

3.01 The learned CIT(A) has erred in disallowing the interest expense of Rs. 23,71,946/- by not considering the fact that the property can be owned and enjoyed only by virtue of owning the shares and debentures as envisaged in the agreement as well as memorandum of association / article of association. The learned CIT(A) erred in not considering the fact that cost of shares and debentures was part and parcel of the entire cost of property.

4.01 The Appellant craves to consider each of the above Grounds of Appeal without prejudice to each other and craves leave to add, alter, delete, amend and / or modify all or any of the above grounds of Appeal at the time or before the date of hearing."

3. The brief facts of the case as emanating from the record are: The assessee filed its return of income on 28/09/2008 declaring a total loss of Rs.15,55,849. The return filed by the assessee was processed under section 143(1) of the Act and a refund of Rs.4,61,390 was determined and issued to the assessee. Subsequently, the assessee filed a rectification application on the basis that the assessee has been allowed a lesser tax credit. Upon verification of the claim of the assessee, it was noticed as per computation of income, the gross annual value of the property let out was Rs.43,48,917, whereas as per the TDS certificate issued by AXIS Bank Ltd, the rent received by the assessee was Rs.47,78,312. Since income to the tune of Rs.4,29,395 has escaped assessment, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 26/07/2010. In response to the aforesaid notice, the assessee filed a revised return of income

declaring a loss from house property to the tune of Rs.11,17,529. On verification of the return filed by the assessee, in response to the notice issued under section 148 of the Act, it was observed that the property concerned which was let out was purchased by the assessee by obtaining unsecured loans from directors and shareholders. As per the registered purchase deed dated 18/12/2006, the assessee had purchased the property for Rs.3,63,72,600. Thus the concerned assessment year was the assessment year 2007-08. On verification of the copy of the balance sheet, it was observed that the unsecured loans were Rs.3,67,88,200 for the assessment year 2007-08. It was further observed that the unsecured loans had increased in the assessment year 2008-09. Since the assessee has borrowed in excess, which is not for the purpose of purchase of the property, the Assessing Officer ("AO") vide order dated 30/09/2011 passed under section 143(3) read with section 147 of the Act, inter-alia, disallowed the deduction of Rs.3,55,893 in respect of interest expenses on such loan under section 24(b) of the Act. The AO, inter-alia, also noticed that the assessee purchased the property along with shares and debentures. It was further observed that the market value of the property as per the registrar was Rs. 1,69,38,500 and as per the stamp duty ready reckoner value of the same works out to Rs. 1,77,48,814. Thus, the AO held that the extended value envisaged by the assessee is the value of the movable instruments which are not immovable property and thus cannot fall under the provisions as mentioned in Chapter- IV-C of the Act. Accordingly, the AO disallowed interest component proportionate to movable instruments of Rs.23,71,496 under section 24(b) of the Act, while allowing the interest component on unsecured loan for the purpose of immovable property.

4. The learned CIT(A), vide impugned order, dismissed the grounds raised by the assessee on both the above disallowances. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*") wishes not to press ground no.1 raised in assessee's appeal. In respect of ground no.2, the learned AR submitted that the assessee purchased the property by utilising the unsecured loans from directors and shareholders. During the year, the assessee had taken unsecured loans to the extent of Rs.92,50,000 and the major portion of the same was utilised in repayment of the earlier loans. Thus, the assessee is entitled to claim a deduction of interest in respect of the second loan under section 24(b) of the Act. In respect of ground no.3, the learned AR submitted that the enjoyment, use, and occupation of the property are inextricably linked to the ownership of the shares and fully convertible debentures, therefore the bifurcation of the purchase consideration into the purchase of shops along with car parking and purchase of shares and debentures is incorrect and contrary to the facts on record.

6. On the contrary, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

7. We have considered the submissions of both sides and perused the material available on record. Since, at the outset, ground no.1 raised in assessee's appeal was not pressed. Therefore the same is dismissed as not pressed.

8. In the present case, the assessee purchased 2 shops admeasuring 1922 square feet each alongwith 4 open car parking spaces on the ground level of the building known as "Ahura Centre" Mahakali Caves Road, Andheri (East), Mumbai together with 4805 B-Class fully paid-up equity shares of Rs. 10 each and 1,50,072 unsecured fully convertible debentures of Rs. 100 each for a total consideration of Rs. 3,63,72,600 vide a Registered Deed of Sale and Transfer dated 18/12/2006 entered into between the assessee and M/s Nishkalp Energy Ltd (earlier known as M/s Nishkalp Investment and Trading Co Ltd). The assessee let out the said shops alongwith 4 car parking space to Axis Bank for a monthly rent/license fee of Rs.3,85,000. For the purchase of the aforesaid property, the said amount of Rs.3,63,72,600 was paid by utilising unsecured loans from directors and shareholders aggregating to Rs. 3,67,82,200. During the year under consideration, the assessee availed unsecured loans to the extent of Rs.92,50,000, a major portion of which is claimed to have been utilised for repayment of the earlier loans. The AO disallowed an amount of Rs.3,55,893 under section 24(b) of the Act as the same is not pertaining to capital borrowed for the purpose of the said provision. However, as per the assessee interest paid on the loan taken for repayment of the earlier loan is allowable as deduction under section 24(b) of the Act. In this regard, the learned AR placed reliance upon the decision of the coordinate bench of the Tribunal in *Indraprastha Shelters (P) Ltd. v/s DCIT, [2021] 187 ITD 306 (Bang-Trib.)*. We find that in the aforesaid decision, the coordinate bench of the Tribunal by referring to the CBDT Circular No.28 dated 20/08/1969 held that even under the provision of section 24, after its amendment by Finance Act 2001, w.e.f. 01/04/2002, interest paid on the loan

taken to repay the earlier loan for construction of the property is allowable as a deduction while computing the income under the head "*Income from House Property*". From the perusal of the aforesaid decision, we find that the money was borrowed for the purpose of construction and letting out of commercial building projects. However, in the present case, the unsecured loan taken from directors and shareholders was utilised for payment of consideration for the purchase of 2 shops along with 4 open car parking spaces together with equity shares and fully convertible debentures. We find that the lower authorities have not examined whether the term '*property*' under section 24 also includes equity shares and fully convertible debentures, which were purchased by the assessee along with shops and open car parking spaces. We are of the considered view that examination of the aforesaid aspect is necessary before determining whether the assessee is entitled to claim a deduction of interest paid on a loan taken for repayment of the earlier loan. Therefore, we deem it appropriate to remand the issue arising in ground No. 2, raised in assessee's appeal, to the file of AO for *de novo* adjudication after examining the aforesaid aspect and thereafter in light of CBDT Circular No. 28 dated 20/08/1969. Accordingly, ground No. 2 raised in assessee's appeal is allowed for statistical purposes.

9. Insofar as ground No. 3, raised in assessee's appeal, is concerned, we find that M/s Nishkalp Investment & Trading Company Ltd. entered into an agreement dated 30/12/1998 with Ahura Chemicals Products Pvt. Ltd. for the purchase of 4816 B-class equity shares. From the perusal of the separate agreement dated 30/12/1998 amongst the aforesaid entities, forming part of

the paper book from pages 94-125, we find that it was also agreed that the purchaser shall have the right to exclusively use and occupy the shops no.1 and 2 admeasuring 3844 sq.ft. on the ground floor together with 11 garages on the above basement level and 4 open car parking on the ground level of the building provided the purchaser subscribes to 177518 unsecured fully convertible debentures of the face value of Rs. 100 each bearing interest at the rate of 4% per annum. Vide the Deed of Transfer and Allotment dated 19/07/1999, forming part of the paper book from pages 80-93, M/s Nishkalp Investment & Trading Company Ltd. was allotted the aforesaid property along with equity shares and fully convertible debentures on payment of the sale consideration. Subsequently, the shares and debentures were split, and the assessee purchased shops no.1 and 2 admeasuring 1922 sq.ft. each and 4 open car parking spaces together with 4805 B-class fully paid-up equity shares of Rs. 10 each and 150072 unsecured fully convertible debentures of Rs. 100 each for a total consideration of Rs.3,63,72,600 vide Deed of Sale and Transfer dated 18/12/2006, forming part of the paper book from pages 140-173. Thus, from the perusal of the aforesaid agreement, it is evident that shops no. 1 & 2 and 4 open car parking spaces alongwith B-class equity shares and fully convertible debentures of Ahura Chemical Products Pvt. Ltd. were sold to the assessee and consideration of Rs. 3,63,72,600 was paid by the assessee. However, before deciding on the validity of proportionate disallowance of the deduction of interest under section 24(b) of the Act, it is pertinent to analyse whether the term '*property*' under section 24 also includes equity shares and fully convertible debentures, which were purchased by the assessee along with shops and open car parking spaces in the facts of the present case. Therefore,

we deem it appropriate to remand the issue arising in ground no.3, raised in assessee's appeal, to the file of AO for *de novo* adjudication after examining the aforesaid aspect. Accordingly, ground no.3 raised in assessee's appeal is allowed for statistical purposes.

10. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 07/07/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 07/07/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai