

**IN THE INCOME-TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI.**

**Before Dr. O.K. Narayanan, Vice-President &
Shri S.S. Godara, Judicial Member**

**I.T.A. No.943/Mds/2012
Assessment Year : 2007-08**

The Assistant Commissioner of
Income Tax, Business Circle IV,
Room No. 507, Annexe Building, 5th
Floor, 121, Nungambakkam High
Road, Chennai 34.

(Appellant)

Vs. Shri C. Ramabrahmam,
16, 2nd Canal Cross Road, Gandhi
Nagar, Adyar, Chennai 600 020.

[PAN:AACPR0103K]

(Respondent)

Appellant by : Shri Guru Bashyam, IRS, JCIT
Respondent by : Shri Ananda Kumar, C.A.
Date of Hearing : 29.10.2012
Date of pronouncement : 31.10.2012

ORDER

PER S.S. Godara, Judicial Member

This Revenue's appeal is directed against the order of the Commissioner of Income Tax (Appeals) VIII Chennai dated 24.01.2012 in ITA No. 53/09-10(A)-VIII for the assessment year 2007-08 in proceedings under section 143(3) of the Income Tax Act 1961 [in short the "Act"].

2. Brief facts of the case are that the assessee (individual), filed his 'return' declaring income of ₹.6,40,440/-. In scrutiny proceedings, the Assessing Officer noticed that the assessee had purchased a house property at T. Nagar, Chennai on 20.01.2003 for ₹.32.64 lakhs. In addition to

the said consideration, he paid ₹.4.00 lakhs towards registration cost and also had added further amount of ₹. 39,926/- as cost of improvement. In this manner, the assessee paid net cost of ₹.37,03,926/-. In the enclosures with the return, the assessee had added an amount of ₹.4,82,042/- as interest on housing loan taken in 2003 for purchasing the property. Finally, the assessee sold the said property on 20.04.2006 for ₹.26.00 lakhs.

After taking cognizance of the above facts, the Assessing Officer was of the opinion that since interest in question on housing loan, had already been claimed as deduction under section 24(b) in assessment years 2004-05 to 2006-07, the same could not be taken into consideration for computation under section 48 of the "Act" as the legislative provision did not provide such method of including amount of deduction under section 24(b) of the "Act". Therefore, the Assessing Officer added back the above said interest amount to the income of the assessee from short term capital gains vide assessment order dated 24.11.2009.

4. Further, the assessee had declared income under "other sources" of ₹.26,127/- alleged to have been derived from tax free dividend of ₹.4,720/- with interest of ₹.26,127/-. With regard to the above income, he debited an amount of ₹.9,94,542/- as interest on loan and brokerage amount and the consequential loss was set off against income from other heads.

5. The Assessing Officer did not accept the assessee's contention by holding that since there was no consistency and regular activity of granting

loans by the assessee, the same could not be called as a business activity even if some interest had accrued to the assessee. The Assessing Officer also noticed that the assessee had not advanced loan to any other party except the above said. In this manner, on legal principle as well as on facts, the Assessing Officer, added an amount of ₹.9,94,542/- in assessee's total income. In this manner, the assessee's total income was assessed as ₹.21,17,020/-.

6. The assessee preferred appeal against the assessment order, wherein, both the additions made by the Assessing Officer (supra) have been deleted by the CIT(A). Regarding addition of interest amount of ₹.4,82,042/-, the CIT(A) has held that the assessee was entitled to include the interest amount for computation under section 48 despite the fact that the same had been claimed under section 24(b) while computing income from house property.

Regarding other addition of ₹.9,94,542/- (supra), the CIT(A) has held that the payments made by the concerned creditor to the assessee stood duly proved from the record, which had not been considered by the assessing authority.

It is, in this background, the Revenue has challenged the CIT(A)'s order.

7. The DR, representing the Revenue, reiterated the finding of the assessing authority as well as grounds of appeal and prayed for restoring

the additions made by the Assessing Officer. It is the submission of the Revenue that once the assessee had availed section 24(b) of the "Act", he cannot include the same very amount for the purpose of computing capital gains under section 48. In the same manner, regarding other addition under the head "income from other sources" (supra), the contention of the Revenue is that the Assessing Officer had rightly made the addition since the assessee's activity of granting loan to a single person could not be called as business. By referring to the findings of the CIT(A), the DR had submitted for verification of creditors facts only the record has been dealt with by the CIT(A) and not qua the legal aspect of the assessee's claim, which was negated by the Assessing Officer by holding that the assessee's activity could not be called as a 'business'.

On the other hand, the AR representing assessee has sought to place reliance on CIT(A)'s order as well as findings contained therein. In the light thereof, he prayed for upholding the same and dismissal of the Revenue's appeal.

8. We have considered submissions of both parties at length and also perused the relevant findings of the Assessing Officer as well as CIT(A). Regarding the issue of capital gains, it transpires that there is hardly any dispute that the assessee had availed the loan for purchasing the property in question. Since the assessee had shown the income under the head 'house property', he preferred to raise the claim of deduction under section 24(b) of

the "Act", which reads as under:

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

There is no quarrel that since the assessee's claim of deduction was under the statutory provisions; therefore, he succeeded in getting the same. However, after the property was sold, he also chose to include the interest amount while computing capital gains under section 48 of the "Act", which reads as under:

"48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration⁴³ received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) expenditure incurred wholly and exclusively in connection with such transfer;*
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto:"*

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". Therefore, the CIT(A) has rightly accepted the assessee's contention and deleted the addition made by the Assessing officer. Hence, qua this ground, we uphold the order of the CIT(A).

9. Coming to the other issue involved i.e. addition regarding income from the head "other sources". We find that the Assessing Officer had turned down assessee's plea by holding that the assessee's alleged loan transaction to the concerned debtor namely Shri S.A. Krishnakanth could not be called a 'business activity' even if it had culminated in some interest which accrued to the assessee. Not only this, the assessing authority also rejected assessee's explanation tendered on facts as well. However, the CIT(A) has found merits in assessee's argument and held that the material on record duly proved the transactions since the details of loan creditors, who had lent money to the assessee stood proved as well as there was evidence that the assessee had also paid interest to them in return. Further, it is also evident that the CIT(A) has nowhere dealt with the legal aspect of the issue i.e., whether the assessee who, called himself to be a salaried employee could raise a plea his loan transaction could be called as a 'business activity' or not even after the same had led to accrual of interest as

held by the assessing authority. This vital aspect, in our opinion has escaped the consideration of the CIT(A). Faced with this situation, we deem it appropriate that the CIT(A) shall redecide this legal aspect in accordance with law after affording adequate opportunity of hearing to the assessee. Accordingly, we uphold the CIT(A)'s order in deleting the addition of ₹.4,82,042/- (supra). Regarding other issue involved i.e. addition of ₹.9,94,542/-, we restore it back to the file of the CIT(A).

10. In the light of the above discussion, the Revenue's appeal is partly accepted for statistical purpose.

Order pronounced on Wednesday, the 31st of October, 2012 at Chennai.

Sd/-
(Dr. O.K. NARAYANAN)
VICE-PRESIDENT

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Chennai, Dated, the 31.10.2012

Vm/-

To: The assessee//A.O./CIT(A)/CIT/D.R.