

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 1043/Kol/2014

Assessment Year : 2010-11

D.C.I.T., Circle-8,
Kolkata-

. -vs.-

M/s. Patton Developers Pvt.Ltd.
Kolkata

[PAN : AABCT 0276 H]

(Appellant)

(Respondent)

For the Appellant : Shri A.K.Sinha, JCIT
For the Respondent : Shri Vinod Kr. Jain, FCA

Date of Hearing : 16.02.2017.

Date of Pronouncement : 01.03.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Revenue against the order dated 27.02.2014 of CIT(A)-VIII, Kolkata relating to A.Y.2010-11.

2. The only issue raised by the revenue in this appeal is as to whether the CIT(A) was justified in deleting the addition of Rs.1,00,12,365/- on account of interest claimed as deduction u/s 24(b) of the Income Tax Act, 1961 (Act).

3. It is not in dispute that the assessee declared income under the head “income from house property”. While computing income from house property the assessee claimed deduction of interest paid on loan borrowed for the purpose of construction of the house property u/s 24(b) of the Act of a sum of Rs.2,28,31,800/-. There is no dispute that the property in respect of which interest expenses was claimed as deduction was originally acquired by a company by name M/s. Centre Point Reality P.Ltd after taking an advance of Rs.29.22 crores from M/s. Patton International Ltd. Subsequently M/s. Centre Point Reality Pvt.Ltd got amalgamated with the assessee company w.e.f. 01.04.2006. The assessee thus became the owner of the house property. It is not in

dispute apart from loan of Rs.29.22 crores availed by the assessee from M/s. Patton International Ltd and another loan of Rs.17,50,00,000/- was availed form State Bank of Mysore. The loan from State Bank of Mysore was availed on 04.01.2006. This loan stood reduced as on 19.08.2008 to Rs.8.37 crores after repayment. During the previous year the assessee borrowed a sum of Rs.20 crores and utilized the same to repay the outstanding loan of Rs.8.37 crores to State Bank of Mysore and the remaining Rs.11.63 crores for repaying loan to M/s. Patton International Ltd. On the borrowing of Rs.20 crores the assessee paid interest amounting to Rs.1,72,18,169/- and this was claimed against income from house property as deduction u/s 24(b) of the Act.

4. The AO was of the view that it was only the sum of Rs.8.37 crores repaid to State Bank of Mysore that can said to be a loan borrowed for the purpose of acquiring the property and therefore interest paid on such amount was eligible for deduction u/s 24(b) of the Act. With regard to the remaining loan of Rs.11.63 crores the AO was of the view that this cannot be considered as loan that was utilized for acquiring the property and therefore interest paid on Rs.11.63 crores was not an eligible deduction u/s 24(b) of the Act. According to the AO the borrowing to the extent of Rs.11.63 crores was only to repay the amount borrowed for acquiring the property and not for acquiring the property and therefore the requirement of Sec.24(b) of the Act was not satisfied.

5. The AO accordingly disallowed the proportionate interest as follows :-

“Accordingly, interest of Rs.1,00,12,365/- [$Rs.1,72,18,169 \times (Rs.11.63 \text{ crore}) / (Rs.20 \text{ crore})$] is disallowed and added back to the total income of the assessee. [Addition : Rs.1,00,12,365/-] “

6. On appeal by the assessee the CIT(A) followed the decision of his predecessor in assessee's own case for A.Y.2009-10 wherein on an identical disallowance the CIT(A) held that the assessee was entitled to deduction u/s 24(b) of the Act on amounts borrowed and utilized to repay a loan that was borrowed for the purpose of acquisition

of the property. Following the aforesaid order the CIT(A) deleted the addition made by AO. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal.

7. At the time of hearing it was brought to our notice that order of CIT(A) for A.Y.2009-10 which was followed by CIT(A) in the impugned order was the subject matter of the appeal before the Hon'ble ITAT and in ITA No.90/Kol/2013 by order dated 24.11.2015 the Tribunal held that the disallowance of interest u/s 24(b) of the Act cannot be sustained. The following were the relevant observations of the Tribunal :-

"7. We have heard rival parties and perused the materials available on record. Before us Ld. DR supported the order of AO whereas Ld. AR supported the order of Ld. CIT(A). The Ld. AR submitted a paper book containing pages 1 to 106 and pleaded that interest paid on the money borrowed from the bank was very much eligible for deduction u/s. 24(b) of the Act and in support of his contention, Ld. AR cited following case laws:-

- a) Saltee Infotex (India) Pvt. Ltd. vs. DCIT in IT(SS) A No. 05/Kol/2012 dated 11.06.2013.*
- b) ITO v. M.s Faith Real Estates P. Ltd. and others in ITA No. 5070 & 5181/Del/2011 dated 11.06.2011*
- c) ACIT v. Sunil Kr. Agarwal in ITA No.641/Luck/2010 (2011) 139 TTJ (Luck)(UO) 49*
- d) Realty Finance & Leasing (P) Ltd. v. ITO (2006) 5 SO 348 (Mumbai)*

From the aforesaid discussion, we find that the dispute is as to whether the assessee-company is entitled deduction for interest expenditure of Rs.2,11,44,914/- from the income earned under the head house property u/s 24(b) of the Act. The AO found that assessee has taken loan from SBM during the month of August, 2008 and repaid the loan of the holding company. The AO claimed that there is no provision under the Act to allow deduction of interest on a subsequent loan taken to repay the original loan. Therefore, he held that assessee-company was not entitled to claim deduction in respect of interest payable for fresh money borrowed to repay the earlier loan and accordingly, he disallowed. Before Ld. CIT(A) Ld. AR of assessee submitted that the fresh loan taken to repay the original loan was within the ambit of law and accordingly Ld. CIT(A) has deleted the addition which made by AO. It is also observed that no material has been brought on record by Ld. DR to controvert the above finding of Ld. CIT(A). A plain understanding of section 24(b) of the Act reads as under:-

"[Deductions from income from house property]

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:-

- (a) a sum equal to thirty per cent of the annual value;*

(b) where the property has been acquired, constructed, repaid, 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 [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 [two lakh 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 installments 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.]"

From the aforesaid explanation, it is very much clear that the subsequent loan taken by assessee to repay his original loan is very much covered for claim the deduction u/s. 24(b) of the Act. It is also important to note that assessee has taken a loan from SBM and same loan from the same bank was enhanced as a result of restructuring of the existing loan. Therefore, in this case no third loan was obtained by assessee. Therefore, we do not find any good and justifiable reason to interfere in the order of Ld. CIT(A). Hence, this ground of Revenue's appeal is dismissed."

8. It is clear from the facts available on record that the sum of Rs.11.63 crores was utilized for repayment of the original borrowing from M/s. Patton International Ltd is erroneous, which was admitted a loan borrowed for the purpose of acquisition of the

property. In the light of the such admitted factual position, we are of the view that the deduction claimed by the Assessee has to be allowed as laid down in the proviso to Sec.24(b) of the Act. Respectfully following the decision of the Tribunal referred to above, We uphold the order of CIT(A) and dismiss the appeal by the revenue.

9. In the result the appeal by the revenue is dismissed.

Order pronounced in the Court on 01.03.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 01.03.2017.
[RG PS]

Copy of the order forwarded to:

- 1M/s. Patton Developers Pvt. Ltd., 3-C, camac Street, Kolkata-700016.
2. D.C.I.T., Circle-8, Kolkata.
3. CIT(A)-VIII, Kolkata.
4. CIT-III, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

