IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

I.T.A .No.-1990/Del/2016
(ASSESSMENT YEAR-2008-09)

Sanjay Verma, C-440, Sushant Lok-1, Gurgaon. PAN-ABQPV8396M (**APPELLANT)**	Vs	ACIT, Circle-II, Gurgaon. **(RESPONDENT)**

Assessee by	**None**
Revenue by	**None**
Date of Hearing	**28.09.2016**
Date of Pronouncement	**23.12.2016**

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 20.01.2016 of CIT(A)-2, Gurgaon pertaining to 2008-09 AY on the following grounds:-

1. "That the learned CIT (A) wrongly confirmed the addition made by the Assessing Officer of Rs.7,33,065/- being 50% of the interest on housing property at C-440, Sushant Lok-1, Gurgaon on the alleged grounds that the property jointly owned by assessee and his wife, assessee was entitled to claim to the extent of 50%of the interest on housing loan only.
2. That the learned CIT (A) completely disregarded the fact that initial down payment and EMIs were made by the assessee from his own sources. His wife Mrs. Jaya Verma neither contributed nor was in a financial position to contribute towards down payment or EMIs.
3. That the learned CIT (A) completely disregarded the fact that the assessee's wife Jaya Verma did not claim deduction for interest on loan for purchase of house property and it was the assessee who claimed the deduction in full in respect of Gurgaon property as mentioned above and also the assessee declared the income from house property in full in his return of income.
4. That it is a general social practice to have wife as co-owner to provide social security and deal with inheritance related issues on demise spouse and also, the bank prefer to have spouse as co-borrower for the purpose of additional security to the loans extended and that was the purpose behind making Mrs. Jaya Verma as co-owner and co-borrower in the property and loan respectively. The banks prefer have spouses as co-borrower also from the point of view that in case of demise of borrower, the liability continues to remain on surviving spouse.
5. That in terms of section 24(b) of the Income Tax Act, the person who makes payment of EMIs is entitled to deduction in respect of interest on housing loan.
6. That the learned CIT(A) confirmed additions of Rs. 103,310/- out of the total interest of Rs.3,78,927/- allowing the assessee interest to the extent of 73% only on the grounds that assessee declared rent income from Banglore property to the extent of 73% in his return of income , disregarding the fact

that assessee is the sole owner of Banglore property and he has declared 100% of income from Banglore property.
7. That the CIT(A) disregard the fact that Mrs. Jaya Verma received the rent towards furniture and appliances and she is not the owner of Banglore property. That the CIT(A) wrongly assumed that she is owner of 27% of Banglore property.
8. That the assessee is sole owner of Banglore property and he took the loan in his name only. The assessee is entitled for deduction on account of total interest paid for housing loan.
9. The assessee craves leave to add/alter any of the grounds of appeal before or at the time of hearing."

2. Both the parties had moved applications for adjournment. As no one was present to represent on behalf of the parties a pass over was given. Even after giving a pass over and on noting that still no one was present for the Revenue which had remained unrepresented through out the week accordingly, considering the material available on record qua the issues agitated it was considered appropriate to reject the applications for adjournment moved by both the parties and proceed ex-parte qua both the Assessee-appellant and Revenue-respondent and to decide the appeal on merits on the basis of relevant provision and material available on record.

3. A perusal of the record shows that the assessee's return of income was picked up for scrutiny wherein the assessee was required to explain the claim of interest of Rs.14,66,110/- and Rs.3,78,927/- claimed under the head *income from house property* for the properties at C-440, Sushant Lok-1, Gurgaon and A1210, Tris Springfields, Sarojpur Main Road, Banglore.

3.1. Not satisfied with the explanation offered, addition of Rs.7,33,055/- and Rs.1,02,310/- was made by the Assessing Officer holding as under:-

"In respect of property at C-440, Sushant Lok-I, Gurgaon, it is seen that the property is jointly owned by the assessee with his wife Smt.Jaya Verma. Loan has also been taken in the joint names of the assessee and his wife. Smt.Jaya Verma is also an independent assessee and files her return of income. The assessee being owner to the extent of only 50% and the loan amount being repaid from the joint account, the interest of claim of the assessee is allowed only for Rs.7,33,055/- (being 50% of Rs.14,66,110/-). Addition to the income is made accordingly.
……
In respect of the property at A-1210, Tris Springfields, Sarojpur Main Road, Bangalore, it is seen that the property is jointly owned by the assessee and his wife. As per the rent agreement the rent is shared in the ratio of 73% and 27% between the assessee and his wife, while Smt. Jaya Verma is showing income from this property, no interest has been claimed by her. While on the

other hand, the assessee has claimed the entire interest of Rs.3,78,927/-. The claim of the assessee for interest is, therefore, allowed at Rs.2,76,617/- and the balance of Rs.1,02,310/- is added to the income of the assessee."

4. Aggrieved by this, the assessee came in appeal before the First Appellate Authority. The submissions advanced on behalf of the assessee are found recorded in Paras 3.2 and 3.5 of the impugned order, considering which the claim of the assessee was rejected holding as under:-

(i) C-440, Gurgaon:-

"In this regard, it is seen from the facts recorded in the assessment order as well as in the submissions given by the appellant that the property is jointly owned by the appellant and his wife Smt. Jaya Verma. It is also seen that for the purchase of this property the appellant and his wife had jointly taken loan and were jointly liable to repay the installment including interest. In these circumstances the appellant's liability to pay the interest was limited to only 50% of the total interest accruing on the loan amount. Accordingly, the appellant was eligible for deduction of 50% of the total interest on the loan. Merely, because the appellant has paid the whole of interest and thereby discharged the liability of his wife does not entitle the appellant to claim the deduction with respect to the interest liability of his wife. It may be relevant to mention here that the appellant's wife is an independent assessee and filed her return of income. She is entitled to claim the deduction for interest paid on her share of loan. It is not open to the appellant to claim the total deduction on account of interest liability on the housing loan in his return of income. The addition made by the AO is accordingly confirmed.

(ii) A-1210. Springfields, Banglore:-

"In this regard, as seen from the assessment order the property is jointly owned by the appellant and his wife. It is also seen from the assessment order that the appellant is entitled to only 73% of the rent and the appellant's wife is entitled to 27% rent. It is also a fact on record that borrowed funds were used for the purpose of this property on which interest has been paid. The appellant has contended that the loan pertaining to this property was in the name of the appellant only and as such the whole of deduction on account of interest was allowable to the appellant. I do not agree with this contention of the appellant. As seen from the facts mentioned above, the appellant's wife had 27% share in the property and rent and accordingly she was liable for 27% of investment in the property. The appellant has not shown that the investment made by his wife in the property was from her own sources and no amount of funds borrowed in the name of the appellant were used for this purpose. In these circumstances, even though the loan was taken in the name of the appellant only, the same was taken on behalf of both the appellant and his wife and his wife accordingly had to discharge her share of liability including the interest liability."

5. On a consideration of the above and the facts available on record, I am of the view that the impugned order cannot be upheld as the submissions of the assessee supported by evidence have neither been examined nor addressed by the Ld. CIT(A) while deciding the issues raised in the appeal. It is further seen that the assessee in support of its claim, has filed fresh evidences before the CIT(A) stating that the respective

properties have been purchased by the assessee entirely through his own funds. The said claim is supported by the bank account maintained with HDFC Bank Ltd. A/c No.05721140000124 wherein the salary payment of the assessee as well as the rental income from the house property is stated to be received. The loan for the specific property, it has been stated, is taken from ICICI Bank and the EMI of the loan has been paid through the bank A/c No.000201544546 from ICICI Bank Ltd.

5.1. I am of the view that the mere fact that the assessee has shown the properties as jointly owned alongwith his wife and the HDFC bank account also is in the joint name of the assessee and his wife, by itself, cannot lead to the conclusion that the investment in the property is also made by the wife where even the interest by way of EMI has not been paid by the wife. The submissions addressing the reasons for co-ownership and the use of joint names, it has been adequately explained, is to address the socio-economic and cultural practices to provide psychological, social and financial security to a surviving spouse in the unfortunate circumstances where the main bread winner of the family does not survive. The fact that it also keeps the inheritance issues simplified in the eventuality of the untimely demise of the husband may also be a relevant factor as it would ensure easy transfer of the properties to the surviving spouse. The financial planning by couples where primarily the husband may be the primary economic supporter of the family is invariably guided by his need to ensure that his surviving spouse, in case of his untimely demise, is not put to the time consuming and exhausting compliance requirements of Land Revenue and Bank Authorities before transferring the ownership in the immovable and movable property to his spouse is permitted. The need to avoid these routine legal procedures may also be relevant factors and reasons personal to the assessee as such inclusions address the immediate psychological and emotional need to permanently address any uncertainty of ensuring that the asset is conjointly owned by the spouse but such addition of spouse's name as, in the present proceedings, cannot be used as a reason to deny the relief allowable on facts under law.

The addition of a spouse's name in the title as a co-owner is invariably to address the psychological fear of a dependent spouse and to avoid all disputes relating to inheritance in case of demise of either spouse that may arise both in case of intestate succession and also in case of execution of a WILL with its attendant though undesirable legal consequences including deffering the devolution of the title. The admitted fact that the purchase of the property was entirely from the sources and resources available to the tax payer alone cannot be ignored. The critical factors in order to decide the issue that in whose hands the deduction is to be allowed qua the property would necessarily require that it be examined who is the primary person who has sought the loan and thereafter examine who is paying the EMI and finally in case of tenanted property, in whose account the rental of the properties are deposited. These critical factors cannot be ignored and discarded. The spouse who though shown as a co-owner may appear to be entitled to claim deduction simply on the basis of the said fact but in the facts of the present case has to be excluded from availing the benefits due to the tax-payer when there is substantial evidence to the contrary that the property was neither purchased nor sourced through a loan applied by the wife. Hence, in the absence of any actual financial contribution for acquiring the asset the mere addition of the name of the spouse as a co-owner by itself can not be the determinative criteria denying the deduction claimed by the husband and on verification of facts, it has to be allowed. The fact that no rental income has been received by the assessee's wife is also a consistent claim on record which needs to be verified.

5.2. Apart from the above, there is also a submission on record that 100% of rent from the Bangalore property has been declared by the assessee as his rent income. The Rent Agreement clearly sets out that rent received for furniture and appliances is receivable and therefore received by his spouse. In view of the documentary evidence on record and nothing shown to the contrary by the tax authorities, I find that the CIT(A) has wrongly assumed that the assessee's spouse was the owner of 27% of the Banglore

property and instead of allowing 100% of interest wrongly disallowed interest of 27% while allowing the assessee interest to the extent of 73% only. As far as the rent for the premises are concerned, it is claimed that 100% of the same is deposited in the assessee's account. It may not be out of place to state that though the spouses at times hold joint accounts to address the human frailties the account invariably is operated by the primary holder of the account and this is a material fact which cannot be ignored. The fact that the name of the spouse is included as a joint account holder, as observed earlier to be operated by either or survivor account, is only to address the transient nature of human life and at best addresses the need for security of a surviving spouse and hence cannot be the determinative factor to deny the claim of the assessee as done in the present case. It is noticed that the consistent claim of the assessee is that the initial down payment and EMIs were made by the assessee from his own sources and that his wife, Mrs. Jaya Verma had not contributed any payment let alone a substantial payment or otherwise towards the purchase of the property in question. It is also seen that the assessee's wife, inspite of being an independent assessee, in the facts of the present case has admittedly not claimed any deduction for interest on loan for purchase of the specific property. It goes without saying that the deduction can be allowed only to the person who claims it and supports the claim by relevant facts and evidences and it cannot be thrust upon another person who has neither claimed it nor could have claimed it on facts. The relevant facts as in the present case which would entitle only the tax-payer to claim deduction are that the claimant should be the person who has purchased the property after applying for a loan for which presumably his financial standing has been considered; he has paid interest thereon; and has shown receipt of rental income from the said property to himself. The fact that he has included the name of the spouse as a co-owner/co-applicant in the Loan Account of the Bank would not be a relevant criteria. Hence, in view of the facts that the Statute permits deduction of interest on loan taken for purchase of house property to the person taking the loan for acquiring,

constructing, repairing, renewing or reconstructing with borrowed capital, it is such a person who has himself made the initial down payment and paid EMIs from his own resources for purchase of the property belonging to him (or acquired through that loan) and has received the rent income if any from the property who alone is entitled to tax relief. Accordingly on a consideration of the material available on record and the views of the tax authorities as expressed in the orders and the argument of the assessee before the CIT(A), I am of the view that the impugned order deserves to be set aside. The assessee on facts has placed fresh evidences before the CIT(A) which as per record have been remanded to the AO who has failed to file any Remand Report. In the circumstances, while remanding the issue to the CIT(A) it is directed that another reasonable attempt may be made to obtain a Remand Report from the AO and in case the AO still fails to respond, the CIT(A), may consider and verify the evidences at his level and pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. ***However in such an eventuality, in case the AO still fails to respond to the CIT(A), Report of the conduct of the AO and dereliction of duties, it is advised should be forwarded to the appropriate authority for administrative corrections; control and discipline.*** Needless to say that a reasonable opportunity of being heard be given to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 23rd of December, 2016.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Amit Kumar
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT NEW DELHI