

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1243/Mds/2016

निर्धारण वर्ष / Assessment Year : 2003-04

Shri K.S. Kamalakannan,
C/o Shri S. Sridhar, Advocate,
New No.14, Old No.82, Flat No.5,
1st Avenue, Indira Nagar,
Adyar, Chennai - 600 020.

v. The Assistant Commissioner of
Income Tax,
Company Circle IV(4),
Chennai.

PAN : AACPK 5960 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 02.01.2017

घोषणा की तारीख/Date of Pronouncement : 05.01.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -8, Chennai, dated 29.02.2016 and pertains to assessment year 2003-04.

2. Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that the Assessing Officer, in the guise of rectifying an error under Section 154 of the Income-tax Act, 1961 (in short 'the Act'), disallowed the interest on borrowed capital. The assessee explained before the Assessing Officer that loan taken from HSBC was used for repayment of loan to M/s Egmore Benefit Society Ltd. and to ING Vysya Bank. The Assessing Officer found that while computing income under Section 24 of the Act under "income from property", the interest cannot be allowed. On appeal by the assessee, the CIT(Appeals) by placing reliance on the assessee's own case, for the assessment year 2001-02, has confirmed the order of the Assessing Officer. According to the Ld. counsel, whether the interest paid by the assessee to bank is allowable under Section 24(vi) of the Act or not is a debatable issue. While passing the impugned order dated 10.11.2006, the Tribunal order was not available for the Assessing Officer. The Tribunal by an order dated 27.11.2009, in the assessee's own case, found that the interest cannot be allowed for the assessment year 2001-02. In the absence of this order of this Tribunal, according to the Ld. counsel, the Assessing Officer cannot make any disallowance in the guise of rectifying a *prima facie* error. Whether deduction on interest paid by

the assessee on the borrowed loan is allowable while computing income from house property or not is a debatable issue and requires a detailed enquiry. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

3. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative, submitted that this Tribunal for the assessment year 2001-02 in the assessee's own case, examined the issue elaborately and found that the interest paid by the assessee on the borrowed loan, which was used for repayment of loan borrowed by the assessee's father, is not an allowable deduction. According to the Ld. D.R., even though the order of this Tribunal was not available on record, the Assessing Officer by applying Section 24(vi) of the Act, has rectified the error which is apparent on record. According to the Ld. D.R., the interest paid on the borrowed loan used for repaying the loan borrowed by the assessee's father, cannot be allowed while computing the income from house property, therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the Assessing Officer, in exercise of her power under Section 154 of the Act, found that by way of family arrangement on 17.07.1995, the property was allotted to the assessee. The loan borrowed from HSBC was said to be used for repayment of loan to M/s Egmore Benefit Society Ltd. The Assessing Officer has also found that the loan taken from M/s Egmore Benefit Society Ltd. was taken by the assessee's father. Therefore, accordingly, the Assessing Officer found that the interest paid by the assessee on the borrowed loan, which was used for repaying the loan taken by his father from M/s Egmore Benefit Society Ltd., is not an allowable deduction while computing income from house property. The question arises for consideration is whether the Assessing Officer can disallow the claim of the assessee with regard to payment of interest while passing an order under Section 154 of the Act?

5. We have carefully gone through the provisions of Section 154 of the Act. Section 154 of the Act enables the Assessing Officer to rectify an error which is apparent on the face of the record. In the case before us, whether the interest on the borrowed

loan, which was utilised for repaying the loan taken by the assessee's father for purchasing the property, is an allowable deduction or not while computing income from house property, is definitely a debatable issue. This cannot be decided while rectifying the error which is said to be on the face of the record. This Tribunal is of the considered opinion that the allowance or disallowance of the interest on the borrowed loan cannot be considered to be a *prima facie* error, especially, when the assessee claims the same for repaying housing loan taken by his father.

6. This Tribunal in the assessee's own case for the assessment year 2001-02, examined this issue by an order dated 27.11.2009 and found that the interest on borrowed loan, which was used for repayment of earlier loan taken for acquisition, reconstruction, repair, etc. on the property cannot be allowed while computing income from house property. This order of the Tribunal was pronounced on 27.11.2009. As rightly pointed out by the Ld.counsel for the assessee, this order was not available for the Assessing Officer on 10.11.2006 when she passed the impugned order of rectification. Therefore, this Tribunal is of the considered opinion that the disallowance made by the Assessing Officer cannot

be amenable for rectification under Section 154 of the Act. Therefore, this Tribunal is unable to uphold the orders of the lower authorities and the same are set aside. The Assessing Officer is directed to delete the disallowance of interest on the borrowed capital.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 5th January, 2017 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 5th January, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.