

I.T.A. No. 2673/Del/2022

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "D" : DELHI ]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 2673/Del/2022  
निर्धारणवर्ष /Assessment Years: 2018-19

Gurpreet Singh Dhillon, Kothi No. 2, Dera Baba Jaimal Singh, Beas, Amritsar, Punjab - 143 204.	<u>बनाम</u> Vs.	ACIT, Circle Int. Tax. 1(2)(2) New Delhi.
PAN No. AFQPD5302R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Ms. Vandna Sharda, C.A.;
राजस्वकीओरसे / Department by :	Shri Sanjan Kumar; Sr. D. R.

सुनवाईकीतारीख/ Date of hearing :	4/07/2023
उद्घोषणाकीतारीख/Pronouncement on :	25/09/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against order of the Id. Commissioner of Income Tax (Appeals)-42, New Delhi

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(hereinafter referred to CIT) dated 22.07.2022 for assessment year 2018-19.

2. The assessee filed revised grounds of appeal as under:-

1. The order of the Ld. Commissioner of Income Tax (Appeals), New Delhi-42, is bad in law and on facts and against the principals of natural justice and must be quashed.

2. That the Ld. CIT(A) has grossly erred in law and on facts in disallowance of interest paid on housing loan (borrowed capital) referring to the third proviso to section 24 for the reason that the assessee failed to furnish certificate for interest, whereas the interest is allowable in entirety in the case of let out property as the third proviso to section 24 is applicable only on self-occupied house property and not on let-out property and therefore the same should be fully allowed as deduction from "Income from House Property" **Tax effect Rs.8,02457.**

3. That the Ld. CIT(A) has grossly erred in law and on facts in disallowance of interest paid on housing loan (borrowed capital) without considering the detailed documents submitted during the course of assessment and appeal proceedings, the same needs to be fully allowed. **Tax effect is Rs.1,78,52,568.**

4. (i) That the Ld. CIT(A) has grossly erred in "enhancement of income" without issuing a show cause notice in view of the provisions of section 251(2) of the I. Tax Act stating that this is the case of enhancement of income not enhancement of assessment, such an addition to income is illegal, void ab intio and needs to be deleted.

(ii) That the Ld. CIT (Appeals) has grossly erred in adding a Notional Interest on an Interest Free Refundable Security Deposit ignoring the provisions of section 23 and various court decisions on identical facts of the case of the assessee, relying on certain court decisions where the facts are entirely different from the facts of the case of the assessee, such an addition to income is illegal, void ab intio and needs to be deleted. (i) & (ii) **Tax effect is Rs.54,044.**

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5. That the Ld. CIT(A) has also grossly erred while making calculation of notional Interest amount and needs to be deleted in view of GOA No.4. **Tax effect is Rs.54,044.”**

3. Briefly stated the facts are that the assessee filed return of income on 4.08.2018 declaring total income of Rs. 'NIL'. In the return of income filed the assessee has shown rental income for 5-1/2 months at Rs.71,44,500 and claimed standard deduction of Rs.21,43,350/- @ 30% and also claimed interest of Rs.7,08,02,251/- paid on housing loan which resulted in loss of Rs.6,58,00,101/- under the head income from house property. In the return of income filed the assessee claimed TDS of Rs.11,69,100/- on the entire rent received including rent received in advance i.e. for the period from 1.04.2018 to 15.08.2018 amounting to Rs.45,46,500/-. In the scrutiny assessment the Assessing Officer added Rs.84,43,500/- to the income from house property on the ground that assessee claimed TDS of Rs.4,54,650/- on the advance rent received but not reflected in the return of income for this assessment year.

4. The assessee carried the matter before the ld. CIT (Appeals). The ld. CIT (Appeals) sustained the addition the extent of Rs.45,46,500/- under the head income from house property being the advance rent received by the assessee for the period 1.04.2018 to 15.07.2018 on the basis of the statement of the assessee agreeing for the addition of advance rent of Rs.45,46,500/- be taxed in the current year itself. The ld. CIT (Appeals) directed the Assessing Officer to allow 30% of ALV on advance rent of

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Rs.45,46,500/- as allowance under section 24(a) having taxed in the current assessment year.

5. However, the ld. CIT (Appeals) disallowed interest of Rs.7,08,02,251/- paid on housing loan observing that interest claimed on the computation has already been allowed by the Assessing Officer and no further allowance is to be made in respect of interest paid. The ld. CIT (Appeals) also observed that assessee failed to furnish certificate during appeal proceedings showing that the assessee paid interest to banks. Further the ld. CIT (Appeals) also directed the Assessing Officer to add notional interest of Rs.2,14,335/- on interest-free security deposit received by the assessee.

6. The ld. Counsel for the assessee submits that the assessee has claimed deduction for interest of Rs.7,08,02,251/- under the head income from house property on borrowed capital of Rs.100 crores from Axis Bank for the purchase of property. The ld. Counsel submits that copy of statement of account of Axis Bank disbursing the loan amount is placed at page No. 63 of the paper book. The ld. Counsel also submits that repayment of schedule of loan interest charged on loan is placed at page No. 65 and 66 of the paper book. The ld. Counsel also submits that the loan which was taken from Axis Bank was subsequently shifted to Punjab National Bank on 2.11.2017 and a copy of loan account statement and certificate from Punjab National Bank certifying the purpose of obtaining the loan are placed at page Nos. 71 to 73 of the paper book. The ld. Counsel submits that the break-up of interest on borrowed capital

of Rs.7,08,02,251/- paid to the banks are shown at page No. 61 of the paper book. Therefore, the ld. Counsel submits that in view of the above evidences there is no justification in not allowing the interest paid on housing loan borrowed for purchase of the property, which was let out and the rental income was shown from such property under the head income from House property.

7. Coming to the addition on notional interest on interest free security deposit received, the ld. Counsel submits that the assessee received interest free refundable security deposit of Rs.38,97,000/- being three months rent at monthly rent of Rs.12,99,000/-. The ld. Counsel placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Moni Kumar Subba [(2011) 333 ITR 38 (Del) (FB)] submits that the ld. CIT (Appeals) erred in directing the Assessing Officer to add notional interest on security deposit to the ALV of the property. The ld. Counsel also placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Asian Hotels Ltd. [(2008) 168 Taxman 59 (Del)]. Assessee prays that the addition of notional interest be directed to be deleted.

8. The ld. DR strongly placed reliance on the orders of the authorities below.

9. Heard rival submissions perused the orders of the authorities below. In so far as the interest on borrowed capital is concerned, we see no valid reason for disallowing the interest paid on borrowed capital to the banks. The evidences furnished by the assessee in

the form of statement of accounts and certificates issued by the banks, sanctioning and disbursing the housing loan to the assessee actually goes to show that the assessee has obtained loans from banks for acquiring the property and the property was let out and the rental income was offered to tax and, therefore, the Assessing Officer should have allowed interest paid on borrowed capital while computing the income under the head income from house property. The observations of the Id. CIT (Appeals) that the interest claimed in the computation has already been allowed by the Assessing Officer is totally misplaced as the Assessing Officer has not allowed the assessee to carry forward the loss under the head income from house property which is mainly paid on borrowed capital. Thus we direct the Assessing Officer to allow interest on borrowed capital as claimed by the assessee and the same shall be carried forward under the head income from house property.

10. Coming to the notional interest on interest free security deposit, we observe that the Hon'ble Delhi High Court in the case of CIT Vs. Asian Hotels Ltd. (supra) held as under:-

“Para 9. Section 23(1)(a) is relevant for determining the income from house property and concerns determination of the annual letting value of such property. That provision talks of the sum for which the property might reasonably be expected to let from year to year. This contemplates the possible rent that the property might fetch and not certainly the interest in fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property. It must be remembered that in a taxing statute it would be unsafe for the Court to go beyond the letter of the law and try to read into the provision more than what is already provided for. The attempt by learned counsel for the revenue to draw an analogy from the

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Wealth-tax Act, 1957 is also to no avail. It is an admitted position that there is a specific provision in the Wealth-tax Act which provides for considering of a notional interest whereas section 23(1)(a) contains no such specific provision. “

11. We also observe that the Hon’ble Delhi High Court in the case of CIT Vs. Moni Kumar Subba (supra) held as under:-

“10. This view of the Calcutta High Court has been accepted by a Division Bench of this Court as well in the case of Commissioner of Income Tax Vs. Asian Hotels Limited [(2008) 215 CTR (Del.) 84] holding that the notional interest on refundable security, if deposited, was neither taxable as profit or gain from business or profession under [Section 28\(iv\)](#) of the Act or income from house property under [Section 23\(1\)\(a\)](#) of the Act. Rationale given in this behalf was as under:

"A plain reading of the provisions indicates that the question of any notional interest on an interest free deposit being added to the income of an assessed on the basis that it may have been earned by the Assessee if placed as a fixed deposit, does not arise. [Section 28 \(iv\)](#) is concerned with business income and is distinct and different from income from house property. It talks of the value of any benefit or perquisite, "whether convertible into money or not" arising from "the business or the exercise of a profession." It has been explained by this Court in Ravinder Singh that [Section 28 \(iv\)](#) can be invoked only where the benefit or perquisite is other than cash and that the term "benefit or amenity or perquisite" cannot relate to cash payments. In the instant case, the AO has determined the monetary value of the benefit stated to have accrued to the assessed by adding a sum that constituted 18% simple interest on the deposit. On the strength of Ravinder Singh, it must be held that this rules out the application of [Section 28 \(iv\)](#) of the Act.

[Section 23\(1\)\(a\)](#) is relevant for determining the income from house property and concerns determination of the annual letting value of such property. That provision talks of "the sum for which the property might reasonably be expected to let from year to year." This contemplates the possible rent that the property might fetch and not certainly the interest

in fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property. It must be remembered that in a taxing statute it would be unsafe for the Court to go beyond the letter of the law and try to read into the provision more than what is already provided for. The attempt by learned counsel for the Revenue to draw an analogy from the [Wealth Tax Act, 1957](#) is also to no avail. It is an admitted position that there is a specific provision in the [Wealth Tax Act](#) which provides for considering of a notional interest whereas [Section 23\(1\)\(a\)](#) contains no such specific provision."

We approve the aforesaid view of the Division Bench of this Court and Operative words in [Section 23 \(1\)\(a\)](#) of the Act are "the sum for which the property might reasonably be expected to let from year to year". These words provide a specific direction to the Revenue for determining the „fair rent“. The AO, having regard to the aforesaid provision is expected to make an inquiry as to what would be the possible rent that the property might fetch. Thus, if he finds that the actual rent received is less than the „fair/market rent“ because of the reason that the assessee has received abnormally high interest free security deposit and because of that ITA No.499 of 2008 with ITA No.803 of 2007, ITA No.1113 of 2008, ITA No.388 of 2010, reason, the actual rent received is less than the rent which the property might fetch, he can undertake necessary exercise in that behalf. However, by no stretch of imagination, the notional interest on the interest free security can be taken as determinative factor to arrive at a „fair rent“. Provisions of [Section 23\(1\)\(a\)](#) do not mandate this. The Division Bench in *Asian Hotels Limited (supra)*, thus, rightly observed that in a taxing statute it would be unsafe for the Court to go beyond the letter of the law and try to read into the provision more than what is already provided for. We may also record that even the Bombay High Court in the case of *Commissioner of Income Tax Vs. J. K. Investors (Bombay) Ltd.*, [(2001) 248 ITR 723 (Bom.)] categorically rejected the formula of addition of notional interest while determining the „fair rent“ in the following manner:

".....Before concluding we may point out that under [Section \(23\)\(1\)\(b\)](#), the word "receivable" denotes payment of actual annual rent to the assessee. However, if in a given year a portion of the actual annual rent is in arrears, it



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would still come within Section (23)(1)(b) and it is for this reason that the word "receivable" must be read in the context of the word "received" in Section(23)(1)(b). In the light of the above interpretation, notional interest cannot form part of the actual rent as contemplated by Section (23)(1)(b) of the Act. We once again repeat that whether such notional interest could form part of the fair rent under Section (23)(1)(a) is expressly left open."

12. It is, thus, manifest that various Courts have held a consistent view that notional interest cannot form part of actual rent. Hence, there is no justification to take a different view that what has been stated in Asian Hotels Limited [(2010) 323 ITR 490 (Del)."

12. Ratio of the decisions squarely applies to the facts of the assessee's case. Thus, we reverse the findings of the Id. CIT (Appeals) on this issue and hold that no notional interest on interest free security deposit can be added to the ALV of the property while computing income from house property.

13. In the result, appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on : 25/09/2023.

Sd/-  
( **G. S. PANNU** )  
**PRESIDENT**

Sd/-  
( **C. N. PRASAD** )  
**JUDICIAL MEMBER**

Dated : 25/09/2023.

\*MEHTA\*

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /  
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	18.09.2023
Date on which the typed draft is placed before the dictating Member	19.09.2023
Date on which the typed draft is placed before the Other Member	25.09.2023
Date on which the approved draft comes to the Sr. PS/PS	25.09.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	25.09.2023
Date on which the fair order comes back to the Sr. PS/PS	25.09.2023
Date on which the final order is uploaded on the website of ITAT	25.09.2023

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Date on which the file goes to the Bench Clerk	25.09.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	