

## **Interest paid for acquiring property other than self occupied one would be deductible without any limit**

**Summary – The Mumbai ITAT in a recent case of Smt. Tupur Chatterji, (the Assessee) held that where assessee had availed loan from bank for acquiring property other than self occupied one, whole of interest payable on borrowed capital would be allowable**

### **Facts**

- The assessee was owner of two properties, one of which is flat at Bandra and the other Nestle property.
- Flat at Bandra has been considered to be self occupied property and property in Nestle is vacant property upon which the Assessing Officer has applied ALV at 7 per cent of book value of the property and computed deemed house property income of Rs.1.40 lakhs.
- For buying aforementioned property the assessee had obtained loan from the bank for which interest of Rs.3.50 lakhs was paid, which was restricted by the Assessing Officer to a sum of Rs.1.40 lakhs on the ground that assessee could not be allowed a cumulative deduction more than Rs.1.50 lakhs as per second proviso to section 24.
- On appeal, the Commissioner (Appeals) upheld the action of the Assessing Officer.
- On further appeal, the assessee contended that its claim is allowable in its entirety in accordance with clause (b) of section 24. He submitted that the restriction of Rs.1.50 lakhs is with regard to property on which sub-section (2) of section 23 is applicable. As per the assessee, it was his case that only property in the shape of flat at Bandra will fall within the ambit of section 23(2) and the restriction of interest would be applicable to that property and in respect of Nestle property no interest limit is fixed by the statute, hence the Commissioner (Appeals) erred in not allowing the full interest of Rs. 3.50 lakhs paid for second property.

### **Held**

- According to section 24(b), where the property is acquired, constructed, repaired or renewed or constructed with the borrowed capital then any interest payable on such borrowed capital would be an allowable deduction. The restriction of Rs.1.50 lakhs described in second proviso is with reference to the property which is referred in sub-section (2) of section 23. Section 23(2) would be applicable to a house or part of the house which either is in the occupation of the owner for the purpose of his residence or the same is not actually occupied by the owner for the reason that owing to his employment, business or profession carried on at any other place and he is to reside at that other place in building not belonging to him and annual letting value of such property would be taken as nil.
- Undisputedly, the flat at Bandra falls under the category of property mentioned in section 23(2) as the Assessing Officer did not assess the annual letting value of the said property as income of the

assessee. Therefore, provisions of second proviso to section 24 would not be applicable and the case of the assessee would fall within clause (b) of section 24 in which there is no limit for allowability of the interest and the condition is that the said property should *inter alia* be acquired out of borrowed capital.

- In the instant case as per submissions of the assessee before the Assessing Officer the assessee has paid interest of Rs.3.50 lakh as interest for Nestle Property. Therefore, interest deductible out of annual letting value of Nestle property could not be restricted to any amount less than the interest paid by the assessee.
- Therefore, ground of the assessee is allowed and the Assessing Officer is directed to give full deduction of interest paid by the assessee which is claimed to be a sum of Rs.3.50 lakhs.
- In the result, appeal filed by the assessee is partly allowed.