

Housing loan interest restricted to Rs. 1.5 lakh as assessee failed to prove that property was let-out to mother

Summary – The Ahmedabad ITAT in a recent case of Hitesh H Budhbhatti, (the Assessee) held that where assessee, staying at different place, claimed deduction of entire amount of interest paid on borrowed capital submitting that residential house in question at other place was let out to his mother but he failed to prove receipt of rent from his mother, deduction of interest on borrowed capital would be restricted to Rs. 1.50 lakhs

Facts

- The assessee was a salaried employee staying at a place different from place where he co-owned a resident of house with his mother. He filed his return of income declaring the annual value of residential house at Shilaj at *nil*. The assessee claimed deduction on interest on borrowed capital at Rs. 8.2 lakhs under section 24 under the head 'income from house property'.
- In the course of assessment proceedings, the assessee submitted revised computation. He claimed that he was not in the actual occupation of the residential house at Shilaj, rather it was co-owned by him along with his mother. The assessee claimed that the residential house at Shilaj was occupied by his mother. Thus, it was claimed to have been let out to his mother at monthly rental of Rs. 30,000. Taking the plea that the house was let out, the assessee claimed deduction of the whole amount of interest expenditure against purported rent.
- The Assessing Officer however noted that the assessee was employed in Ahmedabad and the property was situated at Shilaj. Therefore, in terms of section 23(2), gross annual value of the property at Shilaj was to be taken at *nil*. The Assessing Officer also pointed out that the assessee himself had claimed annual value as '*nil*'. The Assessing Officer, accordingly, held that the assessee was entitled to claim interest on borrowed capital limited to the extent of Rs. 1.5 lakhs referred under section 23(2) and disallowed the remaining amount of Rs. 6.7 lakhs.
- On appeal, the Commissioner (Appeals) endorsed the action of the Assessing Officer that the action of the assessee that property allegedly given on rent to mother and also a co-owner was only a device to avail full deduction of interest expenses and to exclude himself from the purview of restriction of section 23(2).
- On the assessee's appeal before the Tribunal:

Held

- The allowability of interest expenditure on borrowed capital for purchase of residential house under section 24 is in question. As per section 23(2), the gross annual value of the residential house shall be taken at '*nil*' where such house is in the occupation of the owner for his own residence or where the owner of the house is prevented from occupying the house owing to his employment etc. at

other place. The annual value of such house shall be taken at *nil* and consequently, the deduction of interest on borrowed capital in such circumstances is restricted to the extent of Rs. 1.50 lakhs under section 24 for the relevant assessment year. The assessee, in the instant case, has also claimed '*nil*' annual value on this residential house in the return of income. However, by way of revised computation in the course of assessment proceedings, the assessee has altered his stand and claimed that he was not in actual occupation of the residential house (co-owned by him along with his mother). It was claimed that the residential house at Shilaj was actually occupied by his mother and thus, the residential property was let out to mother at a monthly rental of Rs. 30,000 per month, which was received in 'cash'. The assessee accordingly has claimed that the residential house being a let out a property, the statutory restriction for allowability of interest on borrowed capital is not applicable. The assessee thus seeks deduction of the whole of the amount of interest expenditure against the so-called annual value/rent purportedly received from mother.

- The answer to the controversy thus essentially hinges upon as to whether the house property was actually let out as claimed or not. If the property can be taken to be actually let out during the year in terms of section 23(3), it will automatically get excluded from the sweep of section 23(2) which would in turn exclude the restriction of quantum of deduction of interference under section 24.
- Turning to the facts, the assessee has claimed that the residential house was actually let out during the year to his mother for which he has received rent of Rs. 30,000 from mother *albeit* in cash. On the basis of property being let out, the assessee seeks claim of interest deduction to full extent. The assessee has also tried to support his case of let out by an affidavit. When seen in the context, it is very difficult to believe the position taken by the assessee. As noticed earlier, the assessee, at first instance, has not declared rental income while filing the return of income duly verified under section 140. The omission to disclose the so-called rent income derived from mother in the return of income is not explained. Needless to say, a person filing the return of income requires to verify the contents of the return to be true and any falsification in such verification has serious consequences under Chapter XXII. Thus, the income claimed to have been received and not declared in the return cannot be seen in a light-hearted manner. The assessee has conveniently revised the computation to introduce the source of rental income from mother who also happens to be co-owner of the same property. The receipt has been shown to be in cash to shun any possibility of verification. Thus, no trail is available to verify the correctness of the version of the assessee in a reasonable manner. Thus, one has to rely only on the preponderance of probabilities. The version of the assessee is *prima facie* improbable having regard to the ground realities. The assessee neither satisfies the condition from exclusion from the ambit of section 23(2) nor satisfies its case for inclusion under section 23(3) on facts. The lower authorities have rightly questioned the veracity of claim of property being actually let out. The affidavit filed was clearly bald and a self-serving document. No cross examination of the deponent of the affidavit has been offered therein. On a query from the Bench about the payment of electricity bill by the licensee of the property, no evidence could be furnished to prove actual occupation by mother on rental basis. It is also difficult to comprehend

such a claim of the assessee on the touchstone of societal value prevalent and ethos in Indian society. The case of the assessee towards claim of rent from mother for occupation of his house clearly appears be an eyewash to merely put the property in the bracket of section 23(3) with a view to claim deduction of full interest costs without any restriction applicable to self-occupied house. The Commissioner (Appeals) has rightly endorsed the action of the Assessing Officer.