

TAX FLASH NEWS

8 November 2019

Housing loan interest deductible while computing capital gains and income from house property

Background

Capital gains¹ shall be computed by deducting from the full value of the consideration, the expenditure incurred, the cost of acquisition of the asset and the cost of any improvement, if any. The interest paid on housing loan has arguably been considered as an expenditure incurred for acquiring the asset.

Further, interest paid on housing loan is also deductible while computing income from house property².

In this context, the Delhi Bench of the Income Tax Appellate Tribunal (the Tribunal) has recently held³ that a taxpayer is eligible to claim deduction on interest paid towards housing loan under the heads Capital Gains and Income from house property as both are covered under different heads of income and neither of the Sections excludes operation of the other.

Facts of the case

- During the TY 2013-14, the tax payer, an advocate by profession, had sold a residential house and his share of sale consideration was INR 80,00,000. The taxpayer had purchased such property during the TY 2006-07. While computing the cost of acquisition for calculating the capital gains on sale of such property, the taxpayer had claimed such interest paid on housing loan as a deduction while computing income from house property.
- While filing the India tax return for the said TY, the taxpayer had disclosed income from business or profession, income from capital gains and income from other sources.

- During the scrutiny assessment, the Assessing officer (AO) observed that taxpayer had already claimed a deduction on the interest paid on housing loan from house property income. AO was also of the view that such interest expenditure should be claimed as a deduction⁴ against house property income alone. Accordingly, AO inter-alia disallowed such interest expense for computation of capital gains, as allowing interest expenses as cost of acquisition while calculating capital gain and as deduction from income from house property would tantamount to allowing double deduction for the same expense.
- Aggrieved by the order passed by the AO, the taxpayer had filed an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)]. CIT(A) inter-alia had upheld the order of the AO.
- Aggrieved by the order of the CIT(A), the Revenue had filed an appeal with the Tribunal.

Taxpayer's contention

- The taxpayer had contended that interest paid on housing loan is an expenditure incurred for purchase of house property and thus constitutes an element of cost of acquisition of such asset.
- Based on certain judicial precedents⁵, the taxpayer also argued that income from house property and income from capital gains are different heads of income, are independent of each other and accordingly interest paid on housing loan could be claimed as an expenditure incurred for acquiring the asset.

¹ Section 48 of the Income-tax Act, 1961 ('the Act')

² Section 24 of the Act

³ Ashok Kumar Sahi v. ACIT (ITA No. 5155/ Del/2018) – Taxsutra.com

⁴ Section 24 of the Act

- Further, the taxpayer stressed that had the Legislature intended that if interest expense should not be claimed as a deduction under two different heads, it would have clearly said so under either of the Sections⁶. Additionally, if there could be two possible interpretations of the Act, the one that is more beneficial to a taxpayer would apply.

Revenue's contention

- The Revenue contended that claiming deductions under income from house property and as an expenditure for computation of capital gains would lead to double deduction.
- The Revenue had relied on certain judicial precedents⁷ in support of the said claim.

Tribunal's observation and ruling

- The Tribunal relied on Tribunal (Chennai and Delhi) decisions⁵ which were not considered by the CIT(A).
- The Chennai and Delhi Tribunal decisions had observed the following:
 - Deduction² of interest paid on housing loan could be claimed when a taxpayer declares income from house property

⁵ Praveen Gupta v. ACIT [2012] 20 taxmann.com 308 (Delhi) and ACIT v. C. Ramabrahmam [2012] 27 taxmann.com 104 (Chen)

⁶ Section 48 and 24 of the Act

⁷ CIT v. Maithreyi Pai [1985] 152 ITR 247 (Kar) and Captain B L Lingaraju v. ACIT [ITA No. 906/Bang/2014, dated 27 April 2016

- Section 48 of the Act permits a taxpayer to deduct the cost of acquisition and any improvement, for computation of income from capital gains; interest paid on housing loan is an expenditure for acquiring a house property
- Income from house property and income from capital gains are different heads of income and does not place any restriction on each other from operating
- Accordingly, interest paid on housing loan can be included for computing capital gains¹

- Given the above, the Tribunal deleted the addition made by the AO and had held that claim deduction on interest paid towards housing loan under the heads, 'Capital Gains' and 'Income from house property' would not tantamount to double deduction.

Our comments

While this decision provides relief to taxpayers who have purchased house property through loans, the facts have to be followed closely. It clarifies that a taxpayer would be eligible to claim interest expense on the housing loan borrowed for the acquisition of the house property, even if he had already claimed such interest expense while computing income from house property.

Considering this is a fact specific case and a ruling of the Tribunal, adoption of the same in other jurisdictions / set of facts could be evaluated on a case-to-case basis especially in such a case which could tantamount to deduction of expenses under two separate heads of income.

home.kpmg/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road,
Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only