



Home loan interest not eligible for double deduction while computing capital gains

Background

The Income-tax Act, 1961 (the Act) allows for deduction¹ of the cost of acquisition of a capital asset from the consideration received on transfer of the same in order to arrive at taxable capital gains. Recently, the Bangalore Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of Captain B L Lingaraju² (the taxpayer) held that interest paid on a home loan would not be eligible for deduction as the cost of acquisition while computing capital gains.

Facts of the case

- The taxpayer had sold his house property which had resulted in short-term capital gains. The income from the said house property was offered to tax prior to its sale and in the computation of such income, the taxpayer had claimed deduction³ of interest paid on the housing loan.
- In computing taxable capital gains, the taxpayer had claimed interest paid on housing loan as cost of acquisition.
- The Assessing Officer (AO) had disallowed claim of such interest as part of cost of acquisition as the said interest was claimed as a deduction⁴ from income from house property and hence, the same cannot be allowed as a deduction for computing capital gains.

- The taxpayer had relied on the decision of the Karnataka High Court in the case of Sri Hariram Hotels⁵ where the High Court had held that since the property was purchased out of a loan borrowed by the taxpayer, the interest paid on such loan was to be included in computing the cost of the acquisition of the property.
- The taxpayer appealed before the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) passed an order to the effect that 'cost of acquisition cannot be fluctuating, but it should be fixed, except in circumstances where the law permits substitution' and upheld the AO's order.
- The taxpayer went on appeal before the Tribunal on the grounds that the CIT(A) had not considered the decision of the High Court in the case of Sri Hariram Hotels, which was in favour of the taxpayer.

Tribunal's ruling

- The Tribunal observed that in addition to the judgement in the case of Sri Hariram Hotels, the taxpayer had placed reliance on various other judgements of the Madras High Court, the Delhi High Court and of other Tribunals. As there was a judgement of its jurisdictional High Court, the Tribunal did not consider these other judgements as relevant to the instant case.

¹ Section 48 of the Act

² Captain B L Lingaraju v. ACIT (ITA No. 906/Bang/2014)

³ Section 24(b) of the Act

⁴ Section 24(b) of the Act

⁵ CIT v. Sri Hariram Hotels (P.) Ltd. [2010] 229 CTR 455 (Kar)

- The Tribunal also noted that in the case of Sri Hariram Hotels, the High Court had followed its earlier decision in the case of Maithreyi Pai⁶.
- In the case of Maithreyi Pai, the taxpayer had purchased shares under a loan. Interest on such loan was claimed as a deduction⁷ in computing income from such shares. On the sale of the said shares, the taxpayer included interest paid on the loan as cost of acquisition. The High Court held that 'interest paid on the borrowings for the acquisition of a capital asset must fall for deduction⁸ as the cost of acquisition. But, if such sum was already allowed as a deduction under other heads, the same cannot be allowed as a deduction⁹ in computing capital gains. No taxpayer under the scheme of the Act could be allowed deduction of the same amount twice over'.
- In the present case, the taxpayer had claimed a deduction of interest paid on housing loan while computing income from house property which was claimed to be self-occupied. The Tribunal also observed that even if the property had been let out or used for business purposes, claim of deduction of interest could be from income house property¹⁰ or from business income¹¹ respectively.
- The Tribunal followed the rationale behind the decision of the High Court in the case of Maithreyi Pai and held that in the present case, the taxpayer was not eligible to claim interest paid on housing loan as part of the cost of acquisition in computing capital gains as the said interest was allowed as a deduction from house property.

⁶ CIT v. Maithreyi Pai [1985] 152 ITR 247 (Kar)

⁷ Section 57 of the Act

⁸ Section 48 of the Act

⁹ Section 48 of the Act

¹⁰ Section 24(b) of the Act

¹¹ Section 36(1)(iii) of the Act

Our comments

The decision endorses the position that the same sum cannot be allowed as a deduction twice under different Sections of the Act. However, the Chennai Tribunal in its decision in the case of Ramabrahmam¹² held that, in the absence of a specific provision in the Act against double deduction, deduction of interest was allowed once from income from house property and once again from capital gains on the sale of such house property.



¹² ACIT v. C Ramabrahmam (ITA No. 943/Mds/2012) and <http://www.kpmg.com/IN/en/services/Tax/FlashNews/Ramabrahmam.pdf> as accessed on 3 June 2016

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