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TAX FLASH NEWS

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Completion certificate from a government authority is not required for claiming losses on house property

Background

The Income-tax Act, 1961 (the Act) allows for a deduction[1] from income with respect to interest paid during the relevant financial year on the loans acquired for the purchase or construction of house property. In order to claim such a deduction, a certificate that the construction of the property has been completed (completion certificate) needs to be furnished. Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Sudhakar S Mody[2] (the taxpayer) held that the completion certificate need not necessarily be from a government authority in order to claim a deduction with respect to the house property.

Facts of the case

- The taxpayer had purchased a flat from Marathon Realty Limited. The flat was acquired with by funding via a loan from IDBI Bank.
- The taxpayer and the seller had entered into an agreement for the purchase of the flat in 2004. The flat was ready by October 2006, during which time the fit-out possession of the flat was taken by the taxpayer.
- The final possession of the flat was given to the taxpayer on 24 March 2007.
- The taxpayer had claimed a deduction in his India Tax Return (ITR) for the financial year 2006-07 with respect to the interest paid on loan from IDBI Bank.
- During the course of the assessment, the Assessing Officer (AO) required the taxpayer to produce a completion certificate in order to allow the deduction of interest paid on loan. The AO passed an order disallowing the deduction of interest as the taxpayer was unable to produce the said certificate.
- Aggrieved by the order, the taxpayer preferred an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)] and furnished before the CIT(A) a completion certificate issued by the housing society.
- The CIT(A) did not accept the certificate issued by the housing society on the ground that the certificate was not from the appropriate authority and upheld the order of the AO.
- The taxpayer filed an appeal before the Tribunal in order that the interest paid on the home loan be allowed as a deduction on the following grounds:
  - The taxpayer had taken possession of the house property during the financial year and
  - The completion certificate issued by the housing society was furnished in support of the completion of the construction and taking possession of the flat.
- The tax department argued that the taxpayer had not furnished the completion certificate from the appropriate authority. Hence, the possession of the flat was not conclusively proved.

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[1] Section 24(b) of the Act
[2] Sudhakar S Mody v. ACIT (ITA No. 1174/Mum/2014) – Taxsutra.com

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Tribunal's ruling

- The second proviso to Section 24 of the Act requires that the taxpayer should acquire or complete the construction of house property within three years from the end of the financial year in which the loan was taken.

- The proviso does not state that the completion certificate should be issued by the appropriate (Government) authorities.

- In the instant case, as the taxpayer had taken possession of the flat during the financial year as evidenced by the completion certificate issued by the housing society, the taxpayer was entitled to claim the deduction with respect to the interest paid on loan.

- The Tribunal allowed the appeal of the taxpayer.

Our comments

The Tribunal has relied on the language of Section 24 of the Act in order to allow the deduction for the assessee. This decision is likely to provide relief to tax payers claiming a deduction on the basis of the certificate of completion of construction issued even by non-government authorities.

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