

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 384 of 2015

Date of Decision: 26.11.2015

Priya Mahajan

...Appellant.

Versus

Commissioner of Income Tax (Appeals), Chandigarh and another
...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Aman Bansal, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the orders dated 16.6.2015 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Benches "SMC", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1221/Chd/2012, for the assessment year 2008-09, dated 22.8.2012 (Annexure A-2) passed by the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] and dated 5.10.2010 (Annexure A-1) passed by respondent No.2. The following substantial questions of law have been claimed by the assessee:-

- (i) Whether in facts and circumstances of the present case, the Ld. Authorities have erred in disallowing 75% of the deduction u/s 24(b) of the Income Tax Act, 1961 without appreciating that the appellant/assessee had solely re-paid the entire interest and principal since the date of borrowing?
- (ii) Whether in facts and circumstances of the present case, the Ld. Authorities below have erred in misinterpreting the provisions of Section 45 of the Transfer of Property Act as the investment was made out of the separate fund belonging to the appellant/assessee?
- (iii) Whether in facts and circumstances of the present case, the Ld. Authorities below have failed to appreciate that any provision for deduction/relief/incentive has to be construed liberally?
- (iv) Whether in facts and circumstances of the present case, the Ld. Authorities below have failed to quash the initiation of penalty proceedings under section 271(1)(c) of the Act without any cogent reason?
- (v) Whether in facts and circumstances of the case, the Ld. Authorities below have erred in acting only on the basis of assumptions and presumptions and after ignoring the well

reasoned material/evidence which was brought on record by the appellant/assessee?

- (vi) Whether in facts and circumstances of the case, the action of the authorities below, the impugned orders are sustainable in the eyes of law?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed her return of income on 31.7.2008 for the assessment year 2008-09 declaring the income at ₹ 7,44,834/-. The said return was processed under Section 143(1) of the Act on 10.4.2009. Subsequently, the assessee filed a revised return on 18.1.2009 declaring the income at ₹ 3,08,663/-. The case was taken up for scrutiny and notice under Section 143(2) of the Act was issued on 30.9.2009. A questionnaire along with notice under Section 143(2)/142(1) of the Act was issued on 15.2.2010. The assessee claimed deduction of interest on housing loan of ₹ 6,86,971/- under Section 24(b) of the Act for the property bearing House No. 3557, Sector-69, Mohali. The Assessing Officer framed the assessment vide order dated 5.10.2010 (Annexure A-1) and made an addition of ₹ 5,15,228/- after allowing only 1/4th of the total interest payment out of ₹ 6,86,971/- under Section 24(b) of the Act. Feeling aggrieved by the assessment order, the assessee filed an appeal before the CIT(A) who vide order dated 22.8.2012 (Annexure A-2) dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 16.6.2015 (Annexure A-3) dismissed the appeal which gave rise to the assessee to approach this Court by way of instant appeal.

3. After hearing learned counsel for the appellant-assessee, we do not find any merit in the appeal.

4. The Assessing Officer had noticed that there were four co-sharers in the house in question and the loan was taken jointly by them in their names. Since the share of the individual was not specified in the sale deed, the logical conclusion was that everyone had equal share in the property. As per Section 45 of the Transfer of Property Act, 1882 (in short "the 1882 Act"), if the consideration is paid out of common fund, belonging to a number of persons, they are entitled to interest in the property identical to the interest to which they were respectively entitled in the fund. The assessee had not produced any evidence that she had invested for purchase/construction of the house in question. The Assessing Officer had observed that the interest paid on the loan was to be divided among four co-owners as per the provisions of Section 45 of the 1882 Act and, thus, allowed only 1/4th of the total interest payment to the assessee. On appeal, the CIT(A) held that the house loan has been taken jointly by all the four co-owners in whose names the house property was purchased and, therefore, the interest paid on the loan was to be divided among the four co-owners as per the provisions of Section 45 of the 1882 Act. Further, it was held that the Assessing Officer was right in restricting the interest under Section 24(b) of the Act to 25%. The relevant findings recorded by the CIT(A) read thus:-

"2.3. I have considered the submissions of the Ld. Counsel. For the sake of ready reference, provisions of section 45 of the Transfer of Property Act are reproduced below:-

"Where immovable property is transferred for

consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.”

2.3.1. Thus, if consideration is paid out of a common fund, belonging to a number of persons, they are entitled to interest in the property identical to the interest to which they were respectively entitled in the fund. The appellant has claimed that she has invested for purchase/construction of the impugned house property, but no evidence in this regard has been produced. Further, the house loan has been taken jointly by all the four co-owners in whose

names the house property was jointly purchased. Hence, the interest paid on the loan is to be divided among the four co-owners as per the provisions of Section 45 of the Transfer of Property Act.

2.3.2. In the case of Sh. C.K. Malik (82 TTJ 836), the shares of individual co-owners were specified and so the rent was divided among the co-owners as provided in section 45 of the Transfer of Property Act. Thus, the facts in the case of Sh. C.K. Malik (supra) are distinguishable to the facts of this case. In the instant case, the shares of co-owners are not specified and so the house property as well as the housing loan is to be taken as jointly held by all the co-owners and interest claimed u/s 24(b) is also to be equally divided. The allowable interest to the appellant u/s 24(b) is also to be equally divided. The allowance interest to the appellant u/s 24(b) will accordingly be 25% of the entire interest and the Assessing Officer has rightly restricted it to 25%. The action of the Assessing Officer is upheld and the grounds of appeal Nos. 1 to 5 are dismissed.”

5. The Tribunal had affirmed the aforesaid findings of the CIT (A) by observing that the plot in question was purchased by four persons and the housing loan had also been taken jointly by the said four persons, therefore, the allowable interest to the assessee was 25% of the entire interest. Further, it was held that the Assessing Officer as well as the CIT(A) were justified in holding that since the individual shares

were not specified in the sale deed, the logical conclusion was that everyone had equal share in the property. It was also recorded that even the assessee had failed to produce any evidence on record regarding her claim that she alone had invested for purchase/ construction of the house property. The Tribunal had recorded as under:-

“9. I have carefully considered the rival submissions and have also perused the materials available on record. There is no doubt that so far as the facts of the present case are concerned, the assessee had claimed deduction on interest of housing of ₹ 6,86,971/- u/s 24(b) of the Act. There is no dispute that plot in question was purchased by four persons and the housing loan was also taken by same four persons. It is true that in the sale deed the share of individual is not specified. The language of section 45 of the Transfer of Property Act, 1882 is abundantly clear and provides that where immovable property is transferred for a consideration to two or more persons, such consideration is paid out of funds belonging to them in common, they are entitled to interest in such property identical as nearly as may be with the interest to which they were respectively entitled in the fund. If such consideration is paid out of the separate funds belonging to them respectively, then such persons will be entitled to interest in such property in proportion to the shares of the consideration which they respectively advanced. The

last requirement of section is that in the absence of evidence as to the interest in the funds to which they were respectively entitled or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested for the property. In the case of Saiyed Abdullah v. Ahmad AIR 1929 All. 817, the Hon'ble Allahabad High Court held that 'in the absence of specification of the shares purchased by two persons in the sale deed, it must be held that both purchased equal shares.' In the instant case the plot was purchased by four persons and their shares were not specified in the sale deed. Even the housing loan had also been taken jointly by the same four persons, therefore, in my considered opinion, the authorities below were justified in holding that since the individual shares were not specified in the sale deed, the logical conclusion is that everyone had equal share in the property. It is also relevant to state here that the assessee has claimed that she has invested for purchase/construction of the house property, but no evidence in support of this stand is available on records. Considering the entire facts and circumstances of the present case, I fully agree with the observations of the CIT(A) that the allowable interest to the assessee will be 25% of the entire interest and the Assessing Officer was justified in his action.”

6. The authorities below on appreciation of material on record have concurrently recorded that the assessee was entitled to 1/4th deduction, i.e. 25% of the entire interest. Learned counsel for the assessee was not able to demonstrate that the approach of the authorities below was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record. The view of the Assessing Officer, the CIT(A) and the Tribunal is a plausible view based on material on record which warrant no interference by this Court.

7. In view of the above, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

November 26, 2015
gbs

**(RAMENDRA JAIN)
JUDGE**