आयकर अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री वी. दुर्गा राव**, माननीय न्यायिक सदस्य** एवं
श्री **जी. मंजूनाथा, माननीय** लेखा सदस्य **के समक्ष**
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1675/Chny/2019**

निर्धारण वर्ष **/Assessment Year: 2013-14**

Mr.Muthu Daniel Rajan, No.10, Appar Street, Kalakshetra Colony, Besant Nagar, Chennai-600 090. [**PAN:** AADPD 9713 A]	**v.**	The Asst. Commissioner- of Income Tax, Non-Corporate Circle-1(1), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA Nos.1727 & 1632/Chny/2019**
निर्धारण वर्ष **/Assessment Years: 2013-14 & 2014-15**

The Dy. Commissioner- of Income Tax Non-Corporate Circle-1(1), Chennai	**v.**	Mr.Muthu Daniel Rajan, No.10, Appar Street, Kalakshetra Colony, Besant Nagar, Chennai-600 090. [**PAN:** AADPD 9713 A]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

Assessee by	:	Mr.K.G.Raghunath, Adv.
Department by	:	Mr.R.Bhoopathi, Addl.CIT
सुनवाई की तारीख/Date of Hearing	:	22.11.2022
घोषणा की तारीख /Date of Pronouncement	:	31.01.2023

आदेश / O R D E R

PER G. MANJUNATHA, AM:

These two cross-appeals filed by the assessee as well as the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, dated 07.03.2019, and pertains to assessment year 2013-14. The Revenue had also filed one more appeal for the AY 2014-15 against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, dated 07.03.2019. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA No.1675/Chny/2019 & ITA No.1727/Chny/2019

2. The assessee has raised the following grounds of appeal in ITA No.1675/Chny/2019 for the AY 2013-14:

> *1. The Assessment Order for the Assessment Year-2013-2014, passed under Sec.143(3) of the Act, by the Learned Assessing Officer was arbitrary and is against law and contrary to facts of the case and hence Erroneous and untenable in Law.*
>
> *2. The Learned Assessing Officer grossly erred in application of the provisions of Section 54F, and had denied the benefit of claim of exemption U/s 54F, amounting to a value of Rs 2,60,54,377/-.*
>
> *3. The appellant had purchased a residential house at Besant Nagar in the Assessment Year of 2012-13; and to meet out the costs of purchase; had sold his lands at Kunnakkadu in this Assessment Year of 2013-14; and as the sale of lands is covered within the time period stipulated U/s 54F of the Act, the addition of Rs.2,60,54,377/- caused due to disallowance of exemption U/s 54F is unjustified.*
>
> *4. The Learned Assessing Officer has miserably failed to comprehend and appreciate the binding nature of the decisions of the various Hon'ble High Courts on the same issue on hand and various associated aspects thereof.*
>
> *In view of the above and in view of further grounds that may be advanced, as the circumstances may warrant, in the interest of deliverance of justice, during the course of hearings, it is prayed that the Honourable Commissioner of Income Tax (Appeals) may be pleased to grant suitable relief after considering all the evidences*

and explanations that the Assessee could produce before the Honourable Commissioner of Income Tax (Appeals), during the course of hearing on appeals, on the issues raised in the Assessment Order concerned.

3. The Revenue has raised the following grounds of appeal in ITA No.1727/Chny/2019 for the AY 2013-14:

The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.

1. Disallowance of interest claimed OMR property:

1.1 The CIT(A) ought not to have allowed the claim of interest on housing loan in the absence of assessee showing the nexus between the settlement of loan of HDFC Bank with that of the borrowings made from Karvy Finance in respect of OMR property and that too at the rate of 14% per annum.

1.2 The CIT(A) erred in accepting the claim of the assessee and ignoring the fact that the sanctioned letter dated January 2012 of the Karvy Finance was a "Secured Business Loan".

1.3 The CIT(A) ought to have noticed that the sanctioned purpose as well as date of sanction of Karvy Loan is not related to the house property against which the same is being claimed as deduction.

1. 4 The CIT(A) relied on the fresh evidellces submitted by the assessee during the course of appellate proceedings without affording an opportunity to AO which is in violation of Rule 46A.

2. Disallowance of interest on Besant agar property:

2.1 The CIT(A) erred in accepting the rental agreement dated 28.10.2011 which was a new evidence presented before the CIT(A) during the course of appellate proceedings without affording an opportunity to AO which is in violation of Rule 46A.

2.2 The CIT(A) failed to appreciate that the assessee failed to prove the nexus of the loan with the investment in house with appropriate documentary evidences.

2.3 The CIT(A) erred in ignoring the sworn statement recorded u/s 131 of the Act from the assessee, which has got evidentiary value wherein it was stated by the assessee that he resided in the property in question.

2.4 The CIT(A) erred in relying on the nominal rent offered in the return of income for claiming huge interest as deduction without considering that the assessee was taking shelter u/s.24(b) in respect of the self-occupied property.

3. Addition to Short term capital gains:

3.1 The CIT(A) erred in coming to conclusion that income received from Chennai Metro Rail which is compensation for acquiring the property of the assessee as business income instead of capital gains.

3.2 The CIT(A) erred in ignoring the sworn statement recorded u/s 131 of the Act from the assessee, in which he had stated that the sale of land of Mudaliyar Kuppam was his personal asset and not business stock in trade.

3.3 The CIT(A) ought not to have allowed the assessee's claim since the assessee failed to furnish any evidence with regard to his business income during the course of assessment proceedings so as to prove his statement that he was in receipt of any business income.

3 .4 The CIT(A) erred in stating that the commission income received in earlier assessment years was accepted by the Assessing Officer, since the principle of res judicata does not apply to the Income Tax proceedings.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored.

4. The brief facts of the case are that the assessee is an individual and filed his return of income for the AY 2013-14 declaring total income of Rs.1,14,05,810/-, which consist of income from house property, income from business and income from capital gains. The assessment has been completed u/s.143(3) of the Act, on 30.03.2016 and determined total income of Rs.6,03,43,840/- by making additions towards disallowance of deduction u/s.54F of the Act, for Rs.2,60,54,377/-, disallowance of deduction u/s.24(b) of the Act, towards interest paid on housing loan on OMR property, on Besant Nagar property, and additions made under the head 'short term capital gains', towards brokerage & commission received amounting to Rs.62,94,736/-. The assessee carried the matter in appeal before the First Appellate Authority, and the Ld.CIT(A) for the reasons stated in their appellate order dated 07.03.2019, partly allowed appeal filed by the assessee, where he has deleted additions made towards disallowance of interest paid on housing loan u/s.24(b) of the Act, and also additions towards 'short term capital gains'. However, sustained the additions made towards disallowance of deduction u/s.54F of the Act.

Aggrieved by the order of the Ld.CIT(A), the assessee as well as the Revenue are in appeal before us.

5. The solitary issue that came up for our consideration from assessee's appeal is sustaining additions towards disallowance u/s.54F of the Act, amounting to Rs.2,60,54,377/-. The fact with regard to the dispute are that during the FY relevant to the AY 2013-14, the assessee had sold a property at Kunnakkadu vide Sale Deed dated 07.01.2013, for a consideration of Rs.3,63,50,450/- and computed long term capital gains of Rs.2,60,54,377/-. The assessee had claimed deduction u/s.54F of the Act, towards purchase of new residential house property at Besant Nagar vide Sale Deed dated 14.10.2011, and claimed deduction for Rs.2,60,54,377/-. The AO called upon the assessee to furnish necessary evidences to justify computation of long term capital gains and also deduction claimed u/s.54F of the Act. In response, the assessee submitted that he had entered into an agreement to sale in favour of Mrs.S.Lalitha Lakshmi on 28.09.2012 and has executed Sale Deed in favour of purchaser on 07.01.2013. Since, the period between agreement to sale and purchase of new asset at Besant Nagar on 14.10.2011, is less than one year before sale of original asset, he has claimed exemption u/s.54F of the Act.

5.1 The AO, however, was not convinced with the explanation of the assessee and according to the AO, deduction claimed u/s.54F of the Act, is not in accordance with law, because, the assessee has purchased new house property beyond one year from the date of sale of original asset.

Although, the assessee claims to have entered into agreement to sale on 28.09.2012, but in the recitals of Sale Deed, there is no specific reference to agreement to sale. Therefore, the AO opined that so called agreement to sale is a make belief story to get benefit of deduction u/s.54F of the Act, and thus, rejected the arguments of the assessee. The AO, further observed that without prejudice to the above on perusal of the statement of income filed for the AY 2012-13, it was noticed that the assessee had already claimed the benefit of exemption u/s.54F of the Act, for residential house at Besant Nagar and thus, claim of the assessee for the AY 2013-14, once again, is to evade payment of tax. Therefore, rejected the arguments of the assessee and disallowed deduction claimed u/s.54F of the Act, amounting to Rs.2,60,54,377/-.

5.2 The Ld.Counsel for the assessee submitted that there is no dispute with regard to the fact that the assessee had purchased a new house property at Besant Nagar on 14.10.2011. It is also not in dispute that the assessee had sold a property on 07.01.2013, and the same has been agreed to sale to the purchaser vide agreement to sale dated 28.09.2012. The AO disbelieved agreement to sale only on the ground that there is no reference to agreement to sale in the Sale Deed without appreciating the fact that the law does not mandate reference of any sale agreement in the Sale Deed. He, further submitted that if you go by date of agreement to sale and date of purchase of new asset, investment in purchase of new house property is within one year from the date of sale of original asset and

thus, the assessee is entitled for deduction u/s.54F of the Act. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of Sanjeev Lal v. CIT reported in [2014] 365 ITR 389 (SC). As regards, the observation of the AO with regard to multiple claim of deduction u/s.54F of the Act, the Counsel submitted that if the claim is in accordance with law and the amount paid for purchase of new property, is more than the amount of sale consideration received for multiple properties, then the assessee can claim the deduction u/s.54F of the Act, for multiple properties, but the AO without appreciating the relevant facts, simply rejected the arguments of the assessee and made addition.

5.3 The Ld.DR present for the Revenue supporting the order of the Ld.CIT(A) submitted that so called agreement to sale filed before the Ld.CIT(A), is a make belief story and the same was not filed before the AO. Further, if you go by the recitals of agreement to sale, it seems that it was not bona fide, because, there was no reference of agreement to sale in the Sale Deed. Further, the assessee had already claimed deduction u/s.54F of the Act, for the AY 2012-13, for purchase of property at Besant Nagar. Therefore, once again claiming deduction u/s.54F of the Act, for very same property, is not in accordance with law. The Ld.CIT(A) after considering relevant submissions of the assessee, has rightly sustained the additions made by the AO and their order should be upheld.

5.4 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no

dispute with regard to the fact that the assessee had sold a property vide Sale Deed dated 07.01.2013 for a consideration of Rs.3,63,50,450/-. It was not in dispute that the assessee had purchased a new residential house property at Besant Nagar on 14.10.2011. It was also not in dispute that amount paid for purchase of property at Besant Nagar, is higher than the amount of consideration received for sale of property. According to the AO, the period between sale of original asset i.e. 07.01.2013 and purchase of another residential property on 14.10.2011, is more than one year before the sale of original asset at Kunnakkadu. The AO further was of the opinion that the assessee had already claimed deduction u/s.54F of the Act, in respect of sale consideration received towards property in the AY 2012-13, for purchase of house property at Besant Nagar. Therefore, once again claiming deduction u/s.54F of the Act, for very same property is not in accordance with law.

5.5 We have given our thoughtful consideration to the reasons given by the AO to deny the benefit of deduction u/s.54F of the Act, towards purchase of residential house property at Besant Nagar and we ourselves do not subscribe to the reasons given by the AO for simple reason that if you go by date of purchase of new asset i.e. on 07.01.2013 and date of agreement to sale for sale of property at Kunnakkadu i.e. on 28.09.2012, then the period is less than one year before the date of sale of original asset as prescribed u/s.54F of the Act, and the assessee is entitled for deduction. In fact, the AO and the Ld.CIT(A) are not in dispute with regard to fact that

if you go by date of purchase of new asset and date of agreement to sale for property, it is less than one year before the date of sale of original asset. However, the AO and the Ld.CIT(A) denied deduction claimed u/s.54F of the Act, only on the ground that agreement to sale dated 28.09.2012, is not bona fide. We find that the assessee has filed copy of deed of agreement dated 28.09.2012, and agreed to sell in favour of Mrs.S.Lalitha Lakshmi and we find that the parties have set out terms and conditions for purchase of property. Further, the parties have acted upon the sale agreement and executed a Sale Deed dated 07.01.2013 in favour of the purchaser. From the above, what we understood are that the assessee had entered into an agreement to sale with the buyer on 28.09.2012 and had executed final Sale Deed on 07.01.2013. Therefore, we are of the considered view that the AO and the Ld.CIT(A) is erred in not considering the agreement to sale between the parties to allwo the benefit of deduction u/s.54F of the Act.

5.6 In so far as the legal position with regard to deduction claimed u/s.54F of the Act, is concerned, the Hon'ble Supreme Court in the case of CIT v. Sanjeev Lal (supra) had considered a very similar issue and held that transfer in relation to capital asset including extinguish of any rights therein and it has been held that as execution of agreement to sale created a transfer as defined u/s.2(47) of the Act. It has been adjudicated that the date of sale agreement is effective date to be considered to enable the assessee to get the benefit of deduction u/s.54F of the Act. In so far as

reliance on the decision of the Hon'ble Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Another reported in [2012] 340 ITR 1 (SC), we find that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Further, as per the Stamps and Registration Act, the title and interest in the property will not transfer to the buyer unless such transfer is by way of a deed, as held by the Hon'ble Supreme Court. But, when it comes to the beneficial provisions of Sec.54F of the Act, what is required to be seen is whether the assessee has invested consideration for purchase of property or not? In case, the assessee has satisfied conditions prescribed therein and invested sale consideration for purchase of residential house property, then even if some technical lapses like non-registration of agreement to sale, etc., does not disentitle assessee to claim benefit u/s.54F of the Act, in case, the assessee proves with evidences that finally he had registered the property in his favour. In this case, although, the agreement to sale was not registered, but the final Sale Deed executed in favour of purchaser, has been registered as required under the law. Therefore, in our considered view, when the assessee has filed evidences in the form of agreement to sale and if the agreement to sale date is considered, then the period of investment in new house property is less than one year before the date of sale of original asset and thus, in our considered view, the assessee is entitled for deduction u/s.54F of the Act.

5.7 In so far as observation of the AO and the Ld.CIT(A) with regard to multiple deductions in two assessment years, we find that the ITAT Delhi Bench in the case of ACIT v. Mahinder Kumar reported in 84 taxmann.com 141 (Delhi-Trib.), has considered identical issue and held that capital gains on sale of house property can be invested in construction/purchase of house property more than once for same property, if cost of new property is less than capital gains that arose to aassessee. In this case, on the basis of details filed by the assessee, we find that amount paid for purchase of new property at Besant Nagar is much more than the amount of sale consideration received for transfer of original asset, including the asset sold in AY 2012-13 and thus, in our considered view, the assessee can claim deduction u/s.54F of the Act, as long as he or she satisfies other conditions. Since, the assessee has satisfied all conditions prescribed therein, as per provisions of Sec.54F of the Act, he is entitled to claim deduction towards re-investment of sale consideration for purchase of residential house property. Therefore, we direct the AO to allow deduction u/s.54F of the Act, as claimed by the assessee and delete additions made towards disallowance u/s.54F of the Act.

6. The next issue that came up for our consideration from the Revenue's appeal is disallowance of interest claimed on OMR property u/s.24(b) of the Act. The AO has disallowed interest claimed u/s.24(b) of the Act, amounting to Rs.73,08,643/- on the ground that the assessee could not establish nexus between borrowed funds and purchase of house property.

It was the explanation of the assessee that he had purchased OMR property for a consideration of Rs.11.52 Crs. and availed loan from HDFC Bank on 20.02.2008 amounting to Rs.11.68 Crs. The assessee further claimed that he had availed loan from Karvy Finance for Rs.5.50 Crs. on 25.01.2012 to pre-close HDFC Bank loan. Since, the loan borrowed from Karvy Finance is for pre-closure of earlier loan availed from HDFC Bank for purchase of property, interest paid on loan borrowed from Karvy Finance, is eligible for deduction u/s.24(b) of the Act. In this regard, taken support from CBDT Circular No.28 dated 20.08.1969.

6.1 The Ld.DR present for Revenue submitted that the Ld.CIT(A) ought not to have allowed the claim of interest on housing loan claimed to have received from Karvy Finance in the absence of assessee showing the nexus between the settlement of loan of HDFC Bank with that of borrowings made from Karvy Finance in respect of OMR property. The Ld.DR further referring to loan sanction letter from Karvy Finance, submitted that loan availed from said financial institutions is a secured business loan, which cannot be considered as housing loan. The Ld.CIT(A) without appreciating the facts, simply deleted the additions made by the AO.

6.2 The Ld.Counsel for the assessee referring to sanction letter from Karvy Finance and also loan statement of HDFC Bank submitted that the AO never disputed the fact that the assessee has availed loan from HDFC Bank for purchase of OMR property. He further submitted that the assessee has availed loan from Karvy Finance by mortgaging OMR property to re-

pay existing loan with HDFC Bank. The assessee further referring to a letter from HDFC Bank dated 24.02.2012 submitted that the assessee has closed loan with HDFC Bank upon receipt from Karvy Finance. The AO without appreciating the relevant facts, simply made addition.

6.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has availed loan from HDFC Bank when he had purchased property at Kottivakkam, OMR, Chennai. It was also not in dispute that the assessee has availed fresh loan from Karvy Finance to pre-close the loan availed from HDFC Bank, which is evident from documents submitted by the assessee, where loan proceeds from Karvy Finance has been used to re-pay existing loan with HDFC Bank. Since, there is a direct nexus between loan availed from HDFC Bank and purchase of property at OMR, in our considered view, subsequent loan taken from Karvy Finance to re-pay existing loan with HDFC Bank, satisfies the conditions prescribed u/s.24(b) of the Act, and the assessee is entitled for deduction towards interest paid on loan borrowed from financial institution. In fact, the CBDT Circular No.28 dated 20.08.1969 has clarified that if the second borrowing has really been used merely to re-pay the original loan and this fact is proven to the satisfaction of the AO, the interest paid on second loan would also be allowed as deduction u/s.24(1)(vi) of the Act. In this case, the Ld.CIT(A) recorded categorical findings that the assessee has used second loan from Karvy Finance to re-pay existing loan

borrowed from HDFC Bank and there is a nexus between loan borrowed from purchase of property and thus, the assessee is entitled for deduction towards interest paid on second loan. The findings of facts recorded by the Ld.CIT(A) is uncontroverted. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

7. The next issue that came up for our consideration from the Revenue's appeal is disallowance of interest paid on loan borrowed for purchase of property at Besant Nagar. The AO has disallowed interest claimed u/s.24(b) of the Act, in respect of house property at Besant Nagar, on the ground that said property has been used by the assessee for self-occupation purpose. According to the AO, as per Inspector Report obtained during the course of assessment proceedings, the assessee was residing at Besant Nagar property and thus, he had restricted deduction claimed towards interest to the extent of Rs.1,50,000/- and disallowed balance amount of Rs.75,60,327/-. On appeal, the Ld.CIT(A) has deleted the additions made by the AO by holding that the assessee has let out the property for a monthly rental income of Rs.60,000/- to Mr.L.Mohansundaram and has also offered rental income for the impugned assessment year. Therefore, interest if any paid on loan borrowed from bank for purchase of property is allowable as deduction.

7.1 The Ld.DR submitted that the Ld.CIT(A) erred in appreciating the fact that the rental agreement dated 28.10.2011, which was a new evidence presented before the Ld.CIT(A) was not filed before the AO and thus,

admission of new evidence before the Ld.CIT(A) without providing an opportunity to the AO, is violation of Rule 46A of Income Tax Rules, 1962. The Ld.DR further submitted that the Ld.CIT(A) failed to appreciate the fact that the assessee failed to prove the nexus of loan with the investment in house property with appropriate documentary evidence. Therefore, the AO has rightly disallowed interest paid on housing loan.

7.2 The Ld.Counsel for the assessee supporting the order of the Ld.CIT(A) submitted that the Ld.CIT(A) has recorded categorical findings in light of evidences filed by the assessee that house property at Besant Nagar was let out and rental income from the said property has been offered under the head 'income from house property'. The Ld.Counsel for the assessee further submitted that the assessee had also filed necessary evidences to prove that he had borrowed loan from bank for purchase of property. In fact, the AO never disputed the fact that the assessee has availed loan from bank for purchase of property. However, disallowed interest claimed u/s.24(b) of the Act, only on the ground that house property was self-occupied, but was not let. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO and their orders should be upheld.

7.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The Ld.CIT(A) had recorded categorical findings in his appellate order at Para No.4.3.1 that the assessee had furnished a rental agreement dated 28.10.2011 entered

into with Mr.L.Mohansundaram, in connection with Besant Nagar property to prove that the property was in fact let out during the previous year relevant to the AY 2013-14. The Ld.CIT(A) further noted that as per recitals on rental agreement, the assessee had let out impugned property for monthly rent of Rs.60,000/- and has also offered rental income for the AY 2012-13 itself. The assessee had also offered rental income for the AY 2013-14. Therefore, the Ld.CIT(A) came to conclusion that when the property has been let out and rental income is offered to tax, under the head 'income from house property', then interest paid on loan borrowed for acquisition of property should be allowed as deduction u/s.24(b) of the Act. The Ld.CIT(A) further noted that the observation of the AO on the basis of report of Inspector obtained in the course of the assessment proceedings for the AY 2016-17, has no relevance to decide whether the property has in fact let out for the AY 2013-14 or not. In our considered view, the findings and facts recorded by the Ld.CIT(A) is uncontroverted with any evidences except stating that there is a violation of Rule 46A of Income Tax Rules, 1962. In our considered view, the assessee has placed all evidences to prove that rental agreement was filed before the AO and also rental income has been offered for earlier assessment years also. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to delete the additions made towards disallowance of interest u/s.24(b) of the Act and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

8. The next issue that came up for our consideration from Revenue's appeal is deletion of additions towards 'short term capital gains'. The AO has made addition of Rs.62,94,736/- on the ground that the assessee claimed exemption on sale of his own land and thereby concluded that business profit claimed by the assessee needs to be treated as 'short term capital gains'. It was the arguments of the assessee that, he was involved in the business of commission & brokerage and therefore, income derived from commission business has rightly offered to tax under the head 'income from business or profession'.

8.1 The Ld.DR submitted that the Ld.CIT(A) erred in coming to conclusion that income received from Chennai Metro Rail which is compensation for acquiring property of the assessee as 'business income' instead of 'capital gains'. The Ld.DR further submitted that the Ld.CIT(A) erred in ignoring the sworn statement recorded u/s.131(1) of the Act, of the assessee in which he had stated that the sale of land was a personal asset and was not come under stock in trade. The Ld.CIT(A) without appreciating the facts simply deleted the additions made by the AO.

8.2 The Ld.AR, on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee is in the business of real estate and derived commission & brokerage income. The assessee has offered commission & brokerage income under the head 'income from business' even for earlier assessment years and Department has accepted. However, the AO has taken a different view for the impugned assessment year without there

being any change in facts for the current assessment year. The Ld.CIT(A) after considering relevant facts has rightly concluded that commission & brokerage income is assessable under the head 'income from business'.

8.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has admitted commission income apart from real estate deals for the earlier assessment years and the Department has accepted the claim of the assessee. The AO has taken a different view for the impugned assessment year without there being any change in facts and circumstances of the case. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to direct the AO to assess commission & brokerage income under the head 'income from business and profession' as against income assessed by the AO under the head 'short term capital gains' and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

9. In the result, appeals filed by the assessee in ITA No.1675/Chny/2019 for the AY 2013-14 is allowed & appeal filed by the Revenue in ITA No.1727/Chny/2019 is dismissed.

ITA No.1632/Chny/2019 for the AY 2014-15:

10. The Revenue has raised the following grounds of appeal:

> *1. The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.*

2.1 The Ld. CIT(A) erred in giving relief to the assessee by deleting the interest disallowed u/s 24(b) of the Act on his self-occupied property.

2.2 The CIT(A) erred in admitting fresh evidence viz., the rental agreement dt.05.12.2013 which was not produced during the course of assessment proceedings before the AO.

2.3 The CIT(A) erred in not appreciating the sworn statement recorded u/s 131 of the Act from the assessee on 31.12.2016 and the Inspector's enquiry report dt.20.12.2016 at the time of which the assessee had not produced the above rental agreement.

2.4 The CIT(A) erred in giving relief to the assessee by deleting the interest based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.

2.5 The CIT(A) failed to appreciate that the assessee had claimed a total payment of interest at Rs.1,90,37,045/- during the year under consideration and had claimed the entire interest payment as deduction u/s 24(b) on three different properties but had declared only Rs.6,47,44,374/- as the loan obtained from Federal Bank for the purpose of housing, the rest being business loan in his balance sheet.

2.6. The CIT(A) failed to appreciate that no TDS was deducted on the payment received of Rs.7,20,000/- as rental income, which goes to prove that the assessee had offered this notional income only to claim deduction u/s24(b) of the Act.

3.1 The CIT(A) erred in deleting the disallowance of interest claimed at Rs.1,15,70,736/- u/s 24(b) of the Act against the Kottivakkam (OMR) property merely relying on the Board's Circular, in the absence of proving any nexus between the borrowed capital and the let out property at OMR.

3.2 The CIT(A) erred in accepting new evidences claiming that the loan availed from HDFC was foreclosed and another loan from Karvy finance was availed without affording any opportunity to the AO.

3.3 The CIT(A) erred in giving relief to the assessee by deleting the interest based on fresh evidence submitted for the first time before the CIT(A) without giving opportunity to the AO under Rule 46A of the Income tax Rules, for verifying the said claim of the assessee based on evidences filed afresh during appellate proceedings.

3.4 The CIT(A) failed to appreciate that the assessee had claimed deduction u/s 24(b) of the Act in respect of rental income received from M/s. Maples ESM Technology located at Door No.284/1, OMR, Kandanchavadi, Perungudi, Chennai-96 to the tune of Rs.57,85,368/-and from Trishla Apparels Private Limited located at Door No. 152, North Usman Road, T.Nagar, Chennai-17 to the tune of Rs.57,85,367/- and that these interests were paid to two parties in each case being Federal Bank and Karvy Finance.

3.5 The CIT(A) ought to have appreciated that the assessee in his balance sheet had stated that the loan received from Federal Bank only to be housing loan, the rest being business loan and therefore the claim of the assessee in taking shelter

u/s 24(b) in respect of the entire interest payment on different properties cannot be true.

4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored.

11. The first issue that came up for our consideration from Ground Nos.2.1 to 2.6 of the Revenue's appeal is disallowance of interest u/s.24(b) of the Act towards Besant Nagar property at Rs.74,66,310/-. We find that an identical issue had been considered by us in ITA No.1727/Chny/2019 for the AY 2013-14, where we have dealt with the issue of disallowance of interest u/s.24(b) of the Act, in respect of Besant Nagar property and held that the assessee was able to establish nexus between interest paid on loan borrowed for purchase of property. The reasons given by us in the preceding paragraph Nos.7 to 7.3 in ITA No.1727/Chny/2019 for the AY 2013-14 shall, ***mutatis mutandis,*** apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

12. The next issue that came up for our consideration from Ground Nos.3.1 to 3.5 of the Revenue's appeal is disallowance of interest u/s.24(b) of the Act, in respect of OMR property. We find that an identical issue had been considered by us in ITA No.1727/Chny/2019 for the AY 2013-14, where we have dealt with the issue of disallowance of interest u/s.24(b) of the Act, in respect of OMR property and held that the assessee was able to establish nexus between interest paid on loan borrowed for purchase of property. The reasons given by us in the preceding paragraph Nos.6 to 6.3

in ITA No.1727/Chny/2019 for the AY 2013-14 shall, ***mutatis mutandis,*** apply to this appeal, as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

13. In the result, appeal filed by the Revenue in ITA No.1632/Chny/2019 for the AY 2014-15 is dismissed.

14. In the result, appeals filed by the assessee in ITA No.1675/Chny/2019 for the AY 2013-14 is allowed & appeal filed by the Revenue in ITA No.1727/Chny/2019 is dismissed and appeal filed by the Revenue in ITA No.1632/Chny/2019 for the AY 2014-15 is also dismissed.

Order pronounced on the 31st day of January, 2023, in Chennai.

Sd/-	***Sd/-***
(वी. दुर्गा राव**)**	**(**जी. मंजूनाथा**)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 31st January, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF