

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCHES 'G', MUMBAI**

**ITA No.7192/Mum/2010
Asst. Year 2006-2007**

**M/s WINDERMERE PROPERTIES PVT LTD
HDFC House, CTS 154 & 155
Oshiwara District Centre, Garden Road
Goregaon Road, Mumbai – 400 104.
PAN : AAACW5371M.**

Vs

**THE DY COMMISSIONER OF INCOME TAX
Circle 9(3), Mumbai.**

ORDER

Per : R S Syal , AM :

This appeal by the assessee arises out of the order passed by the Commissioner of Income-tax (Appeals) on 06.08.2010 in relation to the assessment year 2006-2007.

2. First ground of the appeal is against the confirmation of the action of the Assessing Officer in disallowing prepayment charges amounting to Rs. 1,56,68,640 paid to HDFC Limited for closure of loan taken from HDFC Limited for the purpose of acquisition of the premises. Briefly stated the facts of this ground are that in the computation of income under the head "Income from house property", the assessee claimed deduction of Rs. 11.05 crore towards interest u/s 24(b) of the Income-tax Act, 1961 (hereinafter called 'the Act'). On perusal of its details, the Assessing Officer noticed that it comprised of the interest of Rs. 9.48 crore and prepayment charges of Rs. 1.56 crore. On being called upon to explain as to why the deduction should not be denied in respect of prepayment charges, the assessee tendered its reply which has been reproduced in the assessment order. Not convinced with the assessee's contention, the Assessing Officer held that the prepayment charges of Rs. 1.56 crore would not fall u/s 24(b) of the Act. Resultantly, the deduction was denied for such amount. No relief was allowed in the first appeal.

3. We have heard the rival submissions and perused the relevant material on record. There is no dispute on the fact that the assessee availed loan for acquisition of certain premises, the income from which was shown and accepted under the head "Income from house property". The assessee claimed deduction of Rs. 11.05 crore u/s 24(b) of the Act. The Assessing Officer did not allow deduction of Rs. 1.56 crore paid as prepayment charges for the closure of the loan account which was taken for acquisition of property fetching the extant house property income. Under these circumstances the question arises as to whether such amount of Rs. prepayment charges' paid to HDFC for closure of loan account is deductible u/s 24(b) of the Act. This provision provides that : "where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital" shall be allowed as deduction in the computation of income under the head "Income from house property". The term "interest" has been defined in section 2(28A) to mean : "*interest payable in any manner in respect of*

any moneys borrowed or debt incurred and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized". The definition of interest u/s 2(28A) makes it manifest that it has basically two components, viz., firstly, the amount with nomenclature of interest for moneys borrowed and secondly, the amount paid by whatever name called in respect of the money borrowed or debt incurred. The second category may also encompass any charge paid for not utilizing the credit facility. When we incorporate the definition of 'Rs. interest' in section 24(b), the position which emerges is that not only the amount paid designated as interest but also any other amount paid by whatever name called in relation to such debt incurred also qualifies for deduction.

4. Adverting to the facts of the instant case, it is noticed that the assessee obtained loan from HDFC Limited for acquisition of property. Later on it arranged the money from other sources and repaid the loan which was taken for acquisition of property. The bank accepted the early repayment of loan on receipt of prepayment charges. By such repayment, the assessee managed to wipe out its interest liability in respect of the loan, which would have otherwise qualified for deduction u/s 24(b) during the continuation of loan. It is obvious that these prepayment charges have live and direct link with the obtaining of loan which was availed for acquisition of property. It is beyond our comprehension as to how the amount paid as interest for the loan taken is allowable as deduction but the amount paid as prepayment charges of the very same loan is not deductible. In our considered opinion the payment of such 'prepayment charges' cannot be considered as de hors the loan obtained for acquisition or construction or repair etc. of the property on which interest is deductible u/s 24(b) of the Act. Both the direct interest and prepayment charges are species of the term 'Rs. interest'. We, therefore, set aside the impugned order on this issue and order for the grant of deduction.

5. Ground no.2 about the deduction in respect of property tax amounting to Rs. 2.03 lakh and ground no.3 against the confirmation of disallowance of Rs. 3,96,243 being various expenses incurred against the house property income were not pressed by the learned AR. Both these grounds stand dismissed.

6. In the result, the appeal is partly allowed.

(Order pronounced on this 22nd day of March, 2013.)