
(1990) 10 CAL CK 0009

In the Calcutta High Court

Case No : Income Tax Reference No. 220 of 1987

Arvind Kumar Lohia

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 26-10-1990

Acts Referred:

Income Tax Act, 1961 — Section 36, 37

Citation : (1993) 113 CTR 96 : (1994) 205 ITR 593 : (1993) 70 TAXMAN 149

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit Kumar Sengupta, J

Bench : Division Bench

Advocate : R.C. Prasad, for the Appellant; M.K. Banerjee, for the Respondent

Judgement

Ajit Kumar Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961 ("the Act"), for the assessment year 1981-82, at the instance of the assessee, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to deduction on account of interest paid by him on the capital borrowed for the purpose of investment in the firm in which he is a partner either u/s 67(3) or Section 36(1)(iii) of the Income Tax Act, 1961 ?"

2. The facts are that the assessee, an individual, is a partner in the firm, East India Transport Agency. The said firm changed its accounting year from Ram Navami to June 30, as a result of which there was no assessment of the firm for the assessment year 1981-82. The assessee, accordingly, had no share income from the said firm and for the assessment year under consideration the assessee has not, therefore, shown any income from the firm. However, before the Income Tax Officer the assessee claimed that interest to the tune of Rs. 29, 195 paid by him on the capital borrowed for investment in the firm should be allowed to be set off against the income from speculation. The Income Tax Officer was of the opinion that since there was no income from the firm this year, there was no

justification for allowance of interest paid by the assessee on the money borrowed for making capital investment in the firm. He, accordingly, disallowed the assessee's claim for deduction of the aforesaid amount of interest. During the relevant accounting year the assessee also had income from his speculation business which is a business distinct and separate from the business of the assessee as a partner of the aforesaid firm.

3. Against the order of the Income Tax Officer, the assessee appealed to the Appellate Assistant Commissioner before whom it was submitted on behalf of the assessee that the Income Tax Officer was wrong in not allowing deduction for the loss suffered by the assessee by way of payment of interest on the capital borrowed for the purpose of investment in the firm. It was submitted that payment of interest was a business loss and, therefore, as per the provision of Section 70(1), read with Section 71(1) of the Act, the loss was allowable as a deduction from the income of that year under any other head. It was further submitted that even though no income was earned from the firm in which the assessee was a partner, yet the amount of interest paid by him on the borrowed capital was allowable in the assessment year under consideration as the interest amount was paid during the year. The Appellate Assistant Commissioner noted that the borrowing of the loan capital and the payment of interest amount are not in dispute. He was of the view that the assessee suffered a loss by way of payment of interest on the borrowed capital during the relevant previous year and so as per the provision of Section 70(1) he is entitled to set off the loss against the income of the said year. The Income Tax Officer was accordingly directed to allow deduction of the interest amount of Rs. 29, 195 from the business income of the assessee for the year.

4. Aggrieved by the order of the Appellate Assistant Commissioner, the Department came up in second appeal before the Tribunal.

5. The Tribunal held that in order to justify a claim u/s 67(3) of the Act there must be some share income from the firm in which the assessee is a partner. If a claim is negated on the phraseology of Section 67(3), the assessee cannot fall back upon Section 36(1)(iii) of the Act which is in the nature of a general provision relating to all businesses. In such a situation Section 36(1)(iii) will have no application and the claim for deduction cannot be allowed under the provision of this section. The Tribunal, therefore, set aside the order of the Appellate Assistant Commissioner.

6. In our view, the Tribunal came to a correct conclusion. Section 67 lays down the method of computing a partner's share in the income of the firm. u/s 67(3) deduction is allowable in respect of interest paid by a partner on capital borrowed by him for the purposes of investment in the firm provided the partner has income by way of his share of the firm's profit. In this case, there is no such profit and, accordingly, no deduction can be allowed u/s 67(3). Further, when Section 67(3) which is a special provision is applicable, a partner cannot fall back upon Section 36(1)(iii) for claiming deduction of interest paid on capital

borrowed for the purpose of investment in the firm.

7. Our attention has been drawn to a decision of the Madras High Court in M.S.P. Raja and Another Vs. Commissioner of Income Tax, , where the Madras High Court has also taken the view that in order to justify a claim for deduction u/s 67(3), there must be some share income from that firm and that when a deduction under the provision of Section 67(3) is negated, the assessee cannot fall back upon Section 36(1)(iii).

8. For the reasons aforesaid we are of the view that the assessee is not entitled to deduction on account of the interest paid by him on the capital borrowed for the purpose of investment in the firm in which he was a partner inasmuch as he had no share income from the firm where such investment was made. He is also not entitled to get the benefit u/s 36(1)(iii) as no capital was borrowed for the purpose of carrying on any business by him in his individual capacity.

9. For the reasons aforesaid, we answer this question in the affirmative and in favour of the Revenue and against the assessee.

10. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

11. I agree.