(1989) 01 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 172 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Agra Tannery — RESPONDENT

Date of Decision : 23-01-1989

Acts Referred:
Income Tax Act, 1961 — Section 40

Citation : (1989) 80 CTR 238 : (1989) 179 ITR 44 : (1989) 45 TAXMAN 331

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; None, for the Respondent

Judgement

S.S. Sodhi, J.—The assessee-firm required funds for carrying on its business. To provide these funds, its two partners, R.N. Wasan and A.N. Wasan, took loans against their individual insurance policies from the Life Insurance Corporation of India. The loans so taken were thereafter credited in the accounts of these two partners. The interest payable on these loans was subsequently paid by the assessee-firm directly to the Life Insurance Corporation, the amount so paid being Rs. 9,540. The question then arose as to whether this amount paid as interest fell outside the ambit of Section 40(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. According to the Income Tax Officer, this amounted to interest paid to the partners which could not be allowed in view of Section 40(b) of the Act. This was confirmed by the Appellate Assistant Commissioner in appeal, The Tribunal, however, held that the provisions of Section 40(b) of the Act were not attracted and that the disallowance of this amount was not thus justified. This has led to the following question being referred for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that interest paid by the assessee-firm to the Life Insurance Corporation for borrowing raised against the policies on the life of its partners did not attract the provisions of Section 40(b) of the Income Tax Act, 1961 ?".

3. A reference to the partnership deed would show that according to its terms, no interest was payable on any contributions made by the partners towards investment in the business. Further, it is also pertinent to note that the amount that was taken as loan by the partners from the Life Insurance Corporation was credited not to the account of the Life Insurance Corporation of India, but to the capital account of the respective partners. In this situation, the interest paid by the firm to the Life Insurance Corporation was in fact interest paid to the partners and the provisions of Section 40(b) of the Act were clearly attracted to it. This being so, the reference must accordingly be answered in the negative, in favour of the Revenue and against the assessee. In the circumstances, however, there will be no order as to costs.