(1978) 11 CAL CK 0037

In the Calcutta High Court

Case No : Income-tax Reference No. 246 of 1974

Commissioner of Income Tax — APPELLANT

Vs

C.L. Bajoria and Others — RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:
Income Tax Act, 1961 — Section 67(3)

Citation : (1979) 119 ITR 6

Hon'ble Judges : S.M. Guha, J;S.C. Deb, J

Bench : Division Bench

Advocate : Suhas Sen, for the Appellant;N.K. Poddar and R.N. Saha, for the Respondent

Judgement

Deb, J.—This is a reference u/s 256(1) of the I.T. Act, 1961, It relates to the assessment of 1966-67 and the question before us is as follows :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 67(3) of the Income Tax Act, 1961, the Tribunal was right in holding that the interest of Rs. 79,609 was an allowable deduction in computing the share of the assessee in the income of the firm, M/s. Soorajmull Nagarmull ?"

2. The assessee is au HUF. The assessee borrowed Rs. 79,609 and invested the said amount with M/s. Soorajmull Nagarmull, a firm in which the assessee was a partner. M/s. Soorajmull Nagarmull utilised this amount for payment of its taxes.

3. In the assessment proceedings the ITO held that the interest paid by the assessee on the aforesaid amount was not a deductible expenditure on the ground that M/s. Soorajmull Nagarmull had utilised this amount for payment of its taxes.

4. The AAC dismissed the appeal filed by the assessee, but the Appellate Tribunal has allowed the claim of the assessee.

5. Section 67(3) of the Act says that any interest paid by a partner on the capital borrowed by him for the purpose of investment in the firm shall, in computing his income chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the firm, be deducted from the share.

6. In view of this express provision of the section, we are of the opinion that the Tribunal was right in holding that the section does not stipulate that the interest will not be admissible if the amount given to the firm was not used by the firm for the purpose of its business.

7. We, accordingly, answer the question in the affirmative and in favour of the assessee. There will be no order as to costs.

Sudhindra Mohan Guha , J.

8. I agree.