
(1980) 08 CAL CK 0016

In the Calcutta High Court

Case No : Income-tax Reference No. 221 of 1977

Commissioner of Income Tax

APPELLANT

Vs

C.L. Bajoria

RESPONDENT

Date of Decision : 07-08-1980

Acts Referred:

Income Tax Act, 1961 — Section 67(3)

Citation : (1981) 129 ITR 772

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.L. Pal and R. Prasad, for the Appellant;N.K. Poddar, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the Tribunal has referred the following question to this court:

" 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 justified in law in holding that the interest of Rs. 1,44,000 was an allowable deduction in computing the share of the assessee in the firm of M/s. Soorajmull Nagarmull for the assessment year 1966-67 ? "

2. The question arises out of the assessment for the assessment year 1966-67. The total income of the assessee for this year was computed at a figure of Rs. 95,482 which had included a sum of Rs. 76,804 for rate purpose. Rs. 76,804 represented the assessee's net share of profit in the unregistered firm of M/s. Soorajmull Nagarmull in which the assessee had one anna six pies share. The assessee's gross share of profit in the said firm came to Rs. 2,20,804 and the ITO reduced it by Rs. 1,44,000 as representing the interest deductible u/s 67(3) of the I.T. Act, 1961. In the course of the appellate proceedings before the AAC, the ITO requested the AAC by a letter dated 1st of September, 1971, that the assessment be enhanced by Rs. 1,44,000 as it was deducted from the share income of the firm erroneously. Apparently, the ITO's plea was that the interest

was not allowable as the amount was borrowed by the assessee and given to the firm and utilised for the purpose of the firm was not for the purposes of the firm's business. On the other hand, the assessee resisted the ITO's plea for enhancement on the ground that the interest had been allowed rightly by the ITO, though it was admitted that the amount borrowed was passed on to the firm of M/s. Soorajmull Nagarmull for the payment of taxes. Reliance was also placed before the AAC on a decision of the Madhya Pradesh High Court. The AAC did not accept the assessee's contention that the interest of Rs. 1,44,000 was rightly allowed in the original assessment. Since the amount borrowed by the assessee was utilised by the firm, according to the AAC, for payment of taxes, the AAC held that the assessee had not discharged the onus of showing that the borrowed amount was used for "business purposes". He, therefore, held that the decision of the Madhya Pradesh High Court upon which the assessee had relied was not applicable to the facts of the case. The alternative plea put up by the assessee that at least 22% of the tax paid by the firm should be related to the appellant and the interest be allowed in that proportion was also similarly rejected. In the result, the AAC accepted the ITO's plea for enhancement and enhanced the total income by Rs. 1,44,000. Being aggrieved by the aforesaid decision of the AAC, the assessee went up in appeal before the Tribunal.

3. The matter before the Tribunal was disposed of by a Bench of three learned members, in which, after noting the rival contentions advanced on behalf of the parties, the majority decision of the Tribunal was in favour of the assessee. In this connection, the Vice-President of the Tribunal and the Accountant Member referred to the construction of Section 67(3) and observed that it was by now axiomatic that the share in the profits of the partnership received by a partner was profits or gains of business carried on by him and was liable to be computed as such. The majority members of the Tribunal were of the view that the share income was stamped with the character of business though the firm itself might have derived its income from various business and non-business sources. According to the majority of the members of the Tribunal, it was for this reason that Section 67(2) of the T.T. Act, 1961, had provided that the share of the partners in the income or loss of the firm should be apportioned under the various heads of income in the same manner in which the income or loss of the firm had been determined under each head of income. Section 67(2), therefore, derogated or deviated from the settled principles of law when u/s 67(3) of the Act any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm was made deductible from his income under the head "Profits and gains of business or profession", whether the firm was registered or unregistered and irrespective of the sources from which the firm might have derived its income. The interest of a partner on the capital borrowed by him for the purpose of investment in the firm, according to the majority members of the Tribunal, was deductible in its entirety from his business income, though he might have income from other sources like dividends and property income from the firm. On the construction of Section 67 of the I.T. Act, the majority members

of the Tribunal, after referring to several discussions, observed that it was not safe to go by the literal meaning of the expression investment in every case without reference to the context in which it appeared. Section 67(3) permitted deduction of interest on capital borrowed for the purpose of investment in the firm. Any act of investment in the firm, according to the majority members of the Tribunal, would amount to laying out money for profit or with an expectation to derive income from the firm immediately or in the near future. The dictionary meaning of the expression mainly deals with the direct investment in properties, shares, etc. Investment in the firm was an indirect mode of laying out money for profit or routing the funds to the firm which would utilise the funds in the manner it thought best. Therefore, according to the majority members of the Tribunal, all that was required u/s 67(3) was that the partner should borrow some money for the purpose of investment in the firm as capital or as loan. There was no further qualification that the firm should utilise the money in question in any particular manner. The majority members of the Tribunal also referred to the history and several other decisions, some of which we shall presently note. The majority members of the Tribunal also noted that the expression "purpose" is to be distinguished from "motive".

4. The facts of the case were that the firm had a tax liability of nearly Rs. 94 lakhs. This was as a result of the disclosure petition filed under the disclosure scheme of 1965. The assessee had paid an amount of Rs. 72 lakhs by cheque on the United Bank of India drawn in the name of the Reserve Bank of India to the account of the ITO. This amount was, therefore, debited to the account of M/s. Surajmull Nagarmull on the 29th November, 1966, by the assessee in his books of account. The account of M/s. Surajmull Nagarmull in the books of account of the assessee started with a credit balance of Rs. 27,01,530 as on 10th April, 1965, and ended with a debit balance of Rs. 42,49,130 as on 29th March, 1966. The reason for this conversion of credit balance into a debit balance of the firm's account in the books of the assessee could be found in the payment on behalf of the firm of the taxes amounting to Rs. 72 lakhs. The firm's account as presented before the Tribunal from the books of the assessee did not include adjustment of the assessee's share of profit and loss in the firm or the interest credited to his account in the books of the firm as details in this regard had, according to the assessee, not been made available for the last 15 years by the firm to the assessee on account of disputes amongst the partners. It was pointed out before the Tribunal on behalf of the assessee that in the case of the HUF of C.L. Bajoria called " C.L. Bajoria and others ", the amounts of Rs. 9 lakhs and Rs. 13,29,389 were paid by cheque on the 29th November, 1965, and 30th November, 1966, respectively, on behalf of the firm, M/s. Surajmull Nagarmull, towards the tax liabilities. It was stated that the firm, M/s. Surajmull Nagarmull, took advantage of the provisions of Section 68 of the Finance Act, No. 1 of 1965, and had made disclosure of its concealed income as a result of which it had discharged the tax liabilities of Rs. 94 lakhs before the end of November, 1965. It was admitted that there was no written agreement between the assessee and the other partners of

the firm with regard to these advances made by him to the firm for payment of taxes. It was, however, asserted on behalf of the assessee that there was an oral agreement among the partners of the firm, according to which, the assessee had to meet on behalf of the firm the tax liability to the extent of Rs. 72 lakhs which he had paid to the Reserve Bank of India on the 29th November, 1965. The assessee was, therefore, entitled to interest at 4 1/2 per cent. per annum on the capital was advanced by him and advanced likewise required to pay 4 1/2 per cent. on the debit balance of the firm. It was admitted that the certificate from the firm in this connection could not be obtained earlier on account of the disputes among the two groups of partners, viz., Bajorias and Jalans. In that background, the majority members of the Tribunal were of the view that as the firm was making use of the concession extended to it by Section 68 of the Finance Act of 1965, a timely payment of the reduced tax liability was a considerable advantage and benefit to the firm and hence to the partner. Therefore, the amount borrowed by the partner and invested for the purpose of discharging the tax liability in this case would amount to the partner's laying out money for profit. The majority members of the Tribunal were of the view that the firm had saved considerable funds by taking advantage of the concession offered by the voluntary disclosure scheme contained in the Finance Act of 1965. If the firm had utilised the funds provided by the assessee at a later date in any way it liked, this controversy would not perhaps have arisen. It could not make any difference, according to the majority members of the Tribunal, if the firm chose to make use of the borrowed funds advanced by the partner immediately for one of its legitimate purposes of paying the tax liabilities. So far as the firm was concerned, it was true that the amount was utilised for paying the tax liabilities of the firm. But as far as the partner was concerned, the interest related to the amount borrowed and advanced by the partner by way of interest bearing investment in the firm, which chose, with the mutual consent of the partners, to make use of the funds in the manner found commercially expedient and financially beneficial. Having regard to these circumstances, the majority members of the Tribunal were of the opinion that the original order of the ITO allowing the deduction of Rs. 1,44,000 u/s 67(3) of the I.T. Act was correct.

5. The learned Judicial Member, however, could not agree with this conclusion. He discussed the relevant provisions of the Act and found that the admitted position was that the receipt of the loan was for the purpose of making a payment of the tax liabilities of Rs. 72 lakhs as Income Tax of M/s. Surajmull Nagarmull. The assessee could not lay his hands on the partnership deed or his capital account in the firm. Another position, according to the learned Judicial Member, was that the firm's accounts as were presented to the Tribunal from the books of account of the assessee did not include the assessee's share in the profits or losses in the firm or interest to his account in the book of the firm and, according to the learned Judicial Member, unless the accounts of the firm were looked at or probed into to see whether the sum of Rs. 72 lakhs was borrowed for the purpose of investment in the firm of M/s. Surajmull Nagarmull or not so

as to enable the firm to make all investment or to discharge its statutory liabilities for the payment of Income Tax, it was not possible to accept the conclusion arrived at by the majority members of the Tribunal, and in view of the decision of the Calcutta High Court in the case of MANNALAL RATANLAL Vs. COMMISSIONER OF Income Tax, CALCUTTA., , which we shall presently note, the learned Judicial Member was of the view that the assessee was not entitled to a deduction and he was, therefore, of the opinion that the payment of interest by the assessee could not be allowed as contemplated under the section while determining his taxable income. Upon these facts, the question indicated above has been referred to this court.

6. It is necessary in this connection to refer to Section 67(3) of the I.T. Act, 1961, which reads as follows :

"67. (3) Any interest paid by a partner on capital borrowed by him for the purposes 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." We may mention that Section 67 deals with the method of computing the partner's share of income in the firm and in computing the total income of an assessee, who is a partner of the firm, where the net result of his income in the profit and loss account of the firm is chargeable, his share should be computed in the manner indicated in that section and in laying down the manner, Clauses (a), (b) and (c) deal with the problem. Other sub-sections deal with the various other contingencies. Sub-section (3) of Section 67 deals with interest paid by a partner on capital borrowed by him for the purpose of investment. The question, in this case, is whether the interest deduction in respect of that interest which was claimed before the Tribunal comes within Sub-section (3) of Section 67 of the Act. Now, Section 67 was introduced, for the first time, in the I.T. Act of 1961, there being no corresponding section in the Indian I.T. Act, 1922. In the original Bill, the section sought to be introduced was as follows :

" 67. (3) Any interest paid by a partner on capital borrowed by him for the purposes 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, but no other deduction shall be allowed in respect of the said share." (Underlined by us).

7. The notes on the clause of this section introducing this Act indicated that this was a new section and it sought to implement the recommendation of both the Direct Taxes Administration Enquiry Committee and of the Law Commission in the report of the Direct Taxes Administration Enquiry Committee. The relevant portion of the report of the Direct Taxes Administration Enquiry Committee reads as follows (p. 66) :

" We would, however, like to mention a few categories of expenditure which, in our view, should be allowed, since their disallowance or uncertainty about their

allowability causes great hardship. We enumerate and briefly discuss these items below :

(a) it is a moot point, at present, whether interest paid or payable on monies borrowed by a partner for investing in the firm as his share of capital is an allowable deduction against his share of profits from the firm. We are of the view that such an interest should be allowable in the same way as it is allowed u/s 10(2)(iii), to an assessee carrying on business, profession or vocation, in respect of the capital borrowed for that business, etc. We see no reason for making a distinction between these two types of cases. Of course, suitable safeguards should be provided against abuse of this allowance by assessees who, having sufficient capital of their own, resort to use it as a measure for avoidance of tax. "

8. Section 10(2)(iii) of the Indian I.T. Act, 1922, provided as follows :

" 10. (2) (iii) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid. "

9. The other relevant sections with which we are concerned are Sections 36, 37 and 57 of the I.T. Act, 1961, which read as follows :

" 36. Other deductions.--(1)

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession. "

"37. General.--(1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and Section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head " Profits and gains of business or profession ". "

" 57. Deductions.--The income chargeable under the head " Income from other sources " shall be computed after making the following deductions, namely:.....

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. "

10. We have already mentioned the provisions of Section 67(3) with which we are directly concerned. The question really is whether, in this case, the interest that was paid was on the capital borrowed by a partner for the purpose of investment. Now, the finding of the Tribunal on this aspect was as follows:

"So far as the partner is concerned, the interest relates to the amounts borrowed and advanced by the partner by way of interest bearing investment in the firm which chose, with the mutual consent of the partner, to make use of the funds in the manner found commercially expedient and financially beneficial."

11. Therefore, it cannot be disputed that it was an investment by the partner and

a loan had to be taken by the partner for making this investment in the firm. Interest was paid for that loan. The question is whether the expression " capital borrowed " in Sub-section (3) of Section 67 requires that such investment must be utilised as a capital of the partner in the firm as such. The section does not use that expression that it should be invested as capital. Nor does the legislative history of its introduction indicate such a view in any way. Section 10(2)(iii) provides that a deduction may be allowed for the amount of interest paid in respect of capital borrowed for the purpose of the business, profession or vocation. So, it provided for the deduction of interest on any capital amount borrowed, that is to say, any amount borrowed as capital on the part of the borrower and on which interest was paid, and not that the amount borrowed should be invested in the company or firm. If this construction is taken then this construction is in consonance with the view taken by this court in the case of Commissioner of Income Tax Vs. C.L. Bajoria and Others, , where the assessee was an HUF being "C.L. Bajoria & others" which had borrowed Rs. 79,509 and invested the sum with M/s. Surajmull Nagarmull, a firm in which the assessee was a partner. M/s. Surajmull Nagarmull utilised this amount for the payment of its taxes. It was held that Section 67(3) said that the interest paid by a partner for capital borrowed by him for the purpose of investment in the firm should, in computing his income chargeable under the head " Profits and gains of his business" and in respect of the share in the firm, be deducted from his share. The Division Bench of this court was of the view that in view of the express provision of the section, the Tribunal was not (sic) right in holding that the section did not stipulate that interest would not be admissible if the amount given to the firm was not used by the firm for the purpose of its business or for payment of taxes. Though this particular argument, which was advanced by the revenue before us at this stage, that it must be invested as capital in the firm, was not advanced before the Division Bench of this court in the aforesaid case, we find that the requirement of deduction does not enjoin that it should be invested qua capital but it should only be capital, that is to say, the capital amount borrowed which should be the capital of the lender or the investor but need not be the capital of the invested company or concern. That was the requirement and if that carried interest or obligation to pay interest then that was investment, and if made for the purpose of investment in that firm then the requirement of that section would be fulfilled. The learned Judicial Member as well as the learned advocate for the revenue placed reliance before us on a Bench decision of this court in the case of MANNALAL RATANLAL Vs. COMMISSIONER OF Income Tax, CALCUTTA., . That decision, however, dealt with Section 10(2)(iii), Section 10(2)(xv) and Section 12(2) of the Indian I.T. Act, 1922, and the Division Bench, there, held that an expenditure to become an allowable deduction against the income must be incurred in the earning of the income or profit. Income Tax was not a part of the expenditure of an assessee and, therefore, the interest that was paid by the assessee on any sum borrowed by him for payment of Income Tax was not deductible from his net income. There, the assessee had borrowed money in the assessment year for paying

Income Tax in respect of the assessment of the previous years and paid Rs. 1,934 as interest on that loan which he claimed to deduct from his total income for that assessment year. The assessee contended that if he had not borrowed the money he would have been compelled to liquidate the whole of his income-yielding assets. So the borrowing was for the purpose of maintaining his income-yielding assets and that there was a direct or at any rate indirect connection between the income and the expenditure. The Income Tax authorities held against the assessee. It was held by the Division Bench of this court, in that case, that there was no provision in the I.T. Act wherein a deduction of this nature had been contemplated and the amount was not deductible in computing the assessee's income. It was for the assessee to prove that there was some statutory provision under which the same had to be allowed. It is to be borne in mind that in that case the assessee itself was claiming deduction in its own computation of income, the interest paid for the money borrowed for the purpose of payment of its tax dues. It was not the case of a partner claiming deduction of interest from his share of income on the money he had borrowed to be invested in the firm which had ultimately been utilised for the purpose of paying taxes. The Division Bench had relied on a decision of the Patna High Court in the case of MAHARAJADHIRAJ SIR KAMESHWAR SINGH Vs. COMMISSIONER OF Income Tax, PATNA., . That decision held that it could not be said that the amount of Income Tax paid by the assessee could be deducted as a business expenditure. The reason was that the Income Tax was not a deductible item to be allowed for arriving at the net profits of the assessee. It was not an expenditure for the purpose of earning profits; it was on the contrary a case of application of profits after that income had been earned and not an expenditure necessary to earn such profits. The Patna High Court also held in that case that interest on money borrowed for payment of tax was not a legitimate deduction in computing the business profits. The borrowing of money by an assessee for payment of advance tax was not made for any purpose of commercial expediency but for the discharge of its statutory obligation imposed upon him u/s 18A of the Indian I.T. Act, 1922. The interest paid by an assessee, the Patna High Court was of the view, on money borrowed by him for payment of advance tax could not be deducted under the provisions of Section 12(2) of the Indian I.T. Act, 1922. The Division Bench of the Calcutta High Court, in the case of MANNALAL RATANLAL Vs. COMMISSIONER OF Income Tax, CALCUTTA., , mentioned hereinbefore, was in agreement with the view of the Patna High Court. Learned advocate for the revenue sought to urge on the analogy of the said decision that if it was not allowable in the case of a firm for the purpose of money borrowed it should not be allowed in the case of a partner for the purpose of investing the same amount in the firm. If Section 67(3) of the Act had not been there, it would have been possible to construe on the same analogy, even though one has to bear in mind the distinction between a firm and its partner in the Income Tax law, as we shall presently note. In this connection, learned advocate for the revenue also drew our attention to Section 13 of the Partnership Act of 1932, which deals with the mutual rights and liabilities of the partners. Section 13 of the Partnership Act of

1932 provided :

" Subject to contract between the partners--....

(c) Where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of the profits;

(d) A partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum..... "

12. Learned advocate for the revenue sought to urge that a partner was entitled under the Partnership Act to invest in the capital of the firm and he is entitled to give loan to the firm for other purposes which may not be a capital of the firm. Therefore, it was sought to be urged that in this case, though it was found by the Tribunal that it was invested by the assessee in the firm, yet it was not found that it was invested as a capital of the firm. That is true. But, we have noticed, that though the amount must be capital yet it need not be invested as capital in that firm, as such, it could come within the purview of Section 67(3) of the Act. Learned advocate for the revenue also sought to argue that in this case interest on the loan for payment of Income Tax was not allowable as a partnership firm was only a compendious way of considering the partners themselves and they had all been treated as same for many purposes, as in the case of a partnership firm. Similarly, the interest paid for payment of the Income Tax dues of the firm should not be allowed.

13. He relied on the decision of the Supreme Court in the case of Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, , where in the context of Section 10(1) of the Indian I.T. Act, 1922, the Supreme Court observed that the business carried on by a firm was business carried on by the partners. Profits of the firm were profits earned by all the partners in carrying on the business. The share of the partner was business income in his hands for the purpose of Section 10(1) of the Indian I.T. Act, 1922, and being business income, expenditure necessary for the purpose of earning that income and appropriate allowances were deductible therefrom in determining the taxable income of the partner. It was held that the assessee, who was a partner in four firms but did not carry on any independent business, was entitled to deduct from his share of the profits from the firms amounts paid as salary and bonus to staff, expenses for maintenance and depreciation of motor cars and travelling expenses expended by him in earning the income from the firms.

14. Now, the facts, as we have noted, were entirely different, where the Supreme Court was dealing with the assessee who was a partner of the firm. His income from the firm was assessable in his hands. In earning the income from the firm, he had incurred certain expenses, viz., salary and bonus to its staff, expenses for maintenance and depreciation of motor cars and travelling and these expenses were necessary for the partner to earn its profit as qua partner of the firm and these expenses were held by the Supreme Court to be deductible

in computing the partner's share of income from the firm. This does not, in our opinion, state that the firm and the partner should be treated as the same in Income Tax law for all purposes.

15. Reliance was also placed on the decision of the Madras High Court in the case of Commissioner of Income Tax Vs. K.G. Sadagopan, , There, on conversion of the medical business carried on by the assessee doctor into a partnership taking his son, who was also a doctor, as a working partner, the assets of the individual business were used by the firm. The partnership deed provided that the assets of the firm belonged exclusively to the assessee. The claim of the firm for depreciation on the assets was negatived in the view that the assets did not belong to the firm while such a claim was negatived in the individual assessment of the assessee. It was held that in the case of a partnership the business was not carried on by the partnership as such but by the partners. Therefore, the assessee had used the assets for the purpose of his business and as he was a partner of the firm he was entitled to depreciation thereon.

16. In a way, this judgment can be read only in the background of the view that in the earning of the profit as qua partner of the firm, the assessee had incurred certain expenses for the purpose of the business and such expenses should be deducted from computing his income from the firm.

17. Reliance was also placed on behalf of the revenue on the decision of the Supreme Court in the case of Madhav Prasad Jatia Vs. Commissioner of Income Tax, U.P. Lucknow, , where the assessee had carried on money-lending and other businesses and had derived income from various sources such as shares, properties and businesses. The capital, assets and income in respect of the different sources, however, were incorporated in one common set of accounts. On October 21, 1955, the assessee had promised to donate Rs. 10 lakhs for the setting up of an engineering college and a further sum for a hospital. Initially, on November 21, 1955, a sum of Rs. 10 lakhs was debited to her capital account (which had ample credit balance) and a corresponding credit was given to the account of the college. Thereafter, on January 7, 1956, the assessee had drawn a sum of Rs. 5.5 lakhs from an overdraft account maintained with a bank for her business and paid it to the college. The balance of the promised donation, viz., Rs. 4.5 lakhs, was treated as a debt due by her and accordingly she was debited with interest with effect from October 21, 1955. The question was whether the interest paid by the assessee to the bank on the sum of Rs. 5.5 lakhs for the assessment years 1957-58 to 1959-60, and the interest credited to the college on the balance of Rs. 4.5 lakhs for the assessment years 1958-59 and 1959-60, were allowable expenditure in computing her business profits. The assessee had claimed that she had preferred to draw on the overdraft account for the purpose of paying the college in order to save her income-earning assets, viz., the shares, which she would otherwise have had to sell. The Appellate Tribunal had held that the sum of Rs. 5.5 lakhs overdrawn from the bank was not borrowed for business purposes and that as regards the balance of Rs. 4.5 lakhs there was at best a

promise and a mere credit entry in her accounts did not amount to a gift or charity for a trust; and that, therefore, neither interest was allowable as a deduction u/s 10(2) of the Indian I.T. Act, 1922. The High Court, on a reference, affirmed the decision of the Tribunal. The Supreme Court held, affirming the decision of the High Court, (1) that the borrowing of Rs. 5.5 lakhs was made by the assessee to meet her personal obligation and not the obligation of her business and as such the expenditure incurred by the assessee by way of interest thereon was not for carrying on the business or in her capacity as a person carrying on that business. The making of the initial entries on November 21, 1955, debiting the assessee's capital account and crediting the account of the college did not alter the character of the borrowing. Interest paid to the bank on the borrowing of Rs. 5.5 lakhs was not deductible either u/s 10(2)(iii) or u/s 10(2)(xv) of the Indian I.T. Act, 1922 ; (2) that beyond the entries in the books of account of the assessee, there was no material on record to show that the assessee had actually made over the sum of Rs. 4.5 lakhs to the college or that the college had accepted the donation. No trust could be said to have come into existence either on October 21, 1955, or on November 21, 1955, or any subsequent date. Therefore, the amount credited to the college represented the assessee's own funds and lay entirely within her power of disposition and the interest credited on that sum belonged to her and she was not entitled to deduction thereof. There, the Supreme Court further observed that the expression " for the purpose of business" occurring in Section 10(2)(iii) as also in Section 10(2)(xv) was wider in scope than the expression " for the purpose of earning income, profits or gains " occurring in Section 12(2) of the Indian I.T. Act, 1922, and, therefore, the scope for allowing a deduction u/s 10(2)(iii) or Section 10(2)(xv) would be much wider than the one available u/s 12(2) of the Indian I.T. Act, 1922. There, the Supreme Court was not concerned with the specific provision whether money is borrowed for the purpose of investment by an assessee, as we are concerned in the instant case.

18. In aid of his submission that borrowed money became the assessee's money after borrowing, reliance was placed on certain observations in the case of Century Enka Ltd. Vs. Income Tax Officer, "D" Ward and Others, . But the said observations were made entirely in a different context. We are of the opinion that the said observations cannot be of much assistance to us in the present reference.

19. In the case of Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, , the Supreme Court had to consider some of the aspects u/s 25(4) of the Indian I.T. Act, 1922, and about the relationship of the partner and the firm under the Income Tax law, at pp. 408 and 409 of the report, the court observed as follows :

" It is true that under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners but it is also equally true that under that law there is no dissolution of the firm

by the mere incoming or outgoing of partners, A partner can retire with the consent of the other partners and a person can be introduced in the partnership by the consent of the other partners. The reconstituted firm can carry on its business in the same firm's name till dissolution. The law with respect to retiring partners as enacted in the Partnership Act is to a certain extent a compromise between the strict doctrine of English Common Law which refuses to see anything in the firm but a collective name for individuals carrying on business in partnership and the mercantile usage which recognizes the firm as a distinct person or quasi-corporation. But under the Income Tax Act the position is somewhat different. A firm can be charged as a distinct assessable entity as distinct from its partners who can also be assessed individually. Section 3 which is the charging section is in these terms ;

Where any Central Act enacts that Income Tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority and of every firm and other association of persons or the partners of the firm or the members of the association individually.

The partners of the firm are distinct assessable entities, while the firm as such is a separate and distinct unit for purpose of assessment. Sections 26, 48 and 55 of the Act fully bear out this position. These provisions of the Act go to show that the technical view of the nature of a partnership, under English law or Indian law, cannot be taken in applying the law of Income Tax, "

20. In the case of D.S. Bist and Sons, Nainital Vs. Commissioner of Income Tax, Delhi Central, New Delhi, , the Supreme Court was of the view that an HUF and a firm were distinct entities. There, an HUF consisting of a father and his son carried on business of forest contractors. Three trucks were used in the business and the family availed of all the depreciation allowance thereon and their written down value had come to nil. There was a total disruption in the family and the father and son formed a firm and took over the business as a running concern. The firm thereafter sold the three trucks for an aggregate sum of Rs. 24,252 and the question was whether the sum could be brought to tax in the hands of the firm as a deemed profit under the second proviso to Section 10(2)(vii) of the Indian I.T. Act, 1922.

21. There, at p. 134 of the report, the Supreme Court observed as follows :

" We are concerned with provisions for the computation of income of an assessee for the purpose of determining its Income Tax liability. It may be, as is quite often said, that a firm is merely a compendious description of the individuals who carry on the partnership business. But under the I.T. Act, a firm is a distinct assessable entity. S. 3 of the Indian I.T. Act, 1922, treats it as such, and the entire process of computation of the income of a firm proceeds on the basis that it is a distinct assessable entity. In that respect it is distinct even from its

partners : Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, . As an assessable entity it is also distinct from an HUF, which in itself is regarded as a separate unit of assessment u/s 3 : Raja Bejoy Singh Dudhuria v. CIT [1933] 1 ITR 135. For the purposes of the question before us it reckes little that the very individuals who constituted the HUF now constitute the appellant-firm. When depreciation allowance was allowed to the HUF in its assessment proceedings, it was a step taken in determining the taxable income of the family. The depreciation allowed to the family cannot be regarded as depreciation allowed to the appellant. We must ignore entirely the circumstance that depreciation has been allowed to the HUF in the past,."

22. The right to recover the dues under the I.T. Act from a firm were separate from the right to recover the dues from the partners. In this context, it was so held by the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishnan and Others, . So far as Income Tax was concerned, the same view was expressed by the Full Bench of the Kerala High Court in the case of Income Tax Officer, Assessment II and Another Vs. C.V. George and Others, . The Karnataka High Court in the decision in the case of S.N. Santhalingam Vs. Income Tax Officer, Central Circle-II, Bangalore and Another, and the Division Bench of the said High Court in the case of Tax Recovery Officer, Bangalore Vs. P. Balchand, , also took the same view.

23. In the case of Commissioner of Income Tax Bombay City-II Vs. Bombay Samachar Ltd., Bombay, , the Bombay High Court was of the opinion that the only condition required to be satisfied in order to enable the assessee to claim deduction in respect of interest on borrowed capital u/s 10(2)(iii) were : firstly, that money must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of business ; and, thirdly, the assessee must have paid interest on the said amount and claimed it as a deduction. It was not the requirement of the provision that the assessee must further show that the borrowing of the capital was necessary for the purpose of the business so that if at the time of borrowing, the assessee had sufficient amount of its own, the deduction could not be allowed. The fact that the assessee had ample resources at its disposal and need not have borrowed that amount was not a relevant matter for consideration by the Bombay High Court.

24. This decision was noticed by the Supreme Court in the case of Madhav Prasad Jatia Vs. Commissioner of Income Tax, U.P. Lucknow, , which we have just noticed, where at page 210 of the report, the Supreme Court observed that the facts of that case with which the Supreme Court was dealing were not similar to the facts with which the Bombay High Court in the case of Commissioner of Income Tax Bombay City-II Vs. Bombay Samachar Ltd., Bombay, had to deal.

25. On the aspect whether there should be a motive of actual earning profit for the purpose of entitlement for deduction u/s 10(2)(iii) of the Indian I.T. Act, 1922, reliance was placed on two decisions of the Supreme Court in the case of The Commissioner of Wealth Tax, Kanpur Vs. J.K. Jute Mills Co. Ltd., , and in the

case of CIT v. Rajendra Prasad Moody and Commissioner of Income Tax, West Bengal-III Vs. Rajendra Prasad Moody, . In view of the construction of Section 67(3) of the I.T. Act, 1961, it is not necessary for us to deal with this aspect any further.

26. In that view of the matter, we are in agreement with the view expressed by the Tribunal and we, therefore, answer the question in the affirmative and-in favour of the assessee.

27. Each party will pay and bear its own costs.

Sudhindra Mohan Guha, J.

28. I agree.