(1995) 04 MAD CK 0055

In the Madras High Court

Case No : Tax Case No. 438 of 1983

Commissioner of Income Tax — APPELLANT

Vs

C.S. Ramachary and Co. — RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:
Income Tax Act, 1961 — Section 40

Citation : (1996) 217 ITR 821

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K. Vaitheeswaran, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question for the opinion of this Court under s.

256(2) of the IT Act, 1961 :

Whether, on the facts and in the circumstances of the case and on proper interpretation of the provisions of s. 40(b) of the IT Act, 1961, the

Tribunal was right in holding that the interest paid to the partners by the firm should be deducted from the interest received by it from the partners

on their overdrawing and the net interest payment by the firm, if any, alone should be disallowed under the said section ?

2. The assessee is a partnership concern carrying on business in money lending. For the asst. yr. 1979-80, it filed a return of income admitting a

total income of Rs. 16,511. While completing the assessment, the ITO noticed that interest payments made by the firm to its partners to the tune of

Rs. 23,240 were not added back by the assessee in terms of s. 40(b) of the IT Act, 1961. It was argued on behalf of the assessee that the partners owed a sum of Rs. 84,970 to the firm by way of interest and if the net result of the payments and the receipts are considered, there was

only a receipt by the firm from the partners and that, therefore, there was no scope for the application of the provisions of s. 40(b) of the Act.

However, the ITO rejected the assessee''s contention and added back a sum of Rs. 23,240 under s. 40(b) of the Act. On appeal, the AAC

followed the earlier order of the Tribunal in the case of the same assessee for the asst. yr. 1976-77 and held that in view of the fact that there was

only an excess of interest from the partners, the provisions of s. 40(b) could not be pressed into service. Accordingly, the AAC deleted the

addition of Rs. 23,240. On further appeal, the Tribunal confirmed the order passed by the AAC.

3. The order passed by the Tribunal is in accordance with the decision of the Supreme Court, in the case of Keshavji Raviji & Co. vs . CIT :

[1990]183ITR1(SC) . Accordingly, we answer the question referred to us in the affirmative and against the Department. There will be no order as

to costs.