
(2004) 09 AHC CK 0262

In the Allahabad High Court

Case No : IT Ref. No. 203 of 1984 & IT Reference No. 203 of 1984 7 September 2004

Commissioner of Income Tax

APPELLANT

Vs

Gordhan Das Mahender Kumar

RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 40

Citation : (2005) 196 CTR 227

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Shambhu Chopra, for the Appellant; None, for the Respondent

Judgement

R.K. Agrawal, J.—The Tribunal, New Delhi, has referred the following two questions of law u/s 256(1) of the IT Act, 1961, hereinafter referred to as the Act, for opinion to this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the order of the learned CIT(A) deleting the disallowance u/s 40(b) of the IT Act, 1961, in respect of interest paid to Shyam Lal (HUF) of Rs. 16,565 and to Mahender Kumar (HUF) of Rs. 20,076 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the order of the learned CIT(A) regarding disallowance u/s 40(b) of the IT Act, 1961 in respect of interest paid to Shyam Lal Private Trust of Rs. 2,466 and to Mahender Kumar Private Trust of Rs. 2,474 ?"

2. Briefly stated the facts giving rise to the present reference are as follows :

The respondent No. 3 is a registered firm deriving income from commission agency (Arhat) at Muzaffarnagar. The present reference relates to the asst. yr. 1978-79. The relevant accounting year ended on 10th Jan., 1978. It has eight partners, some of whom are HUFs and some are trusts. During the asst. yr.

1978-79, the respondent paid interest amounting to Rs. 16,565 to Shyam Lal (HUF) and Rs. 20,076 to Mahender Kumar (HUF). Both of them are partners. During the assessment year in question. The respondent had also paid interest of Rs. 2,466 to Shyam Lal Private Trust and Rs. 2,474 to Mahender Kumar Private Trust, who were partners in the said firm. The ITO disallowed the aforesaid amount u/s 40(b) of the Act. In appeal preferred by the respondents, the CIT(A) deleted the additions.

3. The Department feeling aggrieved preferred an appeal before the Tribunal. The Tribunal had found that the interest paid to the aforesaid HUF and trusts was to be added back u/s 40(b) of the Act only if there was no excess interest paid after adjustment of interest received from Shyam Lal (individual) and Mahender Kumar (individual) who had paid interest amount to Rs. 82,654 and Rs. 98,527, respectively, to the respondent-assessee.

4. We have heard Sri Shambhu Chopra, learned counsel for the Revenue. Nobody has put in appearance on behalf of the respondents.

Learned counsel for the Revenue submitted that two individuals, namely, Shyam Lal and Mahender Kumar were not the partners in the respondent-firm. The partners were the HUF and the trusts to whom the respondent-firm had paid interest. The fact that the two individuals had taken loan from the firm and had paid interest is immaterial. He submitted that the reliance placed by the CIT(A) on the case of Commissioner of Income Tax Vs. Kailash Motors, , which has been subsequently approved by the apex Court in the case of Keshavji Ravji & Co. v. CIT : [1990]183ITR1(SC) is misplaced inasmuch as the capacity of the partners are invariably different and, therefore, the ITO had rightly disallowed the payment of interest to the partners u/s 40(b) of the Act. In the case of Keshavji Ravji & Co. (supra) the apex Court has held that where two or more transactions on which interest is paid to or received from the partner by the firm are shown to have the element of mutuality and are referable to the funds of the partnership as such, there is no reason why Section 40(b) should be so construed as to exclude in quantifying the interest on the basis of such mutuality. In such circumstances, the interest, if any, paid to a partner by the firm in excess of what is received from the partner could alone be excluded from deduction u/s 40(b).

5. Thus, while considering the net amount of interest to be disallowed u/s 40(b) of the Act it is necessary that the interest has been paid by the firm to its partners and partners have also paid interest on the loan taken by them to the firm. In the present case the two individuals, namely, Shyam Lal and Mahender Kumar are not partners in the respondent-firm in their individual capacity. On the other hand the partners are Shyam Lal (HUF), Mahender Kumar (HUF), Shyam Lal Private Trust and Mahender Kumar Private Trust.

6. It is now well-settled that where the Karta of an HUF is a partner in a firm in his representative capacity, the interest paid by the firm to him in his individual

capacity in the firm cannot be disallowed u/s 40(b) of the Act as held by the apex Court in the cases of Brij Mohan Das Laxman Das Vs. Commissioner of Income Tax, Allahabad, , Suwalal Anandilal Jain v. CIT (1997) 224 JTR 753, CIT v. Kanji Shivji (2000) 242 ITR 124 and Commissioner of Income Tax Vs. Gordhanbhai Jethabhai Patel, .

7. The apex Court has held that the status of an individual and Karta are different. The same principle would also be applicable where the partner is the trust. Thus, we are of the considered opinion that the interest paid to Shyam Lal (HUE), Mahender Kumar (HUF), Shyam Lal Private Trust and Mahender Kumar Private Trust was liable to be disallowed u/s 40(b) of the Act.

8. In view of the foregoing discussion we answer the two questions referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, the parties shall bear their own costs.