(1990) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Income-Tax Reference No. 12 of 1987

Commissioner of Income Tax APPELLANT

Vs

Janki Dass RESPONDENT

Date of Decision : 06-07-1990

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1990) 07 RAJ CK 0030

Hon'ble Judges : K.C. Agrawal, C.J;A.K. Mathur, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

1. At the instance of the Revenue, the following question has been referred by the Tribunal for the opinion of the High Court: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing interest of Rs. 5,758 to the firm on the ground that the interest was paid to the Hindu undivided family of the partners and not to them individually?

The brief facts are that the assessee-firm credited interest of Rs. 5,758 in the account of the Hindu undivided family relying on the order relating to the assessment year 1975-76. The said claim of the assessee-firm was disallowed by the income tax Officer. In the next year, the income tax Officer held that the interest that was credited to the Hindu undivided family was, in fact, paid on the capital of the partners and, therefore, that was not allowable under the income tax Act. The assessee-firm took up the matter in appeal. The appeal taken by the assessee was rejected by the Appellate Assistant Commissioner. But, in the second appeal, the contention was upheld and the orders of the two authorities were reversed. The Tribunal held that the interest paid to the Hindu undivided family was allowable.

2. Thereupon, the Department filed an application u/s 256(1) of the income tax Act for making a reference to the High Court. The present reference has come on

the basis of the aforesaid reference application.

3. The controversy raised before us is since covered by a Division Bench decision of this court in COMMISSIONER OF Income Tax Vs. KISHANLAL AND BROTHERS., We need not deal with the various aspects of the arguments raised by the two sides. The Division Bench held that the payment of interest to the Hindu undivided family was not payment to a partner of the firm and as such was allowable. A distinction was made by the Bench between the position of a partner in his individual capacity and that of the firm.

4. We, respectfully, agree with the aforesaid view and answer the question in favour of the assessee and against the Department. In the circumstances, we make no order as to costs.

