(1998) 01 MAD CK 0043

In the Madras High Court

Case No : Tax Case No''s. 1954 and 1955 of 1986 (Reference No''s. 1371 and 1372 of 1986)

Commissioner of Income Tax APPELLANT

Vs

Kamadhenu RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:
Income Tax Act, 1961 — Section 256, 40

Citation : (2000) 158 CTR 497 : (2000) 241 ITR 17 : (2001) 118 TAXMAN 743

Hon'ble Judges : N.V. Balasubramanian, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; G. Ashokpathy, for K. Mani, for the Respondent

Judgement

N. V. Balasubramanian, J.—In pursuance of the directions of this court in T. C. P. Nos. 693 and 694 of 1985, dated November 25, 1984,

the Appellate Tribunal has stated a case and referred the following questions of law for our consideration :

1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that for the purpose of disallowance u/s 40(b) only

net interest should be taken into account and not gross interest ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the sum of Rs. 9,063 being the interest paid by

the assessee-firm to Shri Shantharam could not be disallowed u/s 40(b) of the Act as the partner had obtained loan from Egmore Benefit Society

for the purpose of the assessee-firm and in reality the payment was made only to Egmore Benefit Society ?

2. The assessee is a firm carrying on business in textiles. In the assessment

completed for the assessment year 1979-80, the Income Tax Officer

held that for the purpose of applying the provisions of Section 40(b) of the Income Tax Act, 1961 (hereinafter to be referred to as ""the Act""), only

the gross interest should be taken into account and not the net interest. A sum of Rs. 11,859 was the interest payment made by the assessee. The

sum of Rs. 11,859 is made up of interest allowed to a partner amounting to Rs. 2,296 in his capital account and a sum of Rs. 9,063 being the

interest on loan obtained by the partner, Shantaram from the Egmore Benefit Society for the purpose of the assessee''s business on the security of

his personal property. The firm charged interest on the various amounts advanced to the partner and the amount of interest charged was Rs. 6,989.

The Income Tax Officer made an addition of not only the sum of interest of Rs. 9,063 but also the interest of Rs. 6,989.

3. The assessee appealed to the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) deleted the double addition of Rs. 6,989.

The Commissioner (Appeals) also held that the interest paid to the partner of the firm cannot be deducted from the interest received from the

partner in computing the income of the firm. The Commissioner (Appeals) further held that the entire amount of interest paid to the partner would

require to be disallowed u/s 40(b) of the Act.

4. The assessee as well as the Revenue preferred appeals against the order of the Commissioner (Appeals) before the Income Tax Appellate

Tribunal. The Appellate Tribunal held that only the net interest should be taken into account for the purpose of disallowance under the provisions of

Section 40(b) of the Act. The Tribunal also gave an additional reason that the interest of Rs. 9,063 paid by the assessee to its partner was really an

amount to the Egmore Benefit Society paid through its partner, since he had obtained a loan on his individual responsibility and furnished the

security of his own property. The Tribunal, therefore, recorded a finding that if the interest on the loan is to be excluded from consideration, then

there would be no amount of interest disallowable u/s 40(b) of the Act. The Tribunal further held that having regard to the scope of the appeal

before the Tribunal and the fact that the Tribunal cannot grant a greater relief than that claimed by the assessee, the Tribunal was of the view that

the amount disallowable should be restricted to Rs. 4,369 as claimed by the assessee. The Tribunal also held that the appeal by the Revenue

against the order of the Commissioner (Appeals) deleting the double addition was misconceived. In this view of the matter, the Tribunal allowed

the appeal preferred by the assessee and dismissed the appeal preferred by the Revenue.

5. On the basis of the directions of this court, the Tribunal stated a case and referred the questions of law set out above. In so far as the first

question of law is concerned, Mr. C. V. Rajan, learned counsel for the Revenue, fairly submitted that the issue raised in the first question is

concluded against the Department by a decision of the Supreme Court in the case of Keshavji Ravji and Co. v. CIT : [1990] 183 ITR 1(SC),

wherein the apex court held that only net interest should be the subject-matter of disallowance u/s 40(b) of the Income Tax Act, and following the

decision of the Supreme Court in Keshavji Ravji and Co.''s case : [1990]183ITR1(SC), we answer the first question of law referred to us in the

affirmative and against the Revenue.

6. In so far as the second question of law is concerned, we are of the opinion that in view of the answer to the first question, it is not necessary to

render any answer to the second question of law. We have already seen that the Appellate Tribunal has restricted the disallowance to be made to

Rs. 4,369 and we also noticed how the said sum of Rs. 4,369 was arrived at by the Tribunal. Since the amount to be disallowed is restricted to

Rs. 4,369 by the Tribunal, we are of the opinion, it is not necessary for us to consider the question whether the interest paid by the firm to the

partner was really the interest paid to the Egmore Benefit Society. We are; therefore, of the view that the issue raised in the second question is

purely academic in so far as this tax case is concerned. Therefore, we are not answering the second question of law referred to us, though we are

not confirming the order of the Appellate Tribunal on the merits of the case. Accordingly, we return the second question of law without providing

an answer to it.

7. Accordingly, we answer the questions of law referred to us as under :

8. There will be no order as to costs, in the circumstances of the case.

