

(1986) 06 KAR CK 0034

In the Karnataka High Court

Case No : Income-tax Reference Case No. 217 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Kothari and Co.

RESPONDENT

Date of Decision : 11-06-1986

Acts Referred:

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

Citation : (1987) 64 CTR 255 : (1987) 165 ITR 594 : (1986) 28 TAXMAN 32

Hon'ble Judges : K. Jagannatha Shetty, Acting C.J.; N.D. Venkatesh, J.; Mohammad Sharif, J

Bench : Full Bench

Advocate : K. Srinivasan, for the Appellant; J.N.S. Prasad, for the Respondent

Judgement

K. Jagannatha Shetty, Actg. C.J.

1. This is a reference u/s 256(1) of the Income Tax Act, 1961. The Tribunal has referred the following question :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the Commissioner of Income Tax (Appeals) decision who held that only interest of Rs. 2,181 has to be disallowed as against Rs. 6,954 added by the Income Tax Officer ?"

2. Shri Sohanraj Jain is one of the partners of the assessee-firm. He had two accounts, one capital account and the other house property account. Both the accounts are in the books of the assessee-firm. In the capital account, on the money lent to the firm, interest of Rs. 6,954 was credited. In the house property account, on the money borrowed by him from the firm, interest of Rs. 9,135 was debited. The assessee claimed before the Income Tax Officer that it should be the net interest that has to be taken into consideration for the purpose of assessment. Thus, he calculated the difference of Rs. 2,181 which, according to him, alone could be included in the total income. The Income Tax Officer, however, did not accept the claim. He held that the entire interest paid by the

firm, viz Rs. 9135 paid by the partner to the assessee-firm was concerned, he held that it constituted income of the firm.

3. The assessee challenged the assessment order before the Commissioner (Appeals). The Commissioner held that the Income Tax Officer was not justified in adding the gross amount of Rs. 6,954 paid as interest to the partner. Instead of two accounts, the Commissioner observed that, if one account had been maintained, the Income Tax Officer would have not other alternative but to disallow the interest chargeable on the net debit balance and, therefore, the assessee cannot be penalised just because he maintained two accounts in the books of account of the assessee-firm. He accordingly directed the Income Tax Officer to disallow the net interest of Rs. 2,181.

4. The Revenue, challenging the decision of the Commissioner, appealed to the Appellate Tribunal.

5. The Tribunal, following the two decisions of the *Sri Ram Mahadeo Prasad Vs. Commr. of Income Tax, United Provinces, Lucknow*, and *Commissioner of Income Tax Vs. Kailash Motors*, agreed with the view taken by the Commissioner. (Appeals).

6. The question is whether the view taken by the Tribunal is correct. The answer to the question does not present any problem in view of the circular instructions issued by the Central Board of Direct Taxes to which our attention has been invited by counsel for the assessee. From the Circular Instruction No. 33-D (XXV-29) of 1965, dated November 8, 1965, it is seen that the view taken by the Allahabad High Court in the said decisions has been accepted. Further, this court also in *Income Tax Reference Cases Nos. 15 and 16 of 1982 Commissioner of Income Tax Vs. Balaji Commercial Syndicate*, disposed of on November 15, 1983, has observed that the payment of interest referred to in section 40(b) of the Income Tax Act refers to the actual net amount of interest paid to each partner and the interpretation of section 40(b) could not depend upon a particular way in which interest is accounted for in the books of the firm.

7. In the light of these decisions and the said circular, the answer to the question should be in the affirmative and against the Revenue and we accordingly answer the same.