(2001) 07 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No''s. 61 to 63 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Ram Parshad and Sons — RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 23, 24, 71

Citation : (2001) 250 ITR 622 : (2001) 119 TAXMAN 220

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Appellant; A.K. Mittal, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in upholding the decision of the Appellate Assistant Commissioner in allowing the set-off of loss relating to house property against income under the other heads for the assessment years 1976-77 to 1978-79 ?"

2. The assessee had paid interest during the relevant years. On this basis, it had claimed that the loss against the income from house property be set off against the income under the other heads. The claim was declined by the assessing authority. However, the Appellate Assistant Commissioner had found that "any loss computed under the head ''House property'' is adjustable against other income as per the provisions of Section 71 of the Act". Thus, the assessing authority was directed to "compute the income from house property after allowing interest on the borrowed capital . . . and adjust the loss, if any, against other income of the appellant for the three years". The order passed by the appellate authority was affirmed by the Tribunal on the basis of its decision in the case of K. K. Dhanda and Sons. Since a reference had already been made to this court in the case of K. K. Dhanda and Sons, the Tribunal had sought the opinion

of this court even in the present case.

3. We have heard learned counsel for the parties.

4. On behalf of the Revenue, Mr. R. P. Sawhney has vehemently contended that Section 23 specifically provides that there is no question of loss in the case of income from house property. Thus, the view taken by the Tribunal cannot be sustained. The claim has been controverted by Mr. A. K. Mittal, who has appeared on behalf of the assessee.

5. On a consideration of the matter, we find that Section 23 primarily relates to the determination of annual value. The provision cannot be read in isolation. The deductions permissible u/s 24 have to be kept in view. If by allowing the deductions, the assessee suffers a loss, it can be set off against the income from another head. A specific provision in this behalf exists in section 71. Still further, it deserves mention that tax is leviable only when the assessee derives an income. Not when he suffers a Joss. In any event, we are of the view that Section 71 permits set-off. To clarify the matter, the provision in Section 23 which was causing the confusion has already been omitted by the 1984 amendment.

6. No other point has been raised.

7. In view of the above, the reference is answered in favour of the assessee and against the Revenue. In the circumstances, we make no order as to costs.

