
(2004) 10 AHC CK 0220

In the Allahabad High Court

Case No : IT Reference No. 104 of 1985 25 October 2004

Commissioner of Income Tax

APPELLANT

Vs

Ram Prasad

RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

Income Tax Act, 1961 — Section 256, 40

Citation : (2005) 145 TAXMAN 442

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Revenue. V.K. Rastogi, for the Assessee, for the Appellant;

Judgement

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

"Whether on the facts and in the circumstances of the case and in view of section 40(b) of the Income Tax Act, 1961, a sum of Rs. 20,318, the amount of interest paid by the firm M/s. Bhagwati Prasad Ram Swarup to the credit of the loan account of its partner Shri Ram Swarup (karta of the assessee Hindu Undivided Family) was liable to be added to the income received by the assessee from the firm?"

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

The respondent-assessee is a Hindu Undivided Family and was a partner in a registered firm M/s. Bhagwati Prasad Ram Swarup, through its karta. It derived income from the property, share in the said firm and interest. For the assessment year 1978-79 a return of income was filed showing an income of Rs. 67,791. The assessment was, however, completed on a total income of Rs. 84,828 including interest of Rs. 20,318 received by the respondent in his individual capacity.

Feeling aggrieved by the assessment order, the respondent-assessee preferred an appeal before the Appellate Assistant Commissioner who deleted the amount relying on a previous decision for the assessment year 1974-75. The revenue's appeal before the Tribunal has failed.

3. We have heard Sri A.N. Mahajan, the learned Standing counsel for the revenue, and Sri V.K Rastogi, learned counsel appearing for the respondent-assessee.

4. It may be mentioned here that for the assessment year 1970-71 where the Income Tax Officer has disallowed the amount of interest paid to the present respondent, the matter came up before this court in Income Tax Reference No. 205 of 1983. This court had held that the interest paid by the firm to the individual even though he is representing his Hindu Undivided Family as its karta in the partnership firm as a partner, cannot be disallowed u/s 40(b) of the Act. The decision is in the case of Additional Commissioner of Income Tax Vs. Ram Prasad, .

5. Respectfully following the aforesaid decision, we answer the aforesaid question referred to us in the negative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.