**(1999) 06 AP CK 0053**

**In the Andhra Pradesh High Court**

**Case No :** Case Referred No. 15 of 1991

Commissioner of Income Tax — APPELLANT

Vs

Republic Forge Co. — RESPONDENT

**Date of Decision :** 23-06-1999

**Acts Referred:**
Income Tax Act, 1961 — Section 36, 37

**Citation :** (1999) 240 ITR 57 : (1999) 106 TAXMAN 355

**Hon'ble Judges :** S. Ananda Reddy, J;Ramesh Madhav Bapat, J

**Bench :** Division Bench

**Advocate :** S.R. Ashok, for the Appellant; A.S. Kishore, for the Respondent

## Judgement

R.M. Bapat, J.—This court by order dated June 2, 1986, passed an order in I.T.C. No. 20 of 1985, directing the Tribunal to refer the following question for its opinion :

"Whether, on the facts and in the circumstances of the case, the interest payable amounting to Rs. 3,97,477 and Rs. 1,04,474 for the assessment years 1976-77 and 1977-78, respectively, by the company is allowable as revenue expenditure ?"

2. Now the question is referred to this court. The facts leading to this can be briefly stated as follows : The assessee is a public limited company. The assessments involved are for 1976-77 and 1977-78 for which the previous years ended on March 31, 1976 and March 31, 1977, respectively. In order to establish the forging plant at Hyderabad, the company entered into an agreement with Societe D'' Etudes et de Realisations Industrializes Renault Engineering, France (hereinafter referred to as "company" for the sake of brevity), to supply the entire machinery and the technical know-how relating thereto. The total price of engineering, imported machinery and equipment and technical assistance has to be paid in transferable NF in 20 half yearly instalments along with yearly interest at 6 per cent, on all amounts remaining due from the date of last shipment as

 

shown in article 5(B) of the agreement. The assessee-company accordingly paid the instalments including interest and the interest debited to the profit and loss account for the assessment year 1976-77 was Rs. 3,97,477 and for the assessment year 1977-78 it was Rs. 1,04,474. The Income Tax Officer disallowed the amounts holding that the payment was not for the purpose of business and it was for the acquisition of assets before the commencement of business and hence it is capital in nature. Appeals were filed against the said orders before the Commissioner of Appeals and the Commissioner of Appeals allowed the appeals. Then aggrieved by the said orders, appeals were filed before the Income Tax Appellate Tribunal, Hyderabad, bearing ITA Nos. 975 and 976/H of 1981. The appeals were dismissed confirming the orders of the Commissioner of Income Tax (Appeals). Thereafter, the present reference has come for our consideration.

3. Learned standing counsel for the Department submitted at the Bar that it is a capital expenditure and therefore the deduction is not allowable. While rebutting the aforesaid argument, learned counsel for the assessee invited our attention to Section 36(1)(iii) which specifically allows interest to be deducted in respect of capital borrowed for the purpose of business or profession and submitted that in the above Section, though the supplier of machinery and the financier is one and the same, the assessee had to pay interest on the amount borrowed. Therefore, his case is squarely covered by Section 36(1)(iii) of the Income Tax Act. It was, alternatively, pointed out by learned counsel for the assessee that if it is held that the case of the assessee is not covered under the above section, then he is entitled to the benefits of Section 37(1) of the Act which reads as under :

"Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head ''Profits and gains of business or profession''."

4. With this it was contended by learned counsel that it was not the case of the Department that the interest was paid by the assessee for his personal benefit. It was wholly paid for the purpose of business and under these circumstances learned counsel submitted that in the alternative the assessee is entitled for the benefit of Section 37(1) of the Act. We are in agreement with the submission made by learned counsel for the assessee and we hold that the assessee is entitled for deduction of the interest in computing the income.

5. With this observation the reference is answered in the affirmative and against the Revenue.