
(1978) 11 CAL CK 0012

In the Calcutta High Court

Case No : Income-tax Reference No. 291 of 1973

Commissioner of Income Tax

APPELLANT

Vs

Smt. Shanti Devi Jalan

RESPONDENT

Date of Decision : 10-11-1978

Acts Referred:

Income Tax Act, 1961 — Section 139, 215, 22, 23, 24

Citation : (1983) 139 ITR 152

Hon'ble Judges : Dipak Kumar Sen, J;Bimal Chandra Basak, J

Bench : Division Bench

Advocate : Ajit Sen Gupta, for the Appellant;R.K. Murarka, for the Respondent

Judgement

Bimal Chandra Basak, J.—This arises out of a reference made by the Tribunal u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as " the Act "). The admitted and/or undisputed facts are as follows :

2. The assessment year is 1965-66. The assessee claimed a deduction of interest amounting to Rs. 22,533 paid to the firm of M/s. Soorajmall Nagar-mull (hereinafter referred to as the firm). The assessee was a partner of the said firm. In the assessee's personal account in the books of M/s. Soorajmull Nagarmull there was a debit balance. This debit balance was on account of drawings for personal expenses of the assessee and also due to the losses incurred by the firm and the apportionment of such losses to the account of the assessee. Interest was charged by the firm on this debit balance which came to Rs. 22,533. The assessee claimed deduction in respect of this interest charged. The ITO disallowed the claim. It was stated that in the last assessment that such debit balance comprising of business losses and personal drawings represented the personal liabilities, and the interest payable on such personal liabilities was not allowable against the income earned under any of the taxable heads. The ITO did not find any reason to deviate from the findings of the last year.

3. Being aggrieved by the same, the assessee preferred an appeal before the

AAC. The AAC rejected the claim of the appellant. It was stated that the interest had been paid on a debit balance which consisted mainly of the drawings for personal purposes.

4. Thereafter, the assessee preferred an appeal before the Tribunal. The Tribunal found that the interest was charged on the debit balances which were built up, partly due to the drawings for personal expenses and partly due to the losses incurred by the firm and the apportionment of such losses to the account of the assessee. The Tribunal held that the interest attributable to the portion of the debit balance relating to the loss of the firm would be an admissible deduction as the interest had to be paid for continuing to earn the share income from the firm. The Tribunal directed the ITO to allow such interest as an allowable deduction. However^ the Tribunal held that the interest charged on the debit balance, due to the drawings made by the assessee for personal expenses, was not an admissible deduction. Accordingly, the disallowance to that extent was upheld by the Tribunal.

5. On the above facts, "the following questions of law were referred to the High Court u/s 256(1) of the Act.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest paid on the portion of the debit balance in the capital account of the assessee maintained in the books of the firm of Surajmull Nagarmull attributable to the assessee's share in the loss of the said firm is an allowable deduction in computing the assessee's share income from the said firm ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee can urge in the appeal before the Appellate Assistant Commissioner, the ground relating to the levy of interest under sections 139 and 215 ?

3. Whether, on the facts and in the circumstances of the case and on a correct interpretation of section 26 of the Income Tax Act, 1961, thd Tribunal was right in holding that the shares of the assessee in the income from the jointly owned property computed in accordance with sections 22 to 25 of the Income Tax Act, 1961, shall, for the purpose of inclusion in his total income, be subject to further relief of statutory allowance u/s 23(2) of the Income Tax Act, 1961 ?"

6. So far as the first question is concerned, Mr. Ajit Sengupta, learned counsel appearing on behalf of the Revenue, has made a three-fold submission. Firstly, he has submitted that the interest paid was in respect of a withdrawal by the assessee, and, accordingly, such interest on such withdrawal by the assessee cannot be treated to be an allowable deduction. The second submission of Mr. Sengupta was that there is a specific provision in the Act for deduction on account of interest paid by a partner of a firm. In this context, Mr. Sengupta has referred to Section 67(3) of the Act, which provides as follows:

" Any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm shall, in computing his income chargeable under the head " Profits and gains of business or profession " in respect of his share in the income of the firm, be deducted from the share. "

7. Mr. Sengupta has submitted that the claim for deduction by the assessee in the present case does not fall within the scope of Section 67(3). He has further submitted that excepting for such interest as provided in such section no other interest can be allowed as deduction.

8. The next submission of Mr. Sengupta on this question was that as it was interest paid in respect of the reduction in capital this is in the nature of capital expenditure and, accordingly, no such deduction is allowable.

9. In support of his aforesaid contentions, Mr. Sengupta has relied on the following decisions : Commissioner of Income Tax Vs. Smt. Allareddy Sudarsanamma and Others, and the case of M.S.P. Raja and Another Vs. Commissioner of Income Tax, .

10. So far as the first submission of Mr. Sengupta is concerned, we are not in a position to accept the contention of Mr. Sengupta that this was a withdrawal. The Tribunal itself has made a distinction between the two types of cases. The Tribunal has found that this interest has been charged on two accounts, namely, interest charged on the debit balance due to the drawings made by the assessee for personal expenses and the interest charged on that portion of the debit balance relating to the loss of the firm. So far as the drawings are concerned the Tribunal has disallowed that claim. But the portion in respect of which the claim has been allowed and which is the subject-matter of this reference, is not in respect of any withdrawal but it is in respect of the debit balance relating to the loss of the firm. This is a finding of fact. This finding of fact has not been challenged in this reference, and the questions referred do not cover the same.

11. So far as the second submission of Mr. Sengupta is concerned we are unable to accept such a contention. Section 67(3) is not exhaustive. It merely provides for a case where a particular interest paid is allowable as a deductible expense. But it is not comprehensive, in the sense that it cannot be said that no other kind of interest can be deductible. If such interest complies with the requirements of the other provisions of the Act which allow a deduction, there is no reason why such deduction should not be allowed merely because of the provisions of Section 67(3).

12. So far as the third submission of Mr. Sengupta is concerned, we are unable to allow Mr. Sengupta to agitate this point before us. This question is not covered by the questions referred to us by the Tribunal, nor Was it raised before the Tribunal.

13. So far as the decisions cited by Mr. Sengupta are concerned, they have no application in the facts and circumstances of this case. In the case of

Commissioner of Income Tax Vs. Smt. Allareddy Sudarsanamma and Others, , three assessees were partners of a firm having an one-third share each. They individually withdrew substantial amounts from the firm for personal expenses. The deed of partnership did not provide for the payment of any interest on the capital investments of the partners, but they had to pay interest to the firm in respect of their drawings. In the relevant accounting year, the assessee paid interest on their withdrawals from the firm. The claim made by the assessee for a deduction of the amounts paid towards interest to the firm from their share income, was negatived by the ITO and the AAC. On appeal, the Tribunal directed the ITO to exempt the amounts of interest paid by each of the partners to the firm after its ascertainment. On a reference, the High Court decided the question in favour of the Revenue. This case has no application in the facts of this case because the sums admittedly, there, were withdrawals of the amounts. As already pointed out so far as this reference is concerned there were no such withdrawal involved.

14. So far as M.S.P. Raja and Another Vs. Commissioner of Income Tax, is concerned, similarly, there was a withdrawal by the assessee of certain amounts from one partnership firm for the purpose of providing capital to a new firm. The firm charged interest. This interest was not allowed as a deductible expense. It is quite, clear that the facts of this case are quite different from the one before us.

15. So far as the second question is concerned, it is now covered by an unreported decision of this court in the case of Commissioner of Income Tax Vs. Karam Chand Thapar and Bros. (P.) Ltd., .

16. So far as the third question is concerned, this is also covered by a decision of this court in the case of Commissioner of Income Tax Vs. Bejoy Kumar Almal, .

17. Accordingly, we answer the questions referred to us as follows :

18. Question No. 1: We answer the same in the affirmative and in favour of the assessee.

19. Question No. 2 : Following the decision of the case of Commissioner of Income Tax Vs. Karam Chand Thapar and Bros. (P.) Ltd., , we remand the matter to be disposed of by the AAC in accordance with the principles laid down in the said decision. In particular, it is to be considered whether the assessee is denying its liability to pay any interest at all. If this is so, then the matter has to be considered further. If not, and the dispute is as to the quantum or calculation of the interest charged, then the appeal should be rejected in limine.

20. Question No. 3 : We answer the question in the "affirmative and in favour of the assessee.

21. There will be no order as to costs.

Dipak Kumar Sen, J.

22. I agree.