

(2002) 02 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No's. 143, 144 and 211 of 2001 and I.T.R. No's. 26, 187, 188 and 226 to 228 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Sunil Kumar Sharma

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Income Tax Act, 1961 — Section 24(1)

Citation : (2002) 173 CTR 368 : (2002) 254 ITR 103

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and N.G. Sharma, for the Appellant;

Judgement

N.K. Sud, J.—This order will dispose of a bunch of Income Tax appeals and Income Tax references bearing I. T. A. Nos. 211, 143, 144 of 2001. I. T. R. Nos. 26, 187, 188, 226 to 228 of 1999, involving a common question of law and facts. For the sake of convenience, the facts are being taken from Income Tax Appeal No. 211 of 2001.

2. The petitioner is an individual. He filed the return for the year 1992-93 on August 31, 1992, declaring an income of Rs. 96,187. One of the sources of income was rent from various immovable properties assessable under the head "House property". The assessee had constructed SCO No. 865, Mani Majra, on a commercial site purchased by him in an auction from the Notified Area Committee, Mani Majra, for which payment is being made as per schedule of instalments given by the Notified Area Committee. The assessee claimed deduction of Rs. 80,000 u/s 24(1)(vi) of the Income Tax Act, 1961 (for short "the Act"), for the interest portion of the instalments paid by him to the Notified Area Committee. This claim was disallowed on the ground that this amount could not be treated as interest paid on capital borrowed for the purpose of acquisition, construction, repair, renewal or reconstruction of the property. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals),

Chandigarh, who vide her order dated May 31, 1993, allowed the claim for deduction of interest u/s 24(1)(vi) of the Act.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), which was dismissed on November 29, 2000. It is against this order that the present appeal has been filed by the Revenue.

4. Mr. R. P. Sawhney, learned counsel for the appellant, states that for the purpose of claiming deduction u/s 24(1)(vi) of the Act, it is necessary that cash should have been actually borrowed and paid against the purchase price and that there should have been a relationship of a borrower and lender qua the person to whom the interest is paid. According to him, the unpaid purchase price cannot be considered as capital borrowed by the purchaser from the seller. He relied on the judgment of the Supreme Court in BOMBAY STEAM NAVIGATION CO. (1953) PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY, , and also on the decision of this court in Commissioner of Income Tax Vs. Four Fields (P.) Ltd., , and those of the Bombay and Madras High Courts in METRO THEATRE BOMBAY LTD. Vs. COMMISSIONER OF Income Tax., . K. Govinda Bhatt Vs. Commissioner of Income Tax, , respectively.

5. The provisions of Section 24(1)(vi) of the Act are as follows :

"Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital."

6. The short question for consideration is as to whether the unpaid purchase price can be treated as capital borrowed for acquiring the property ? It is evident that if a property is acquired by raising a loan, interest paid on such borrowing is an admissible deduction. If that is so, it is not understood as to what difference it can make if a buyer instead of raising a loan from a third person, enters into an arrangement with a seller to pay the sale price in instalments along with interest due thereon. The moment such an arrangement is entered into, the seller becomes the lender qua the unpaid purchase price and the purchaser becomes the borrower. It is because of this reason that the instalments carry interest from the date of sale to the date of payment. Section 24(1)(vi) of the Act providing deduction of interest on borrowed capital is an incentive to promote construction of buildings. It cannot be interpreted narrowly so as to defeat the very purpose for which it is enacted. Thus, in our considered view, the unpaid purchase price has to be treated as a borrowed capital within the meaning of Section 24(1)(vi) of the Act. The view that we are taking finds support from the decision of the Calcutta High Court in Commissioner of Income Tax Vs. R.P. Goenka and J.P. Goenka, .

7. We may now briefly refer to the authorities cited by learned counsel for the appellant. In BOMBAY STEAM NAVIGATION CO. (1953) PRIVATE LTD. Vs.

COMMISSIONER OF Income Tax, BOMBAY., , the issue before the Supreme Court was whether interest paid on unpaid consideration due to the sellers on the assets acquired by a company could be treated as interest paid in respect of capital borrowed for the purpose of business, profession or vocation as specified in clause (iii) of Sub-section (2) of Section 10 of the Indian Income Tax Act, 1922. It was specifically observed that the expression "capital" used in that provision in the context in which it occurred, meant money and not any other asset. However, the interest was allowed under clause (xv) of Section 10(2) of that Act as an allowable business expenditure. Thus the Supreme Court was interpreting the term "capital borrowed" in the context of business income only. Similar was the position in METRO THEATRE BOMBAY LTD. Vs. COMMISSIONER OF Income Tax., . In fact the Bombay High Court rejected the claim for deduction of interest u/s 9(l)(iv) of the Indian Income Tax Act, 1922 (which corresponds to Section 24(1)(vi) of the Act) on the ground that in terms of the agreement, the ownership in the property had not yet passed to the assessee. It was, therefore, held that when the assessee had not even acquired the property, there was no question of allowing deduction of interest u/s 9(l)(iv). There is no such dispute in the present case. The assessee has not only acquired the property, but is earning rental income from the same.

8. In Commissioner of Income Tax Vs. Four Fields (P.) Ltd., , this court was dealing with a case where the property along with other assets and the liabilities had been taken over by one partner on dissolution. The dissolution deed provided for payment of certain amounts to the outgoing partners by December 31, 1976. It was further stipulated that in case the payment was not made by that date, the assessee was liable to pay interest on the amounts due to the outgoing partners. There was some delay in payment to the outgoing partners and the interest was paid to them. Since one of the assets taken over by the continuing partner was a building, the assessee claimed that he was entitled to deduction of such interest u/s 24(1)(vi) of the Act. This claim was negated on the ground that there was no specific borrowing by the assessee from the outgoing partners to acquire that property and, therefore, the incurring of the liability could not be considered as capital borrowed for acquiring such building. It was further held that when all the assets and liabilities of the firm were taken over by the assessee, it could not be said that any particular asset, out of the total assets of the firm, was taken over with the aid of outstanding due to the outgoing partners. Such is not the case before us. The liability is clearly relatable to the acquisition of the property.

9. We are, therefore, of the considered view that the Commissioner of Income Tax (Appeals) and the Tribunal were justified in holding that the interest portion of the purchase price included in the instalments was allowable as deduction u/s 24(1)(vi) of the Act. There is thus no infirmity in the view taken by the Tribunal.

10. Accordingly, all the appeals filed by the Revenue are dismissed being devoid of any merit. Similarly, all the petitions filed u/s 256(1) of the Act are also

disposed of and the question of law answered in favour of the assessee and against the Revenue.