
(1987) 07 RAJ CK 0033

In the Rajasthan High Court

Case No : Income Tax Reference No. 44 of 1980

Hamendra Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:

Income Tax Act, 1961 — Section 57

Citation : (1988) 69 CTR 205 : (1988) 170 ITR 508

Hon'ble Judges : J.S. Verma, C.J; Milap Chandra, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; B.R. Arora, for the Respondent

Judgement

Milap Chandra, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be called as "the Act"), made by the Income Tax Appellate Tribunal, Jaipur, on the request of the assessee to answer the following questions of law, namely :

" 1. Whether the learned Appellate Tribunal is correct in not holding that the assessee's interest-earning capital of Rs. 2,71,000 represented by the fixed deposits stood reduced by the amount of loans of Rs. 1,51,818 taken by the assessee on the security of the said fixed deposits and in not holding that the interest paid on the reduced capital alone was taxable u/s 56 of the Act ?

2. Whether the learned Tribunal is correct in invoking the provisions of Section 57 of the Act when the assessee's interest-earning fixed deposits stood reduced by the amount of loans taken on the security thereof and the interest on reduced amount only is taxable u/s 56 of the Act?"

2. In the return relating to the assessment year 1970-71, the assessee declared income by way of interest to the extent of Rs. 20,902 obtained from various fixed deposits. He took loans from the respective banks on pledging the fixed deposit receipts for constructing his house and paid interest of Rs. 14,740 on the loans so obtained. Interest was paid by him at a rate higher than what he obtained

from his fixed deposits and Rs. 3,800 was paid in excess as interest by him. The assessing authority did not allow this deduction u/s 57(iii) of the Act. On appeal, the Appellate Assistant Commissioner allowed the deduction to the extent of Rs. 11,940 paid as interest by the assessee on the said loans. The Department preferred an appeal before the Income Tax Appellate Tribunal, Jaipur. It was allowed holding that the assessee was not carrying on the business of construction of houses, interest was not paid by him for maintaining the interest income and, therefore, the provisions of Section 57(iii) of the Act were not attracted. On the request of the assessee, this reference has been made.

3. It has been contended by learned counsel for the assessee that the assessee pledged the fixed deposit receipts to take loans on them and paid interest in order to keep intact the income by way of interest. He also contended that the assessee could sell the fixed deposit receipts for constructing his house and, in that case, the income by way of interest would have gone down substantially and, as such, the interest paid on the said loans was wholly and exclusively for maintaining the interest income from the said fixed deposit receipts and, therefore, the provisions of Clause (iii) of Section 57 of the Act are fully applicable in the present case. He relied upon COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUMVERBA SAHEB OF MORVI AND OTHERS., , Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi, and State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, .

4. In reply, it has been contended by learned standing counsel for the Department that the said loans were admittedly taken for constructing a house and not for earning interest, that interest was not paid wholly and exclusively for the purpose of earning interest on fixed deposits, that construction of the said house was not in any way connected with the income arising out of the said fixed deposits and as such Clause (iii) of Section 57 of the Act is not attracted in the present case. He relied upon Bai Bhuriben Lallubhai v. Commissioner of Income Tax, (1956) 29 ITR 543 (Bom) , COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL., , Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat, and Padmavati Jaykrishna Vs. Commissioner of Income Tax, .

5. It is the admitted case of the parties that the loans were taken by the assessee on pledging the fixed deposit receipts for the construction of a house. Indisputably, during the relevant year, a sum of Rs. 20,902 was earned as interest from the various fixed deposits made in the three scheduled banks, namely, Bank of Rajasthan, State Bank of India and Punjab National Bank, Ajmer. Interest of Rs. 14,740 was not paid for the purpose of keeping or maintaining the earning of fixed deposit interest but was paid on the amount of loans taken for constructing the house. The motive of the assessee that he took loans on his fixed deposits in order to save them and to maintain his interest income is irrelevant. He had an option to incur the said expenditure. It depended upon his own personal consideration. It was not compulsory. His option had no connection with the earnings of interest from the fixed deposits. It has been

observed in *Bai Bhuviben Lallnbhai v. CIT* [1959] 29 ITR 543, as follows :

" It may be that the assessee's motive was to save her fixed deposit and interest accruing from it and to purchase jewellery by means of loan borrowed from some person or other. But that consideration is entirely irrelevant. What we are concerned with is the actual action on the part of the assessee and not of the action she could have taken under the circumstances. If she had chosen to purchase this jewellery by withdrawing money from the fixed deposit, then undoubtedly her income would have been reduced and to that extent the tax on that income would also be reduced. But because she chose to borrow money to buy the jewellery, it does not establish the purpose, namely, that she borrowed money in order to maintain or preserve the fixed deposit or help her to earn interest."

6. It has further been observed at page 550 as under :

" If an assessee has no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would come within the ambit of Section 12(2). But where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2)."

7. There is yet another aspect of the case. In view of the aforesaid facts and circumstances, it cannot be said that interest of Rs. 14,740 was paid wholly and exclusively for the purpose of keeping and maintaining the income by way of interest therefrom. It cannot be denied that the immediate purpose of taking loans and paying interest of Rs. 14,740 was to construct the house. It shows that the purpose was a dual one. If that be so, it cannot be said that the expenditure was incurred wholly and exclusively for the purpose of making the earning in question as required under Clause (iii) of Section 57 of the Act.

8. In *Seth R. Dalmia Vs. The Commissioner of Income Tax Delhi, New Delhi*, , the assessee was an investment company; it borrowed money and utilised the same for its investment on which it earned income. On these facts, it was held that interest paid by it on the loans was a permissible deduction. In *State Bank of Travancore Vs. Commissioner of Income Tax, Kerala*, , the provisions of Section 57 of the Act were not under consideration.. *Bai Bhuriben Lallubhai v. CIT* [1959] 29 ITR 543 has been approved and followed in *COMMISSIONER OF Income Tax, GUJARAT Vs. MRS. INDUMATI RATANLAL*, , *Padmavati Jaykrishna Vs. Commissioner of Income Tax, Gujarat*, and *COMMISSIONER OF Income Tax, BOMBAY CITY I Vs. H. H. MAHARANI SHRI VIJAYKUMVERBA SAHEB OF MORVI AND OTHERS*, .

9. Question No. 1 and the second limb of question No. 2 do not arise out of the order of the Income Tax Appellate Tribunal dated August 31, 1977. Suffice it to

say here that neither the figures of Rs. 2,71,000 and Rs. 1,51,818 nor Section 56 of the Act finds mention in the said order dated August 31, 1977. As such they are not answered.

10. The first limb of question No. 2 is answered as under :

"The Tribunal is correct in holding that the assessee is not entitled for exemption u/s 57(iii) of the Act and in not allowing under these provisions the deduction of the amount of interest paid by him on the loans taken on pledging his fixed deposit receipts."