(1997) 01 BOM CK 0045

In the Bombay High Court

Case No : IT Ref. No. 439 of 1984

Kesar Sugar Works Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:
Income Tax Act, 1961 — Section 36(1)

Citation : (1997) 01 BOM CK 0045

Hon'ble Judges : Pratibha Upasani, J;B.P. Saraf, J

Bench : Division Bench

Advocate : P.J. Pardiwala, instructed by Daphtary Perrieira and Diwan, for the Appellant; Balasubramaniun, T.U. Khatri and J.P. Deodhar, instructed by R. D. Rathod, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference under s. 256(1) of the IT Act, 1961, the Tribunal has referred the following question at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that interest pertaining to the borrowings taken by the assessee direct for making payment of Income Tax and dividend was not allowable under s. 36(1)(iii) of the IT Act, 1961 ?"

2. The controversy in the above question is fully covered by the decision of this Court in Commissioner of Income Tax, Bombay City-III Vs. Shree Changdeo Sugar Mills Ltd., . In the above case, it has been held that the interest paid on moneys borrowed, which are utilised for payment of dividend to the shareholders of a company, is entitled to deduction under s. 36(1)(iii) of the IT Act, 1961 as payment of dividend is a part of the business of a company and one of its purposes and must be recorded as included in the connotation of the expression "for the purpose of business" within the meaning of cl. (iii) of s. 36(1).

However, so far as the claim for deduction of interest paid on moneys borrowed for payment of Income Tax is concerned, it was held by this Court in the above decision that interest paid on moneys borrowed for payment of taxes is not entitled to deduction under s. 36(1)(iii) of the Act. In view of the above, we answer the question referred to us as follows :

The Tribunal was justified in holding that the interest pertaining to the borrowings taken by the assessee for payment of Income Tax was not allowable as deduction under s. 36(1)(iii) of the IT Act, 1961.

The Tribunal was, however, not justified in holding that the interest paid on moneys borrowed for payment of dividend was not allowable under s. 36(1)(iii) of the IT Act, 1961. Such interest is allowable as deduction under s. 36(1)(iii) of the IT Act, 1961 as the payment of dividend is part of the business of the company.

3. The question referred to us is answered accordingly. No costs.

