
(2013) 12 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Reference No. 176 of 1998

Naman Kumar

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2014) 221 TAXMAN 269

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Dr. Bharat Bhushan Parsoon, J.—In all these three Income Tax References, following questions of law have been referred to this Court for adjudication: i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that in view of the original assessment having been made summarily u/s. 143(1), there was no question of change of opinion and the Assessing Officer was justified in resorting to action u/s. 148 of the Income Tax Act, 1961, particularly as the judgement of the Supreme Court in the case of Shew Kissen Bhattar Vs. The Commissioner of Income Tax, Calcutta, was already before the Assessing Officer at the time of original assessment?

ii) Whether in the facts and circumstances of the case, the claim of deduction made by the assessee on account of interest paid to the bank is an allowable deduction u/s. 24(1)(vi)/or u/s. 24(1)(iv) of the Income Tax Act, 1961 and had been rightly allowed in the original assessment?

Since the matter in controversy as also questions of law are the same in these references, therefore, the same are being taken up together for adjudication. For convenience and clarity, facts of ITR No. 186 of 1998 titled Mrs. Manju Kumar v. The Commissioner of Income Tax, Patiala are being taken up for discussion.

2. The reference pertains to assessment years 1985-86, 1986-87 and 1988-89 to 1991-92. The assessee as individual having property income was assessed to income tax for the assessment years 1985-86, 1986-87 and 1988-89 to

1991-92. The assessment for all the six years was framed separately by the Assessing Officer (hereinafter referred to as, the AO) vide assessment orders (Annexures A-1 to A-6). A joint appeal was preferred by the assessee for the assessment years 1985-86 and 1986-87 before the Deputy Commissioner of Income Tax (Appeals) Range, Chandigarh [hereinafter referred to as, the DCIT(A)] wherein order was pronounced on 19.11.1992 (Annexure B-1). On the other hand, for the assessment years 1987-88, 1988-89, 1990-91 and 1991-92, a joint appeal was preferred by the assessee before the Commissioner of Income Tax (Appeals), Chandigarh [hereinafter referred to as, the CIT(A)] wherein order was pronounced on 1.6.1992 (Annexure B-2). Appeals preferred by the assessee for all the six assessment years were decided by the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as, the Tribunal) vide a consolidated order (Annexure C).

3. We have heard counsel for the parties while going through the paper book.

4. The first question is as to whether it was a case of income escaping assessment and, therefore, re-assessment, u/s 148 of the Act, was required or not?

5. For the year 1985-86 and 1986-87, return of income furnished by the assessee on 3.3.1987 declaring total income of Rs. 48,190/- and Rs. 37,700/- respectively, was accepted vide order of 5.5.1987 and 30.6.1987 respectively u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as, the Act). The assessee had disclosed income from property at Rs. 51,690/- and Rs. 52,700/- for the assessment years 1985-86 and 1986-87 respectively in the return filed for both these years.

6. During proceedings of assessment for the period ranging from 1987-88 to 1991-92, it was noticed that the assessee was having 25% share of rental income of SCO Nos. 57, 58 and 59, Sector-17, Chandigarh. It was also noticed that the assessee had been claiming compound interest on loan raised for construction of the property, whereas during the assessment proceedings, it was found that only simple interest was admissible to the assessee.

7. Since income of the assessee had escaped assessment on this account, notice u/s 148 of the Act had been issued to the assessee after seeking prior approval of DCIT(A), in response to which notice, the assessee had furnished return for the assessment year 1985-86 and 1986-87. Since no computation of declared income had been furnished along with the return, notices u/s 143(2) and 142(1) of the Act were also issued to the assessee. During the assessment proceedings when computation chart was furnished by the assessee, it was found that interest on house building loan for the year 1985-86 had been claimed at Rs. 1,83,875/- against rent of Rs. 4,81,032/- of the property received during this period. It was further noticed that interest on house building was claimed at Rs. 2,25,263/- against declared rent of Rs. 5,54,603/- received from the property for the assessment year 1986-87.

8. The AO falling in line with the assessment order for the year 1984-85 had held the assessee to be entitled to only simple interest on the principal amount outstanding during the year out of the loan raised by the assessee. In short, interest @ 15% per annum on outstanding principal amount of Rs. 5,05,000/- was allowed.

9. Counsel for the assessee had challenged the legality of proceedings initiated u/s 148 of the Act claiming that allowability of interest as simple interest or compound interest was not a circumstance sufficient enough to conclude that some income had escaped assessment but this fact was covered within the domain and sweep of "change of opinion and hence proceedings u/s 148 of the Act could not be initiated in such circumstances".

10. Per contra, claim of the revenue is that in the return of income, the assessee had neither furnished data nor details as to how she had been claiming compound interest on the loan raised for construction of the property. No computation chart had been furnished with the original return. It was then asked for later. Without such chart, there was no indication or detail as to how much interest had been claimed and as to what was the basis of claiming such interest.

11. It is contended by the revenue that in absence of complete facts and details regarding charging of interest, there was no application of mind by the AO at the time of finalising the original assessment or while dealing with the point of allowability of interest as compound or simple interest.

12. Not only the AO but even the DCIT(A), CIT(A) and the Tribunal had rightly come to the conclusion that plea of the assessee that Section 148 of the Act could not be invoked as it was a case of change of opinion, was wrong and thus was rejected.

13. Vague reference made to some unspecified circular of the Board cannot make the re-opening invalid. Same was the position in both the years viz. 1985-86 and 1986-87. So far as assessment for the years 1987-88 to 1991-92 is concerned, though chart of computation of income was furnished along with the return, share of the assessee was mentioned as 20% in the rental income, whereas during scrutiny of the cases, it was found that the assessee had not disclosed her income truly in the income tax return. It was in these circumstances that notice u/s 148 of the Act was issued in response to which the assessee had furnished the return declaring net income as Rs. 33,350/- when pursuant to notice u/s 148 of the Act, the assessee had furnished the return, income was declared disclosing 25% share in the income of the property. It was thus clearly a case of escape of income from the assessment. This adjudication made by the AO at the time of ordering of assessment has not only been approved by the CIT(A) but by the Tribunal as well but actually is correct position of the facts and the law on the point. Clearly enough it was not at all a case of "change of opinion" but was a clear case of "escapement of income from assessment" and, therefore, whether jurisdiction of the Hon'ble Supreme Court was available to the AO or not is

irrelevant.

14. Next question for determination is as to whether simple interest or compound interest charged by the bank on the amount borrowed by the assessee from it for raising construction was to be allowed or not?

15. To answer this aspect, we need to go through the provisions of section 9(1)(iv) of the Indian Income Tax Act, 1922 with its relevant provisions u/s 24 of the present Act. Section 9(1)(iv) of the Indian Income Tax Act, 1922 for ready reference is appended as below:

9. Property--(1) The tax shall be payable by an assessee under the head "income from property" in respect of the bonafide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession

"or vocation carried on by him the profits of which are assessable to tax, subject to the following allowances, namely:

i)

ii)

iii)

iv) where the property is subject to mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital.

16. For comparative evaluation, relevant provisions of section 24 of the Act is also reproduced as under:

24(1). Income chargeable under the head "income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely:

i)

ii)

iii)

iv) where the property is subject to an annual charge (not being a charge created by the assessee voluntarily or a capital charge), the amount of such charge;

v) where the property is subject to a ground rent, the amount of such ground

rent;

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

Explanation.--Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as a deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years.

17. When comparative analysis of these two provisions under the two respective Acts is made, it is found that provisions of Section 9(1)(iv) of the Indian Income Tax Act, 1922 has been split into three clauses under the present Act without bringing about any change in the scheme of the Act. In short, provisions under both the Acts are *pari-materia* in respect of their stratum.

18. At this stage, reference may be made to *Shew Kissen Bhattar Vs. The Commissioner of Income Tax, Calcutta*, where in similar circumstances compound interest was disallowed and only simple interest was allowed. It was held that interest paid on borrowed amount is permissible as a deduction only on the amount loaned by the bank and not on the amount added to such amount loaned by the bank for the non-payment of loan amount thus increasing the liability of the assessee in terms of interest which thus would include even compound interest. The observations made in this authority are appended as below:

It must be borne in mind that what the law permits is the deduction of the "amount of any interest on such mortgage or charge". The interest payable by the assessee on the capital charge was at the rate of 63/4% per annum. But if he fails to pay that in accordance with the terms of the contract, he was liable to pay compound interest. In other words, if he fails to pay interest in accordance with the contract, he was liable to pay interest on interest. Or, to put it differently, when the interest payable is not paid, the same became a part of the principal and, thereafter, interest has to be paid not only on the original principal but also on that part of the interest which had become a part of the principal. It cannot be said that the interest which became a part of the principal can be considered as the capital charge.

19. It was further held in this judgment as under:

What the assessee is entitled to deduct is the interest payable by him on the capital charge and not the additional interest which because of his failure to pay the interest on the due date had been considered as a part of the loan. In fact, the real capital charge is that which was originally due. The other portion is merely an interest on which the assessee has agreed to pay interest. Hence we are unable to accept the connection of the assessee that the interest is an

interest paid on the capital charge. Mr. Chagla, the learned counsel for the assessee, contended that the law permits his client to deduct any interest paid by him on the capital borrowed or charged and "any interest" included compound interest also. This, to our minds, appears to be a fallacious argument. The compound interest is payable not on the capital charge but on that part of the interest on which he has agreed to pay interest. That is not the capital taken note of by section 9(1)(iv). If we accept Mr. Chagla's contention as correct, then the door will be open for evasion of tax. All that the debtor need do is not to pay interest regularly but utilise that amount for other purpose and make the Revenue pay compound interest payable by him and thus derive advantage out of his own omission. Such an interpretation is impermissible.

20. By now, it is clear that income of the assessee under the head "income from house property" is to be computed for the purpose of income tax after making certain deductions as are envisaged in Section 24 of the Act. Section 24(1)(vi) of the Act stipulates that amount of interest payable on capital borrowed, inter alia, for construction of the property yielding income, is an admissible deduction. It thus is evident that only interest payable on such borrowed capital is to be deducted while computing income chargeable to income tax under the head "income from house property". In short, interest paid on interest levied by the bank, because of non-payment of instalments of borrowed capital to the bank, does not qualify for an admissible deduction.

21. It is thus clear that the Tribunal was right in disallowing interest on interest which had been deducted by the assessee as allowable deduction and in allowing only simple interest as deduction. In view of the above discussion, both the substantial questions of law are answered in favour of the revenue. Sequelly, all the three references are adjudicated against the assessee and in favour of the revenue.