
(1980) 09 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 76 of 1977

Naraindas Goyal Contractor

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-09-1980

Acts Referred:

Income Tax Act, 1961 — Section 145, 256(1), 256(2)

Citation : (1982) 134 ITR 96

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.C. Goyal, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Sohani, J.—This is an application u/s 256(2) of the I.T. Act, 1961, hereinafter called "the Act", requiring the Appellate Tribunal to state the case and refer certain questions of law to this court for its opinion.

2. The material facts giving rise to this application briefly are as follows : The applicant is an assessee carrying on business as a contractor. For the assessment year 1972-73 the assessee filed his return of income at Rs. 12,127. The ITO held that the proviso to Section 145 of the Act was applicable as the books of account maintained by the assessee were not verifiable. The ITO, therefore, estimated the net profit of the assessee at 15% of the receipts shown by the assessee. The ITO, however, disallowed the claim for deduction of interest paid by the assessee over borrowed capital. The ITO thus made consequential additions to the disclosed income of the assessee. On appeal, the AAC held that the assessee was entitled to deduction of interest. Aggrieved by the order of the AAC, the department preferred an appeal before the Tribunal. The Tribunal held that the assessee was not entitled to deduction of interest. Aggrieved by the order passed by the Tribunal, the assessee submitted an application for making a reference to this court, but that application was rejected. Hence, the assessee has filed this application.

3. Having heard learned counsel for the parties, we have come to the conclusion that the following question of law arises in this case :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that interest paid by the assessee on borrowed capital was not separately admissible when profit was computed on a net rate basis ? "

4. The application is, therefore, allowed. The Tribunal is directed to state the case and refer the aforesaid question of law to this court for its opinion. There shall be no order as to costs.