

**(1985) 04 MAD CK 0015**  
**In the Madras High Court**  
**Case No : T.C.P. No. 423 of 1984**

Prem Nazir

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 08-04-1985

**Acts Referred:**

Income Tax Act, 1961 — Section 36(1), 57, 67, 67(3)

**Citation :** (1986) 159 ITR 182

**Hon'ble Judges :** N.A. Sathar Sayeed, J;G. Ramanujam, J

**Bench :** Division Bench

**Advocate :** V. Ramachandran, for the Appellant; J. Jayaraman and N.V. Balasubramaniam, for the Respondent

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## Judgement

Ramanujam, J.—This reference application has been filed by the assessee seeking a direction to the Income Tax Tribunal from this court to

refer the following three questions for the opinion of this court :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the firm had not commenced business,

especially since one of the businesses of the firm was to acquire commercial properties and the firm had advanced the funds for the purchase of a property ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the deduction of interest could not be

allowed on the ground that the applicant had no source of income from business through the firm ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the disallowance of the interest ?

2. The assessee is a cine artiste. During the relevant accounting year relating to

the assessment year 1977-78, the assessee had borrowed a sum of Rs. 3 lakhs from various persons agreeing to pay interest at 15 per cent. for utilising the said amount for investment in a firm called Sevenseas International. However, the said firm did not commence its business at all and the assessee got no share income from the said partnership. The assessee claimed deduction in respect of the interest paid on the capital borrowed as against his total income, which is mainly from his profession as a cine artiste. The assessing authority rejected the said claim on the ground that deduction can be allowed u/s 67(3) of the Income Tax Act, 1961, hereinafter referred to as "the Act", only against the assessee's share income from the partnership and when there is no share income actually received from the partnership, there is no question of deduction of interest paid on the capital invested in the partnership. The matter was taken in appeal to the Commissioner of Income Tax (Appeals). The appellate authority also agreed with the view of the original authority that the assessee is not entitled to deduction of the interest paid on the borrowed capital as against his total income, which admittedly did not include any share of income from the partnership. The assessee took the matter in appeal to the Tribunal. The Tribunal, however, upheld the view of the appellate authority and held that deduction cannot be allowed u/s 67(3) of the Act on the facts and circumstances of the case. The view taken by the Tribunal that section 67(3) will not stand attracted, on the facts and circumstances of this case, is sought to be challenged by seeking a reference to this court.

3. Learned counsel appearing for the assessee contends before us that the Tribunal has not properly understood the scope and ambit of section 67(3) of the Act and that in dealing with the scope of the said section, the Calcutta High Court in Commissioner of Income Tax Vs. C.L. Bajoria, , has held that all that is required u/s 67(3) is that the partner should borrow some money for the purpose of investment in the firm as capital or as loan, that there is no further qualification that the firm should utilise the money in question in any particular manner and that, therefore, the interest on the amount borrowed by the partner which he has utilised in the firm either as capital or as loan was allowable in computing his share of income from the firm u/s 67(3) of the Act. We do not see how the said decision could

apply to the facts of the present case. In that case, the money has been borrowed by the partner for investment in the partnership and the partnership actually carried on business. The money borrowed and invested by the partner in the firm was actually utilised by the firm for payment of taxes, which indicates that the firm was carrying on business and the partner received his share of income from the firm and that it was against that share of income that the deduction u/s 67(3) was claimed. The claim was objected to by the Revenue only on the ground that the firm did not utilise the money invested by the partner for the purpose of the business but it was utilised only for payment of taxes and that since the amount invested by the partner in the firm has not been utilised for the purpose of the business, deduction cannot be claimed as against the partner's share of the business income. The court, if we may say so with respect, very rightly rejected the contention of the Revenue and proceeded to hold that whatever use the money invested by the partner has been put to by the firm, the partner is entitled to claim deduction in his assessment as against his share of the income from the partnership. Thus, the said decision has rightly given effect to the provision in section 67(3) of the Act. Here, the position is somewhat different. Though the assessee borrowed a sum of Rs. 3 lakhs and invested the same in the firm, the firm has not commenced business at all and the amount borrowed, though invested in the firm, has not been utilised in connection with any business. Though the assessee has paid interest on the amount borrowed, we do not see how the interest paid could be taken to be a charge on the assessee's total income which mainly consists of his professional income as a cine artiste.

4. Learned counsel for the assessee then refers to the decision of the Supreme Court in Commissioner of Income Tax, West Bengal-III Vs.

Rajendra Prasad Moody, . Here again, we do not see how the said decision can help the assessee. In that case, the Supreme Court, while

considering the admissibility of a deduction u/s 57(iii) in computing the income from dividend under the head ""Income from other sources"",

expressed the view that section 57(iii) does not require that the purpose must be fulfilled in order to qualify the expenditure for deduction and that

the said section does not say that the expenditure shall be deductible only if any

income is made or earned. According to their Lordships of the Supreme Court, the plain and natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within that section, it is not necessary that any income should in fact have been earned as a result of the expenditure. In the case cited, the assessee borrowed moneys for the purpose of making investment in certain shares and paid interest thereon during the accounting period relevant to the assessment year but did not receive any dividend on the shares purchased with those monies. The assessee claimed deduction towards interest paid on the capital borrowed for the purpose of purchase of the shares. That claim was rejected on the ground that the assessee has not earned any dividend during the accounting year and, therefore, he is not entitled to claim deduction. The Supreme Court, on these facts and circumstances, held that the interest on moneys borrowed for investment in shares which had not yielded any dividend was admissible as a deduction u/s 57(iii) in computing its income from dividend under the head "Income from other sources".

5. Section 67(3) came up for consideration before this court in *M.S.P. Raja and Another Vs. Commissioner of Income Tax*, . In that case, after referring to the scope of section 67(3), the court observed as follows (p. 310). Section 67(3) deals with the method of computing a partner's share in the income of the firm. Sub-clause (3) thereof provided for the deduction of interest paid on capital borrowed for the purpose of investment in the firm. As a specific provision has been made u/s 67(3) with reference to the claim for deduction of interest from the share of income, it would follow that section 36(1)(iii), which is in the nature of a general provision relating to all businesses, would have no application. Section 67(3) provides for the deduction of any interest paid by the partner on capital borrowed by him for the purpose of investment in the firm. It proceeds on the basis that in computing the income chargeable on the profits and gains of business or profession, which the share income would come under, interest paid could be deducted from the share. There must be some share income in order to justify the assessee's claim for deduction u/s 67(3). When there is none, it is not possible to accept the claim for deduction under that provision.

6. We are of the view that the said decision correctly sets down the object and

the principle behind section 67(3) that in the absence of any share income from the partnership, a partner cannot claim deduction for the interest paid on the share capital borrowed for investment in the partnership as against his income under other heads on the basis of section 67(3). In this view of the matter, we are of the opinion that the Tribunal has come to the right conclusion in this case. Therefore, the petition is dismissed with Costs. Counsel's fee Rs. 250.