(1986) 01 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 292 of 1984

Sobhagmal Phoolchand APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:
Income Tax Act, 1961 — Section 40

Citation : (1986) 53 CTR 387 : (1987) 166 ITR 541

Hon'ble Judges : K.L. Shrivastava, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Mandovra, for the Appellant; R.C. Mukati, for the Respondent

Judgement

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the interest paid by the assessee-firm to the Hindu undivided family Prakash Chandra Sobhagmal and Arunkumar Sobhagmal on their loan accounts is to be disallowed under the provisions of Section 40(b) of the Income Tax Act, 1961?"

2. The material facts giving rise to this petition briefly are as follows :

The assessee is a registered firm consisting of partners, Prakashchandra Sobhagmal, Arunkumar Sobhagmal and Smt. Vidyadevi. While framing the assessment for the assessment year 1978-79, the Income Tax Officer rejected the claim of the assessee that interest paid to partners, Prakash Chandra Sobhagmal and Arunkumar Sobhagmal, could not be disallowed u/s 40(b) of the Act inasmuch as that amount of interest was paid to them in their Hindu undivided family capacity. The appeal preferred by the assessee in that behalf was, however, allowed by the Appellate Assistant Commissioner. The Revenue thereupon preferred a second appeal before the Tribunal. The Tribunal held that interest paid by the assessee-firm to its partners, Prakashchandra Sobhagmal and Arunkumar Sobhagmal, was rightly disallowed by the Income Tax Officer u/s 40(b) of the Act. The Tribunal accordingly allowed the appeal. Hence, at the instance of the assessee, the Tribunal has referred the aforesaid question of law to this court for its opinion.

3. Learned counsel for the assessee contended that the matter was covered by a Division Bench decision of this court in Balchand Hashmatrai and Co. Vs. Commissioner of Income Tax, . On behalf of the Revenue, Shri Mukati relied on an earlier decision of this court in Jalam Chand Mangilal (No. 2) Vs. Commissioner of Income Tax, where it was held that payment of interest to a partner in whatever capacity would not be allowable u/s 40(b) of the Act.

4. Having heard learned counsel for the parties, we have come to the conclusion that there is an apparent conflict between the decisions of this court in Jalam Chand Mangilal (No. 2) Vs. Commissioner of Income Tax, and Balchand Hashmatrai and Co. Vs. Commissioner of Income Tax, . We, therefore, refer this case to the Chief Justice with a recommendation that it be heard by a Full Bench. The registry is accordingly directed to arrange to send the record of the case to the main registry for being placed before the Chief Justice.

