

Devi Cine Projector Manufacturing Co. and Others

Vs

Commissioner of Income Tax

Civil Appeal Nos. 1185 to 1188 (NT) of 1990

(M.N. Venkatachaliah, N.D. Ojha, J.S. Verma JJ)

05.02.1990

JUDGMENT

VENKATACHALIAH J. -

1. These four petitions for grant of special leave arise out of the orders of the High Court of Judicature at Madras in the corresponding four tax case petitions, rejecting the assessee's applications under section 256(2) of the Income Tax Act, 1961, and the reference of a question of law whether the disallowance under section 40(b) of the Income Tax Act, 1961 (Act) of the interest paid by a firm to its partner should be the gross amount of such interest or should be confined to the net amount after setting off the interest, in turn, paid by the partner to the firm on his borrowings from the firm.
2. In each of these cases, the Income Tax Appellate Tribunal had, in substance, held that what was disallowable was the entirety of the interest paid by the firm to the partner without reference to any interest that may, in turn, have been paid by the partner to the firm. The Tribunal, in the appeals preferred by the Revenue before it, allowed the appeals and reversed the view to the contrary taken in favour of the assessee by the refer a question of law under section 256(1) of the Act to the High Court; whereupon the assessee moved the aforesaid tax case petitions before the High Court under section 256(2). The High Court rejected these applications on the view that there was no referable question of law arising out of the appellate orders of the Tribunal, having regard to earlier pronouncement of the High Court in CIT v. O. M. S. S. Sankaralinga Nadar and Co. ((1984) 147 ITR 332 : 1984 Tax LR 89 (Mad HC)) on which the Tribunal had relied.
3. The correctness of the decision of the High Court in the said Sankaralinga Nadar case has come to be examined by this court in Keshavji Ravji and Co. v. CIT ((1990) 2 SCC 231) and this Court has taken a view in the light of which Sankaralinga Nadar and Co. case cannot be held to have laid down the law correctly in all respects. The pronouncement of this Court in the said Keshavji Ravji and Co. case covers the point raised in these special leave petitions.
4. However, as the present special leave petitions arise out of the orders of the High Court rejecting the tax case petitions under Section 256(2) of the Act, we should, in the normal course, grant special leave, register the corresponding civil appeals and, after setting aside the orders of the High Court, remit the corresponding tax case petitions to the High Court with a direction to allow the petitions and to direct the Income Tax Appellate Tribunal to state a case and refer a question of law for the opinion of the High Court and thereafter to dispose of the references in the light of the pronouncement of this court in the said Keshavji Ravji and Co. case ((1990) 2 SCC 231) This procedure would, indeed, be an idle, time-consuming and wholly avoidable formality in the

circumstances of the present cases. As the position is now settled, we are of the opinion that the interests of justice would be served by treating the present special leave petition as directed against from the main appellate orders of the Income Tax Appellate Tribunal, Madras, and after granting special leave, set aside that part of the appellate orders as pertain to the extent of disallowance of the interest under Section 40(b) of the Act and direct the Tribunal to dispose of the appeals on the point afresh in the light of the aforesaid pronouncement of this court.

5. These petitions are, therefore, treated as directed against the main appellate judgment dated March 3, 1984, in I.T. A. No. 1521/Mds/1982; February 29, 1984, in I.T.A. No. 898/Mds/1982; August 30, 1983, in I.T.A. No. 1520/Mds/1982 and February 22, 1984, in I.T.A. No. 1848/Mds/1983 of the Income Tax Appellate Tribunal, Madras, and special leave granted.

6. The orders of the Tribunal made under section 256(1) of the Act in each of these cases as well as the orders of the High Court in Tax Case Petitions No. 739 of 1985, 313 of 1985, 260 of 1984 and 42 of 1986 are set aside.

7. Further, the appellate orders of the Income Tax Appellate Tribunal, in so far as they pertain to the extent of disallowance of interest under Section 40(b) of the Act, are set aside and the said appeals remitted to the Tribunal for fresh disposal of the appeals on the point in the light of the pronouncement in Keshavji Ravji and Co.'s case ((1990) 2 SCC 231).

8. There will, however, be no order as to costs.

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