Cit Vs. Subhash Chand

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Court : Allahabad

Decided On : Dec-07-2004

Reported in : [2006]150TAXMAN486(All)

Appeal No. : IT Reference No. 212 of 1988 7 December 2004

Appellant : Cit

Respondent : Subhash Chand

Advocate for Pet/Ap. : A.N. Mahajan, *for the Revenue* Shakeel Ahmad, *for the Assessee*

Judgement :

1. The Income-tax Appellate Tribunal, Allahabad, has referred the following two questions of law under section 256(1) of the income Tax Act (hereinafter referred to as 'the Act') for opinion to this Court :

'1. Whether, on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was correct in law in holding that the interest derived by the minors on the investments made with the firm was not as a result of their admission to the benefits of the partnership and that it could noi be included in the assessee's income under section 64(1)(iii) of the Income Tax Act, 1961 ?

2. Whether the Tribunal was correct in law in allowing deduction under section 80V of the Income Tax Act, 1961, on the amount of interest paid by the assessee to the firm, in which he is a partner ?'

2. We have heard Sri A.N. Mahajan, learned Standing Counsel for the revenue and Sri Shakeel Ahmad for the respondent-assessee.

3. The reference relates to the assessment years 1980-81 to 1984-85. So far as the first question is concerned Sri A.N. Mahajan, learned Standing Counsel submitted that this Court in CIT v. Subhash Chand (IT Reference No. 217 of 1983

4. So far as the second question is concerned, during the assessment years 1981-82 to 1984-85 the respondent had paid interest to the firm from which he had borrowed money to pay tax. Under section 80V of the Act, which as it stood during the relevant assessment years deduction of any interest paid by any assessee on any money borrowed for paying any tax due from him was allowable. In the present case payment of tax related to the amount clubbed under section 64 of the Act related to the income of the minors assessed during the relevant assessment year. The liability of payment of tax was on the respondent, therefore, if the respondent had borrowed the amount to pay tax, the interest paid by him is an allowable deduction.

5. In view of the foregoing discussion we answer the first question in negative i.e., in favour of the revenue and against the assessee and we answer the second question in affirmative i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.