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Cit Vs. Simplex Rayon and Silk Processors

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Court : Gujarat

Decided On : Jul-03-2002

Reported in : [2002]123TAXMAN838(Guj)

Appeal No. : IT Reference No. 75 of 1990 3 July 2002

Appellant : Cit

Respondent : Simplex Rayon and Silk Processors

Advocate for Pet/Ap. : Tanvish Bhatt, *for the Revenue*

Judgement :

K.A. Puj, J.

At the instance of the revenue, the following question of law is referred by the Tribunal for the opinion of this court :

'Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance of interest paid to Hindu undivided family partner under section 40(b) of the Income Tax Act ?'

2. The Income Tax Officer had disallowed under section 40(b) of the Income Tax Act the interest paid to the partner. That partner was a Hindu undivided family and the disallowance was made on the ground that a partial partition of that Hindu undivided family took place after the amendment which nullified the effect of that

partition. The Commissioner had confirmed that disallowance following his decision in the assessee's case for the assessment year 1980-81. In that decision, the Commissioner had followed two decisions of the Hyderabad Benches of the Tribunal. He had observed that the substance of those two decisions was that section 171(4) of the Act had operation only for computing the income of the Hindu undivided family and interest paid to the Hindu undivided family could not be disallowed by applying section 40(b). The Tribunal has taken the view that the assessee was entitled to the deduction of the interest paid and the disallowance was cancelled. Being aggrieved by the said order of the Tribunal, the revenue has come in reference to this court.

3. We have heard Mr. Tanvish Bhatt, the learned standing counsel appearing for the department. No one appears on behalf of the respondent-assessee though the notice was duly served.

4. At the hearing of the reference, our attention was drawn to the decision of this court in the case of Bhupendra Navnitlal & Co. v. CIT : [1994]209ITR972(Guj) wherein it is held as under :

'In computing the business profits of the assessee-firm, the interest paid to an individual on monies advanced by him from his individual funds could not be disallowed on the ground that he was partner of the assessee-firm as a karta of a Hindu undivided family. When the assessee represents a Hindu undivided family, the interest paid to the Hindu undivided family has to be disallowed and not any interest paid to the assessee in his account for the advance made by him personally. Under section 40(b) of the Income Tax Act, 1961, it is only the interest paid to the partner which is not allowed to be deducted.'

5. Following the aforesaid judgment, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

The reference is, accordingly, disposed of with no order as to costs.

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