

(1992) 09 AHC CK 0052

Allahabad High Court

Case No: Income-tax Reference No. 90 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Murlidhar Kanodia and Sons
(HUF)

RESPONDENT

Date of Decision: Sept. 24, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 24(1)

Citation: (1993) 204 ITR 760

Hon'ble Judges: R.K. Gulati, J; Om Parkash, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act"), at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question relating to the assessment years 1973-74 and 1974-75 to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in allowing the interest paid on the loan of Rs. 1,50,000 as a deduction u/s 24(1)(iv) of the Income Tax Act, 1961 ?"

2. The facts, briefly, are that the assessee, a Hindu undivided family, owned a building, namely, Kanodia Commercial Building, Kanpur, which was mortgaged on December 11, 1951, in favour of Hindustan Commercial Bank Limited, Kanpur, against a loan of Rs. 1,50,000 taken for being invested in "disposal business". A charge in regard to interest on such loan liability was created on the aforesaid property which was mortgaged and the assessee claimed deduction of such interest liability u/s 24(1)(iv) of the Act being an annual charge. The contention of the assessee was rejected by the Income Tax Officer and by the Appellate Assistant Commissioner. The Income Tax Officer held that, by the loan taken in the year 1951 and invested in disposal business by the assessee, no involuntary charge could have

been created within the meaning of Section 24(1)(iv) of the Act. Since the charge was voluntarily created in the opinion of the Income Tax Officer, he rejected the claim of the assessee for deduction of interest. The Appellate Assistant Commissioner affirmed the view taken by the Income Tax Officer.

3. On further appeal by the assessee, the Appellate Tribunal held that the loan transaction was not entered into voluntarily by the assessee and it was entitled to deduction of interest being an annual charge u/s 24(1)(iv). The precise finding of the Tribunal in this regard is as follows :

"... In the accounting year under consideration, the payment of interest is not at all a voluntary thing for its payment can be enforced against the assessee and the property can be sold if the payment is not made. We, therefore, feel that the reasons for disallowing the payment as given by the learned Appellate Assistant Commissioner are legally not correct. . . ."

4. The contention of learned standing counsel before us is that the Tribunal was in error in holding that there was an involuntary charge created on the property in respect of the interest within the meaning of Section 24(1)(iv) of the Act. On the other hand, the submission of learned counsel for the assessee is that interest had to be paid by the assessee under the contract of loan and he has no option but to pay the interest as the loan had been taken by the assessee. The question for consideration is whether, on the facts as found by the authorities below, it can be said that there was an involuntary charge u/s 24(1)(iv) of the Act. A similar question came up for consideration before this court in [Commissioner of Income Tax Vs. Smt. Indramani Devi Singhania](#), . The facts in the case of [Commissioner of Income Tax Vs. Smt. Indramani Devi Singhania](#), , were that the interest was paid by the owner of the property, which was mortgaged by him and then deduction in respect of interest was claimed u/s 24(1)(iv) of the Act for the assessment years 1969-70, 1970-71 and 1971-72. It was contended before the court by the assessee that the mortgage had been made under necessity and, therefore, the charge on the property in respect of the interest was involuntary. This submission was rejected by this court, saying that interest paid on such mortgage would not be deductible for the simple reason that the mortgage was not involuntary. This court further said that so long as the mortgage is voluntary, the interest paid thereon is not deductible under Clause (iv). This court also pointed out that no one mortgaged his property except when he is in need of whatever kind, and on that account, it cannot be said to be an involuntary transaction. For these reasons, this court decided the question referred to it in favour of the Revenue.

5. Following the aforesaid authority with which we fully agree, we hold that the mortgage was a voluntary act of the assessee and, therefore, the charge in respect of the interest on the property cannot be said to be an involuntary annual charge within the meaning of Section 24(1)(iv) of the Act.

6. We, therefore, answer the aforementioned question in the negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.