

(1993) 08 AHC CK 0061

Allahabad High Court

Case No: IT Reference No. 14 of 1984

In Re: Tarai Development Corpn.
Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 16, 1993

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)(xu)
- Income Tax Act, 1961 - Section 256(1), 36, 36(1)(iii)

Citation: (1994) 72 TAXMAN 153

Hon'ble Judges: A.P. Misra, J; A.N. Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

A.P. Misra, J.

The present reference arises u/s 256(1) of the Indian income tax Act, 1961 ("the Act") and the Tribunal has referred the following question to be answered by this Court which is quoted as under:

"Whether, on the facts and in the circumstances of the case, the learned Tribunal was legally justified in holding that the payment of interest amounting to Rs. 97,290 was allowable in terms of clause (iii) of sub-section (1) of section 36 of the Act in the computation of the business income of the assessee?"

[[Ritz Continental Hotels Ltd. Vs. Commissioner of Income Tax, Central-II,](#)].

The assessee-company is wholly owned by the Government of Uttar Pradesh and has been carrying on the business of process of seed. For this purpose, it has set up a factory at village Nagla and obtained loan from the State Bank of India amounting to Rs. 13,277,660 whereon interest in question amounting to Rs. 97,289.52 was paid by the assessee. This interest was disallowed by the authorities below being of

capital nature. The assessee's contention is that he has not acquired any enduring asset by borrowing loan from the State Bank of India and that the said loan was taken for the purpose of carrying on assessee's business and as such it was allowable in terms of clause (iii) of sub-section (1) of section 36 of the Act. The assessee relied, on the decision reported in the case of [India Cements Ltd. Vs. Commissioner of Income Tax, Madras,](#) while the revenue relied on the decision reported in the case of Ritz Continental Hotels Ltd. (*supra*).

2. The Tribunal in this regard has found that the interest was allowable to the assessee in terms of the aforesaid section. The actual finding recorded is quoted below:

"In our opinion, the assessee's contention is correct. The assessee is not setting up a new business. The new factory which was being set up by it during the previous year at Nagla was an extension of its existing business. Moneys borrowed for the purpose of carrying on business could be spent by the assessee on any account, either capital or revenue. There is no distinction made in clause (iii) of sub-section (1) of section 36 of the Act, 1961 based on the purpose for which the capital borrowed is utilised. In this respect the wordings of clause (iii) of sub-section (1) of section 36 are significantly different from those of sub-section (1) of section 36 in that it has been carrying on business and that it is for the purpose of business that it borrowed the capital in question. That the capital in the present case has been borrowed for its business is not in doubt. Accordingly, we feel that the assessee's contention is correct and the disallowance of interest on the facts of the present case was not justified."

Clause (iii) of sub-section (1) of section 36 is quoted as under:

"the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession;"

3. We find in the present case the finding has been recorded that the assessee was setting up a new factory in the previous year and it was an extension of its existing business and moneys borrowed were for the purpose of carrying on business and which could be spent by the assessee on any accounts either capital or revenue. The aforesaid section 36(1)(iii) provides for the amount of interest paid in respect of capital borrowed for the purpose of the business/occupation which could be covered u/s 36 for deduction. We find that the principle for the grant of deduction under similar situation has been laid down by the Supreme Court while interpreting the provisions of section 10(2)(xu) under the Indian income tax Act, 1922 in the case of India Cements Ltd. (*supra*). On the other hand, the decision relied upon on behalf of the revenue in Ritz Continental Hotels Ltd.'s case (*supra*) is not applicable to the facts and circumstances of the present case. We further find that the decision of this Court in [Prem Spinning and Weaving Mills Company Ltd. Vs. Commissioner of Income Tax,](#) is also to the same effect as we have held above.

4. In view of the aforesaid we are answering the aforesaid reference against the revenue and in favour of the assessee and hold that the Tribunal was legally Justified in holding that the payment of interest amounting to Rs. 97,289.52 was allowable in terms of clause (iii) of sub-section (1) of section 36 in the computation of the business income of the assessee. Accordingly, the reference is dismissed with costs.