

(1999) 12 AHC CK 0120

Allahabad High Court

Case No: Income-tax Application No. 255 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Kesho Ram and Others

RESPONDENT

Date of Decision: Dec. 14, 1999**Citation:** (2000) 245 ITR 733 : (2001) 116 TAXMAN 224**Hon'ble Judges:** M.C. Agarwal, J; B.K. Sharma, J**Bench:** Division Bench**Advocate:** A.N. Mahajan, for the Appellant; Rajesh Kumar, for the Respondent**Final Decision:** Dismissed

Judgement

M.C. Agarwal, J.

By this application u/s 256(2) of the Income Tax Act, 1961, the Commissioner of Income Tax, Meerut, prays that the Income Tax Appellate Tribunal, Delhi, be directed to draw up a statement of the case and refer the aforementioned question stated to be of law arising out of the Tribunal's order dated October 13, 1994, passed in ITA No. 1377(Delhi) of 1990 for the assessment year 1988-89 to be referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the decision of the Madhya Pradesh High Court reported in [Viswanatha Chettiar Vs. Agricultural Income Tax Officer, Mercara](#), is directly on the point and there was no prohibition under the provisions of the Income Tax Act to pay interest to the members of association of persons during the assessment year under consideration ?".

2. We have heard Sri A. N. Mahajan, learned counsel for the applicant, and Sri Rajesh Kumar, learned counsel for the opposite party.

3. The assessee-respondent is an association of persons that was engaged in the business of retail sale of country liquor and was operating five shops for which necessary licences had been obtained. The association of persons borrowed money

from its various members and paid interest amounting to Rs. 18,71,276. The Assessing Officer did not allow this expenditure as a deduction while computing the income of the association of persons. On appeal, the Commissioner of Income Tax reversed that decision and held that the payment of interest was a business expenditure and, therefore, allowed deduction in computing the income of the association. The Assessing Officer appealed to the Tribunal and that was dismissed. The Tribunal noticed that there was no prohibition under the Income Tax Act, 1961, for allowing such a deduction and the matter was covered by a judgment of the Madhya Pradesh High Court in [Viswanatha Chettiar Vs. Agricultural Income Tax Officer, Mercara, .](#)

4. It is on the aforesaid facts that the question, as stated above, is sought to be referred for the opinion of this court.

5. As regards the judgment of the Madhya Pradesh High Court, a perusal thereof would show that it has categorically been held that a member of an association of persons, who advances money to the association for the purpose of its business is in the position of a creditor of the association and the interest paid by the association to him is legitimate deduction u/s 10(2)(iii) of the Indian Income Tax Act, 1922, in computing the profits of its business. Therefore, the Tribunal was right in applying this decision and the answer to this aspect of the question is self-evident.

6. As regards the question relating to the absence of prohibition in the Act, no provision is pointed out which may prohibit an allowance for such a deduction. The prohibition for the first time came on April 1, 1989, by an insertion of Clause (ba) in Section 40 of the Act. Therefore, the answer to this part of controversy is also self-evident.

7. In our view, therefore, no referable question of law arises from the order of the Tribunal. The application is accordingly rejected.