

**(2002) 08 DEL CK 0203**

**Delhi High Court**

**Case No:** IT Ref. No. 95 of 1978 1 August 2002

Raj Narain Agarwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

---

**Date of Decision:** Aug. 1, 2002

**Citation:** (2002) 177 CTR 90

**Hon'ble Judges:** Sharda Aggarwal, J; Ms. Sharda Aggarwal, J; Jain, J; D.K. Jain, J

**Bench:** Full Bench

**Advocate:** CS. Aggarwal and Salil Aggarwal and Prakash Kumar, for the assessed R.D. Jolly and Ms. Rashmi Chopra and Ajay Jha, for the Revenue, for the Appellant;

---

### **Judgement**

D.K. Jain, J.

Civil Misc No . ...../2002

Let a number be assigned to the application.

2. By this application the petitioner prays for bringing on record the legal representatives of the deceased assessed, namely, Shri Raj Narain Agarwal.

3. For the reasons stated in the application, it is allowed and the legal representatives of the deceased assessed are brought on record. Let the amended memo of parties' names be filed during the course of the day. Application stands disposed of.

IT Ref No. 95/78

4. The Tribunal, Delhi Bench "C", New Delhi, has referred u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the disallowance of Rs. 41,689 being the interest payable by the assessed to the Income Tax department under sections 220(2) and 217 of the

Income Tax Act, 1961 ?"

5. Briefly stated, the material facts are : While framing assessment for the assessment year 1971-72, the Income Tax Officer noticed that the assessed had disclosed an income of Rs. 33,901 from interest. This included a sum of Rs. 15,250 as interest on deposits and Rs. 18,651 as interest received from the Income Tax department on belated refund. Against the said interest received the assessed had claimed a deduction of Rs. 41,689 as interest payable by him under sections 220(2) and 217 of the Act to the Income Tax department in respect of various assessment years. The Income Tax Officer disallowed the said deduction on the ground that it was penal in nature and also not incidental to the business of the assessed.

Aggrieved, the assessed preferred an appeal to the Appellate Assistant Commissioner but without success. The assessed carried the matter in further appeal to the Tribunal. The Tribunal affirmed the view taken by the lower authorities by observing that the assessed had failed to show that the interest paid by him to the Income Tax department was an expenditure laid out or made wholly and exclusively for the purpose of its business. The Tribunal thus, held that the assessed was not entitled to claim the said interest as business expenditure u/s 37(1) of the Act. On an application being moved by the assessed u/s 256(1) of the Act, the Tribunal has referred the afore noted question.

6. We have heard learned counsel for the parties. It is contended by Mr. Aggarwal, learned counsel for the assessed, that the assessed is entitled to claim the said amount as deduction while computing its interest income u/s 56 of the Act. It is urged that none of the authorities below has gone into this question though it was raised before them. As regards its allowability u/s 37(1) of the Act, Mr. Aggarwal very fairly states that in view of the decision of the Supreme Court in [Bharat Commerce and Industries Ltd. Vs. The Commissioner of Income Tax, Central II](#), the interest paid cannot be allowed as business expenditure. On the other hand, Mr. R.D. Jolly, learned senior standing counsel for the revenue, has submitted that it is evident from para 10 of the order of the Tribunal that it has proceeded on the basis that the assessed had claimed the said interest as business expenditure.

7. Though we feel that there may be some substance in the contention of learned counsel for the assessed but having regard to the fact that none of the authorities below has examined the question from the angle, it is now being projected for the first time, we are of the view that it will not be proper for us to go into a new issue at this juncture. It is also pertinent to note that in his application u/s 256(1) of the Act, the assessed had proposed the following two questions :

"1. Whether the Tribunal was justified in upholding the disallowance of the claim of Rs. 41,689 or part thereof, while computing the income of the assessed for the assessment year 1971-72 ?

2. Alternatively, whether on the facts and in the circumstances of the case was the Tribunal justified in law in not allowing the claim of the assessed of Rs. 41,689 within the meaning of section 57(iii) of the Income Tax Act ?"

However, the Tribunal while referring the aforementioned question has not even commented on the second question proposed by the assessed, perhaps for the reason that it did not arise out of the order. We feel that if the assessed had any grievance with the order of the Tribunal regarding non-consideration of his plea relating to section 57(iii) of the Act, he could have taken recourse to further proceedings in accordance with law. But nothing was done in that behalf. Be that as it may, we feel that it is not a fit case where we should now go into the controversy, sought to be raised before us by learned counsel for the assessed.

8. In view of the decision of the Supreme Court in Bharat Commerce & Industries" case (supra), the question referred is answered in the affirmative, that is in favor of the revenue and against the assessed.

The reference stands disposed of in the above terms.

OPEN