

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 28 of 1995

For Approval and Signature:

**HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MR.JUSTICE Z.K.SAIYED**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

L N TALKIES, - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 29/01/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question under section 256(2) of the Income-tax Act, 1961 ("the Act").

"Whether, the Tribunal is right in law and on facts in setting aside the order made by the CIT u/s.263 of the I.T. Act on the issue of interest payment amounting to Rs.1,26,916?-"

2. The Assessment Year is 1981-82. The relevant accounting period is S.Y. 2036. The assessee, a registered firm, is engaged in running a Cinema. After assessment was complete the Commissioner of Income-tax (CIT) initiated proceedings under section 263 of the Act by issuance of notice dated 10.2.1986. Though the Notice pertains to two issues the only issue which is relevant for the present is the debit of a sum of Rs.1,26,916/- towards interest in the Profit and Loss Account. According to the CIT the deduction of the said amount had been allowed by the Assessing Officer without making any inquiry and investigation and hence the Assessment Order was erroneous and prejudicial to the interests of revenue. He, therefore, set aside the Assessment Order for the limited purpose of examination by the Assessing Officer.

3. The assessee carried the matter in Appeal before

the Tribunal. After hearing both the sides, vide order dated 5.7.1988, the Tribunal allowed the assessee's Appeal on this ground on the basis of findings recorded by the Tribunal for the Assessment Year 1986-87.

4. Heard Mrs.M.M. Bhatt, learned Standing Counsel for the applicant – Revenue. Though served, there is no appearance on behalf of the respondent – assessee.
5. Learned Counsel for the applicant – Revenue submitted that the earlier order in assessee's own case, wherein the Tribunal had recorded a finding that the assessee had borrowed loans from the two parties for renovation of Cinema Hall and allowed the deduction of interest, had been accepted by the Revenue as the records do not reveal any pending reference or otherwise.
6. In the aforesaid fact situation it is not possible to take a different view of the matter considering the findings of fact recorded by the Tribunal. The position in law is well settled. Once a loan or borrowing is found to be for the purpose of business interest paid thereon is an allowable deduction. In the present case admittedly it has been found that the amounts borrowed from the two parties were utilized for renovation of Cinema Hall which is admittedly a part and parcel of the assessee's business of

exhibiting films. Hence, in absence of any infirmity in the impugned order of the Tribunal no interference is warranted. The Tribunal was justified in setting aside the order made by the CIT under Section 263 of the Act on the issue of interest payment amounting to Rs.1,26,916/-.

7. The question referred is answered in the affirmative i.e. in favour of the assessee and against the Revenue. Reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.MEHTA, J.)

(Z.K.SAIYED, J.)

sas

