IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 379 of 1995

DATE OF DECISION: 11.9.2007

The Commissioner of Income Tax, Patiala

…Applicant

Versus

Shri R.K. Gupta (HUF), Chandigarh

…Respondent

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present: Mr. S.K. Garg Narwana, Advocate,
for the applicant-revenue.

**M.M. KUMAR, J.**

This order shall dispose of I.T.R. Nos. 379 of 1995 and 380 of 1995 as common question of law and facts are involved. However, the facts are being referred from I.T.R. No. 379 of 1995.

The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') by exercising its power under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act') has referred the following question of law, which is stated to have emerged from order dated 30.9.1994, in I.T.A. No. 781/Chandi/1989, in respect of assessment year 1985-86:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in allowing intt. Paid on borrowed capital which was invested for securing control over the management of related companies and not for the purpose of earning profits?"

On 21.8.2007, learned counsel for the revenue had stated that the status of the earlier assessment year 1983-84 was checked and as per the information supplied to the learned counsel no record was available. He had, however, requested for one last opportunity to check up the status of the assessment year 1983-84 because the order passed in respect of that year was heavily relied upon by the Tribunal in its order, which is subject matter of consideration in the instant reference.

At the hearing today, learned counsel for the revenue has placed on record a copy of the letter dated 10.9.2007, sent by the Income Tax Officer, Ward: 1(3), Chandigarh, intimating that the case under reference is very old and the assessee is not being assessed to tax in the aforementioned ward. The assessment record for the requisite year is not traceable despite all out efforts in that regard. It has been pointed out that the Income Tax Officer was unable to ascertain the position in respect of assessment year 1983-84 as to whether any appeal had ever been filed before this Court. The aforementioned letter dated 10.9.2007 is taken on record as Mark-'A'.

In view of the above, the question referred by the Tribunal is returned unanswered.

**(M.M. KUMAR)**
**JUDGE**

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 11, 2007**
Pkapoor