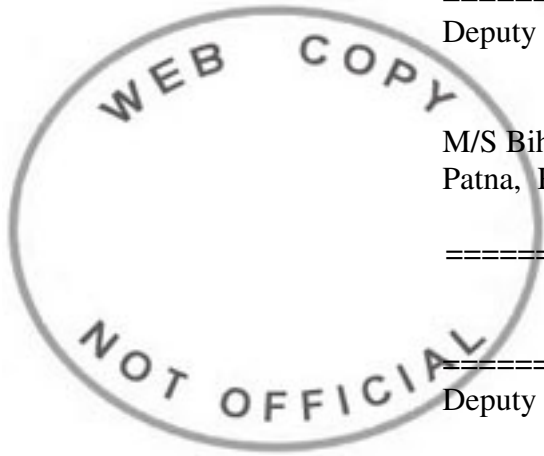




IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.44 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd.,
Patna, Ram Charitra Path, Patna.
..... Respondent/s

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with
Miscellaneous Appeal No.45 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd.,Patna
..... Respondent/s

=====

with
Miscellaneous Appeal No.46 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd.,Patna.
..... Respondent/s

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with
Miscellaneous Appeal No.47 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd.,Patna
..... Respondent/s

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with
Miscellaneous Appeal No.48 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd.,Patna
..... Respondent/s

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with
Miscellaneous Appeal No.49 of 2009

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Deputy Commissioner of Income Tax Circle 2 Patna
..... Appellant/s

Versus

M/S Bihar State Credit & Finance Investment Corporation Ltd., Patna
 Respondent/s

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Sr. S.C.
 For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

9 30-06-2015

Heard learned counsel for the appellant-Income Tax

Department.

These appeals have been filed against the common order dated 29.08.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in among others ITA No. 5/Pat/07 relating to the assessment year 1994-1995, in ITA No. 2/Pat/07 relating to the assessment year 1998-1999, in ITA No. 5/Pat/07 relating to the assessment year 1993-1994, in ITA No. 6/Pat/07 relating to the assessment year 1995-1996, in ITA No. 3/Pat/07 relating to the assessment year 1992-1993, in ITA No. 1/Pat/07 relating to the assessment year 1997-1998 respectively. The Tribunal has dismissed the appeals filed by the Revenue and allowed the cross objections filed by the assessee relying upon a decision of the Kerala High Court in the case of Commissioner of Income-Tax Vs. State Bank of Travancore: [1997] 228 ITR 40, holding that the case of the assessee was squarely covered by the

said decision.

In the aforesaid decision at Page Nos. 48 and 49 it has been held as follows:-

“Our examination of the scheme that is placed before us, makes it abundantly clear that whatever is collected by the assessee-bank is to pass over to the Industrial Development Bank of India and it is to be understood in the nature of repayment obviously with regard to the money advanced by the Industrial Development Bank of India alone. In such a situation, the concerned amount cannot have the legal requirement in terms of the Interest-tax Act to be the “chargeable interest” because it cannot be said that on the said amount, interest has accrued or arisen to the credit of the institution in the concerned previous year.

The situation is plain and straight. However, the assessing authority came to the conclusion that the interest earned under the scheme forms part and parcel of the gross receipts of the bank under “interest from loans and advances”. We are unable to understand, firstly as to how the amount in question could be understood as receipt and/or income of the bank which is the prerequisite of taxability as a consequence. In this context, the observations



of the assessing authority as to whether the bank has made its advances out of its own funds or through refinance from the Industrial Development Bank of India or the Reserve Bank of India, is immaterial, to say the list, is more than difficult to comprehend and appreciate in the context.

The first appellate authority, the commissioner of income-tax (appeals) has considered this aspect in paragraph -5 of its order. The said appellate authority also has proceeded to observe that the process is in the nature of a joint venture by the assessee-bank and the Industrial Development Bank of India or the Reserve Bank of India. This is not the factual position and is wrongly described in the context. However, the said appellate authority has observed that the interest earned by the assessee gets reduced by the interest paid on the refinance and, therefore, the same could be excluded from the chargeable interest. In our judgement, if the scheme is understood in the context, the bank is only the collective agent and it has to collect the installments and interest with a clear understanding of the relationship to pass over the collection to the Industrial Development Bank of India or the Reserve Bank of India, as the situation may be”.

The Kerala High Court had relied upon the decision of the



Madhya Pradesh High Court in the case of C.I.T. Vs. State Bank of Indore: [1998] 172 ITR 24, and accordingly answered the question as to whether, in the facts and circumstances of the case, the interest earned on refinancing operations is to be excluded from the taxable interest in the affirmative against the Revenue and in favour of the assessee.

In the present matter also, the assessee Bihar State Credit & Investment Corporation Ltd., is a credit institution established by the Government of Bihar providing financial assistance by way of loans and advances to the entrepreneurs for setting up industries in the State, with the primary aim to finance entrepreneurs on re-finance from development banks like IDBI, SIDBI etc.

The Assessing Officer, earlier decided the matter against the assessee. But appeals filed by the assessee before the C.I.T. (Appeals) were partly allowed with the direction to the Assessing Officer to carry out necessary verification and with further direction to the Assessing Officer to examine ledger copies of IDBI and SIDBI refinance and the cash book to ascertain the interest received from the parties to whom loans were granted under the Refinance Scheme and which were eventually paid to the IDBI and SIDBI and only such amount of interest, which



have actually been paid to IDBI under the Scheme of refinance, should be excluded from chargeable interest. The AO was further directed by the C.I.T. (Appeals) by his order dated 08.10.2007 to charge interest tax only on that amount of the interest which has not been paid to the IDBI as found after verification of the cash book and ledger. Thereafter, the Revenue filed the appeals before the Tribunal, which have been dismissed upholding the direction of the C.I.T. (Appeals) to carry out the necessary verification.

Learned counsel for the appellant has relied upon a decision of Bombay High Court in the case of Unit Trust of India & Anr. Vs. P.K. Unny: [2001] 249 ITR 612.

On a consideration of the said decision, we find that the three questions of law, which arose in the said decision and were answered by the Court, were entirely different and have no connection to the issues which arise in the present matter. The questions in the said decision were primarily related to the tax on income of Unit Trust of India as to whether it was exempt from the interest tax by virtue of Section 32 of the U.T.I. Act which plea was negatived. No such issue of interest on refinancing arose in the said decision and reliance placed on the said decision by learned counsel for the appellant is misconceived.

On a consideration of the decision of the Kerala High

Court in the case of Commissioner of Income-Tax Vs. State Bank of Travancore (supra), and the proposition of law laid down therein, we are in respectful agreement with the same. We, thus, find that no substantial question of law arises in the present matter and there is no reason to interfere with the order of the Tribunal.

The appeals are, accordingly dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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