In the High Court of Judicature at Madras

Dated : 08.9.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Tax Case (Appeal) No.1289 of 2007

Infrastructure Development
Finance Co.Ltd., Chennai-2. ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Company Circle-II(3),
Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.3.2007 made in I.T.A.No.0011/Mds/2004 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench.

For Appellant : Mr.Farrokh V.Irani for Mr.O.R.Santhanakrishnan
For Respondent : Mrs.R.Hemalatha, Standing Counsel

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal under Section 260A of the Income Tax Act, 1961 filed by the assessee, was admitted on the following substantial question of law :

"Whether the Income Tax Appellate Tribunal erred in holding that the interest of Rs.2,52,28,420/- on investments in corporate bonds, fell within the scope of the definition of 'interest' in Section 2(7) of the Interest Tax Act, 1974 ?"

2. Heard Mr.Farrokh V.Irani, learned counsel appearing for the assessee and Mrs.R.Hemalatha, learned Standing Counsel for the Income Tax Department.

3. During the relevant previous year ended 31st March 2000, the appellant, which is engaged in the business of providing long term finance to enterprises engaged in developing, maintaining and operating infrastructural facilities, invested its surplus funds/idle funds in various corporate bonds and earned interest to the tune of Rs.2,52,28,420/-. In the return of interest tax filed for the relevant assessment year, the assessee claimed that this interest is not exigible to interest tax under the Interest Tax Act, 1974. But, the stand taken by the assessee was not accepted by the Assessing Officer.

4. The appeal filed by the assessee was allowed by the Commissioner of Income Tax (Appeals) by an order dated 7.11.2003. But, the decision of the Commissioner of Income Tax (Appeals) was reversed by the Income Tax Appellate Tribunal on an appeal filed by the Revenue. Hence the present appeal.

5. To understand the scope of the dispute, it is necessary to take note of the definition of the expression 'interest' as given in Section 2(7) of the Interest Tax Act, 1974, which is as follows :

> *" 'Interest' means interest on loans and advances made in India and includes*
>
> *(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and*

(b) discount on promissory notes and bills of exchange drawn or made in India.

But does not include -

(i) interest referred to in Sub-Section (1B) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills."

6. In ***Commissioner of Income Tax Vs. Lakshmi Vilas Bank Limited [228 ITR 697],*** this Court had an occasion to consider whether the interest earned on debentures, would constitute interest within the meaning of Section 2(7) of the Interest Tax Act, 1974. Answering the question in favour of the assessee, this court held that the purchase of debentures would constitute an investment made in accordance with the Banking Regulations Act. In as much as an investment cannot be termed either as a loan or as an advance in terms of Section 2(7) of the Act, this Court held that the interest on debentures would not be interest on securities.

7. In ***Commissioner of Income Tax Vs. Indian Overseas Bank*** decided on ***24.10.2005 [T.C.A.Nos.695 and 696 of 2005]***, one of the questions of law raised before a Bench of this Court was as to whether interest on Government electricity bonds, interest on securities and interest on debentures would come within the meaning of the expression 'interest' under Section 2(7) of the Act. While answering the said question in favour of the assessee, this Court cited with approval the earlier decision in *Lakshmi Vilas Bank.*

8. Even in ***Discount and Finance House of India Limited Vs. S.K. Bharadwaj [259 ITR 295],*** the Bombay High Court pointed out that loans and advances, as a concept, are different and distinct from investments in the commercial sense and also in the accounting sense. Therefore, the Court held that interest received from the Reserve Bank of India on dated Government securities will not fall within the meaning of the expression 'interest on loans and advances' under Section 2(7) of the Act. A similar view was expressed in another decision of the Bombay High Court in ***Commissioner of Income Tax Vs. United Western Bank Limited [259 ITR 312]*** in so far as interest received by banks on securities and debentures.

9. In any case, the question is no longer res integra in view of the decision of the Supreme Court in ***Commissioner of Income Tax Vs. Sahara India Savings and Investment Corporation Limited [321 ITR 371].*** The Supreme Court held in the said case that for the purpose of Interest Tax Act, 1974, interest on loans and advances will not cover under Section 2(7), interest on bonds and debentures bought by an assessee as and by way of investment. The Court clarified that interest on investments is not taxable as interest under Section 2(7) of the Act.

10. It appears that the Tribunal relied upon a decision of the Mumbai Bench of the Income Tax Appellate Tribunal in ***Bajaj Auto Holdings Limited Vs. Deputy Commissioner of Income Tax [(2005) 95 ITD***

356]. But in the said case, the Tribunal was concerned with an inter corporate deposit governed by Section 370(1) of the Companies Act read with Sections 58A and 227(1A)(d) of the Act. Therefore, the said decision is of no application to the facts of this case. In any event, we have the decisions of two Division Benches of this Court and two Benches of the Bombay High Court, all of which indirectly received the seal of approval from the Supreme Court in *Sahara India Savings and Investment Corporation Limited.*

11. Mrs.R.Hemalatha, learned Standing Counsel appearing for the Department made a valiant attempt to contend that the Interest Tax Act, 1974 defined the expression 'interest' at a time when the expression 'interest' was not defined in the Income Tax Act. According to the learned Standing Counsel, the expression 'interest' came to be defined in the Income Tax Act, 1961 for the first time under the Finance Act, 1976 with effect from 1.6.1976 with the insertion of Sub-Section (28A) of Section 2. Therefore, drawing our attention to the definition of the said expression in the Income Tax Act, 1961, the learned Standing Counsel contended that the definition is so exhaustive as to include even a deposit or any kind of obligation.

12. But, we are unable to agree. If the case on hand had arisen solely out of the Income Tax Act, 1961, we would not look into the definition of the expression 'interest' under the Interest Tax Act, 1974. The case on hand has arisen out of the provisions of the Interest Tax Act, 1974. Apart from defining

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J
RS

the expression 'interest' in Sub-Section (7) of Section 2, the Interest Tax Act also contains another indication under Sub-Section (10) of Section 2. Under this Sub-Section, the Interest Tax Act, 1974 makes it clear that only those words and expressions used in that Act, but not defined therein, would have the same meaning assigned to them in the Income Tax Act, 1961. Therefore, it is only in cases where an expression is not defined in the Interest Tax Act, 1974, for the purpose of application of the said Act that we have to borrow the definition of the same expression in the Income Tax Act, 1961. This case is not of the said type. Therefore, we are of the view that the decision of the Supreme Court in *Sahara India Savings and Investment Corporation Limited* is squarely applicable to the facts of this case.

13. Accordingly, the question of law is answered in favour of the assessee and the tax case appeal is allowed. No costs.

08.9.2015

Internet : Yes

To
1.The Assistant Commissioner of Income Tax, Company Circle-II(3),
Chennai-34.
2.The ITAT, Chennai 'A' Bench.