# IN THE HIGH COURT OF BOMBAY AT GOA

REFERENCE UNDER INCOME TAX ACT NO. 3 OF 2016

M/S. MANDOVI PELLETS LMT. ... Applicant

Versus

THE COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, BANGALORE. ... Respondent

Mr. P. Karpe, Advocate for the applicant.
Mr. K. Arvinda, Advocate for the respondent.

Coram:- F. M. REIS &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 15th June, 2017

P.C.

Heard Mr. P. Karpe, learned Counsel for the applicant and Mr. K. Arvinda, learned Advocate for the respondent.

2. In the above reference, it is not disputed that 14 question were came to be referred for decision of this Court.

3. After hearing the learned Counsel for the applicant as well as the respondent, it is not disputed that the questions referred to this Court are no longer res integra in view of the judgment of the Apex Court report in (1997) 93 Taxman 502(SC) in the case of Tuticorim Alkali Chemicals and Fertilizers Ltd. Vs Commissioner of Income-Tax, wherein they have observed at paragraphs 14 and 15 thus:-

"Para 14: In other words, if the capital of a company is fruitfully utilised instead of keeping it idle the income thus generated will be of revenue nature and not accretion of capital. Whether the company raised the capital by issue of shares or debentures or by borrowing will not make any difference to this principle. If borrowed capital is used for the purpose of earning income that income will have to be taxed in accordance with law. Income is something which flows from the property. Something received in place of the property will be capital receipt. The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilising borrowed capital.

Para 15: It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilising the borrowed funds as its income. It was rightly pointed out in the case of Kedar Narain Singh vs. CIT (1938)6 ITR 157(All) that 'anything which can properly be described as income is taxable under the Act unless expressly exempted'. The interest earned by the assessee is clearly its income and unless it can be shown that any provision like Section 10 has exempted it from tax, it will be taxable. The fact that the source of income was borrowed money does not detract anything from the Revenue character of the receipt. The question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessees business had commenced. But that is not the case here. The assessee may be entitled to capitalise the interest payable by it. But what the assessee cannot claim is adjustment of this expenditure against interest assessable under Section 56. Section 57 of the Act sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under Section 56. It is not the case of the assessee that the interest payable by it on term loans are allowable as deduction under Section 57.

4. Taking note of the said observation, issue referred has to be answered in the positive and in favour of the revenue. Above reference accordingly stands disposed of.

5. Registry is accordingly directed to sent the said order to the concerned Income Tax Appellate Tribunal, Panaji for further decision in accordance with law.

PRITHVIRAJ K. CHAVAN, J. F. M. REIS, J.

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