

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

Tax Case Appeal Nos.1093 to 1098 of 2008

Commissioner of Income Tax
Chennai – III.

...Appellant in all
the Appeals

-vs-

M/s.Shriram City Union
Finance Ltd., Chennai-1.

...Respondent in TCA
Nos.1093 &1094/2008

M/s.Shriram Transport
Finance Co.Ltd., Chennai-1.

...Respondent in TCA
Nos.1095& 1096/2008

M/s.Shriram Investments Ltd.,
Chennai – 600 001.

...Respondent in TCA
Nos.1097 & 1098/2008

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Tax Case Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 25.08.2006 in ITA Nos. 86,87,52,53, 95, 96/Mds/2002, for the Assessment years 1999-2000, 2000-01, 1999-

2000, 2000-01, 1999-00, 2000-01 respectively.

For Appellant : Mr.T.R.Senthil Kumar
(in all the Appeals)

For Respondent : Mr.R.Sivaraman
(in all the Appeals)

COMMON JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

These appeals by the Revenue are directed against the common order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 25.08.2006 in ITA Nos.86,87,52,53,95,96/Mds/2002, for the Assessment years 1999-2000, 2000-01, 1999-00, 2000-01, 1999-00, 2000-01 respectively and therefore, they are clubbed together on account of the common issues involved in this batch of cases.

2. Heard Mr.T.R.Senthil Kumar, learned Counsel for the Revenue and Mr.R.Sivaraman, the learned Counsel for the respondent.

3.All these Appeals have been admitted on 05.08.2008, on the following two Substantial Questions of Law:

"1. Whether in the facts and in the circumstances of the case, the Tribunal was right in law in holding that the "minimum guarantee charges" received by the assessee from companies to whom "financial assistance" is given is not 'interest' chargeable to Interest Tax?

2. Whether on the facts and in the circumstances of the case, the Tribunal is was right in holding that the financial assistance is not a loan or advance but an investment?"

4. The learned counsel for the Revenue would submit that the Tribunal, in its impugned order, followed the decision of the Allahabad High Court in the case of ***CIT Vs. Sahara India Savings and Investment Corporation Ltd., [reported in (2003) 264 ITR 646]***. The said decision has been upheld by Hon'ble Supreme Court in the decision reported in ***(2010) 186 Taxman 19*** and the substantial question of law has been answered in favour of the assessee. The said decision in the case of ***Sahara India Savings and Investment Corporation Ltd.,*** was taken note of, in the case of ***M/s. Palghat Permanent Fund Ltd., Vs. ACIT in TCA Nos. 1148 & 1149 of 2008 dated 10.09.2018,*** the operative portion of which is as follows:

"9. The issue, which falls for consideration, is whether the penal interest collected by the assessee would fall within the ambit of the Interest Tax Act and more particularly, within the definition of Section 2(7) of the Interest Tax Act. The said provision reads as follows:-

"Section 2(7), Interest Tax Act, 1974

2. In this Act, unless the context otherwise requires,

(7) "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;"

10. In terms of the "definition" of interest as defined in Section 2(7) of the Interest Tax Act, it means interest on loans and advances made in India.

It includes two other categories and excludes two other categories. But, in these appeals, we are not constrained about such inclusion or exclusion, as it is the case of the Revenue that the charges collected by the assessee would fall within the inclusive definition of interest under Section 2(7) of the Interest Tax Act.

11. The case of the Revenue is pitched on the sole point that whatever that has been collected is on loans and advances extended by the assessee and in whatever name it might have been collected, it would fall within the definition of interest under Section 2(7) of the Interest Tax Act.

*12. More or less identical question came up for consideration before a Division Bench of this Court in the case of **Commissioner of Income Tax vs. Cholamandalam Investment & Finance Co. Ltd.** reported in **(2008) 296 ITR 0601** wherein, the substantial question of law, which was framed for consideration, was whether the Tribunal was right in excluding additional discount charges from the chargeable interest under the Interest Tax Act. The Division Bench, after referring to the decision in the case of **Commissioner of Income-tax vs. State Bank of Travancore** reported in **(1997) 228 ITR 40 (Ker)**, held that interest on loans and advances and*

the additional discount charges would not attract the provisions of the Interest Tax Act. The operative portions of the judgment read as follows:-

"3. To decide the issue whether the additional discount charges are not liable to tax under Interest-tax Act, it is useful to refer the decision in CIT vs. State Bank of Travancore (1997) 140 CTR (Ker) 358 : (1997) 228 ITR 40 (Ker) wherein the Kerala High Court held that the character of an overdue bill is wholly distinct from loans and advances and the interest on the loans and advances alone is taxable under the Interest-tax Act and the character of an overdue bill is not synonymous with loans and advances and therefore, the interest on overdue bills is to be excluded from chargeable interest under the Interest-tax act.

4. Applying the above ratio to the facts of the case, we hold that the Interest-tax Act is attracted only in respect of interest on loans and advances and the additional discount charges which is an amount given as a premium, would not attract the provisions of the Interest-tax act. The Tribunal is therefore correct in excluding additional discount charges from the chargeable interest under the Interest-tax Act."

13. In the case of Commissioner of Income-tax vs. Bank of Rajasthan Ltd. [2010] 323 ITR 524 (Rajasthan), it was held that interest or penal

interest charged by the assessee on the delayed payment of instalments by the depositors of the recurring deposit accounts, is not exigible to tax under the provisions of the Interest-tax Act, 1974.

14. Similar view was taken in the case of **Commissioner of Income-tax vs. State Bank of Indore** reported in **[1988] 172 ITR 24 (MP)** wherein the Court held that the Tribunal was not right in holding that the amounts charged by the assessee for delayed payment of bills of entry were in the nature of interest on advances and exigible to tax under the Act.

15. The High Court of Karnataka, in the case of **State Bank of Mysore vs. Commissioner of Income-tax** reported in **(1989) 175 ITR 607 (Kar.)**, held that interest is the damages or compensation for delayed payment of money due and therefore, the expression 'compensation' in Section 32 of the Negotiable Instruments Act, will include interest paid by way of damages or compensation for delayed payments. It was further, held that any amount collected by the Bank cannot be anything but interest, whatever may be the nomenclature, and is chargeable interest for the purpose of Interest Tax Act.

16. All the aforementioned decisions were

considered for its correctness by the Hon'ble Supreme Court in the Case of **State Bank of Patiala vs. Commissioner of Income-tax, Patiala** reported in **[2016] 383 ITR 244 (SC)**. The Hon'ble Supreme Court held that the view of the High Court of Karnataka in the case of **State Bank of Mysore** (supra) is directly in conflict with the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Sahara India Savings & Investment Corpn. Ltd.** **[2009] 17 SCC 43** and therefore, held that a contrary view cannot be countenanced.

17. It was further pointed out that "loans and advances" has been held to be different from discounts and legislature has kept in mind the difference between the two and it is clear that the right to charge for overdue interest by the assessee banks did not arise on account of any delay in repayment of any loan or advance made by the said banks and this right arose on account of default in payment of amounts due under a discounted bill of exchange. Further, it was held that a subject can be brought to tax only by a clear statutory provision in that behalf and interest is chargeable to tax under Interest Tax Act only if it arises directly from a loan or advance. This finding was explained by stating that it is clear from the use of the

word "on" in Section 2(7) of the Interest Tax Act that interest payable "on" a discounted bill of exchange cannot be equated with interest payable "on" a loan or advance. With the above finding, the Court held that the reasoning contained in the judgments of the High Court, which differ from the High Court of Karnataka is correct. The Court then proceeded to deal with the expression "interest" as defined under the Income Tax Act in Section 2(28A) and held as follows:-

"18.It will be noticed that this definition is much wider than that contained in Section 2(7) of the Interest Tax Act, 1974. The expression "payable in any manner in respect of any moneys borrowed" is an expression of considerable width. It will be noticed that the aforesaid language of the definition section contained in the Income Tax act is broader than that contained in the Interest Tax Act in three respects. Firstly, interest can be payable in any manner whatsoever. Secondly, the expression "in respect of" includes interest arising even indirectly out of a money transaction, unlike the word "on" contained in Section 2(7) which, we have already seen, connotes a direct arising of payment of interest out of a loan or advance. And thirdly, "any moneys borrowed" must be contrasted with "loan or advances". The former expression would certainly bring within its ken moneys borrowed by means other than by way of loans or

advances. We therefore conclude that the Interest Tax act, unlike the Income Tax Act, has focused only on a very narrow taxable event which does not include within its ken interest payable on default in payment of amounts due under a discounted bill of exchange."

18.In the light of the above referred decisions, the order passed by the Tribunal does not lay down correct legal position and accordingly, the same calls for interference.

19.In the result, the appeals filed by the assessee are allowed, the order passed by the Tribunal, is set aside and the substantial questions of law framed for consideration are answered in favour of the assessee. Consequently, the order passed by the CIT(A) dated 22.01.2003, is restored. No costs."

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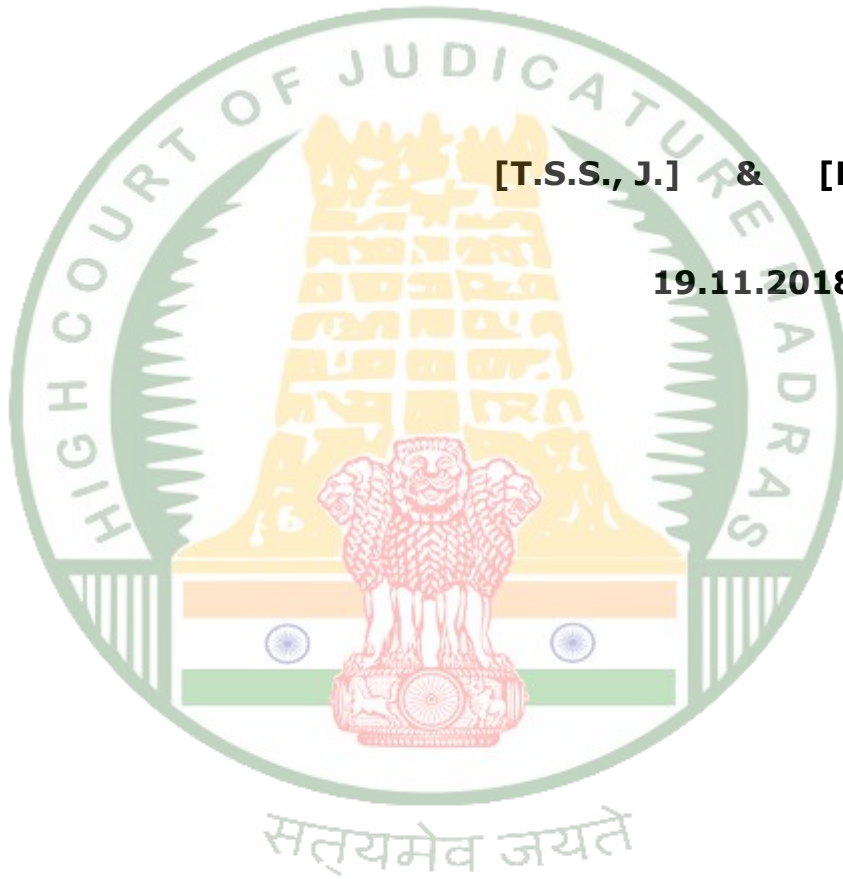
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5. In the light of the above, the appeals filed by the Revenue are dismissed and the substantial questions of law are answered against the Revenue and in favour of the assessee. No costs.

[T.S.S., J.] & [N.S.K., J.]

19.11.2018

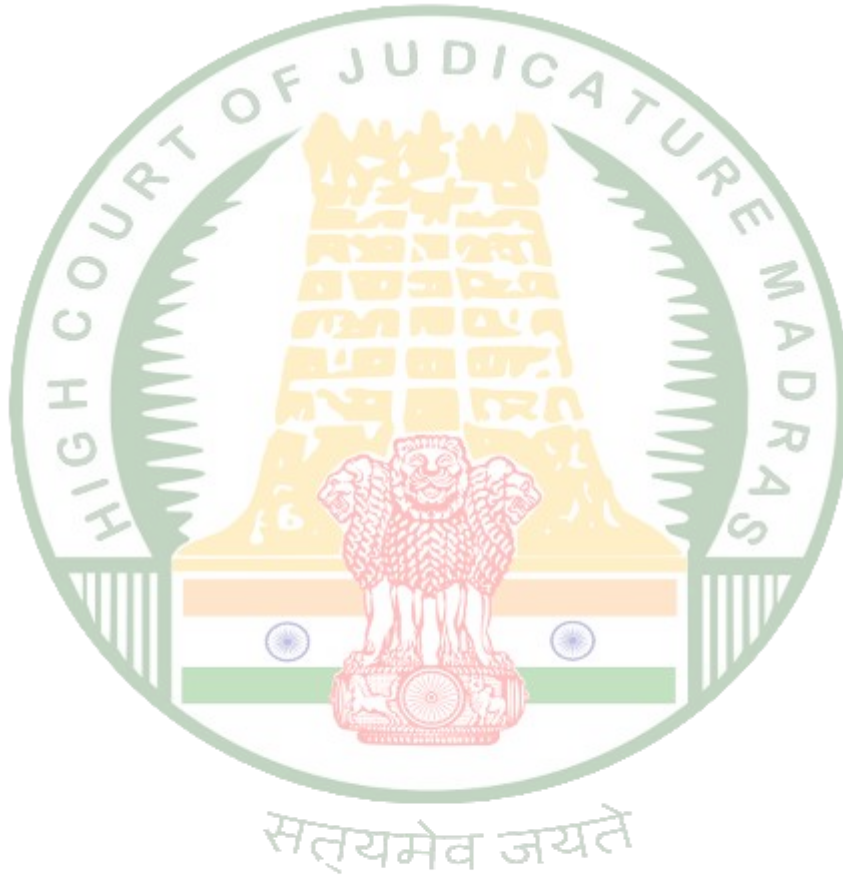
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To

The Income Tax Appellate Tribunal Madras 'B' Bench.



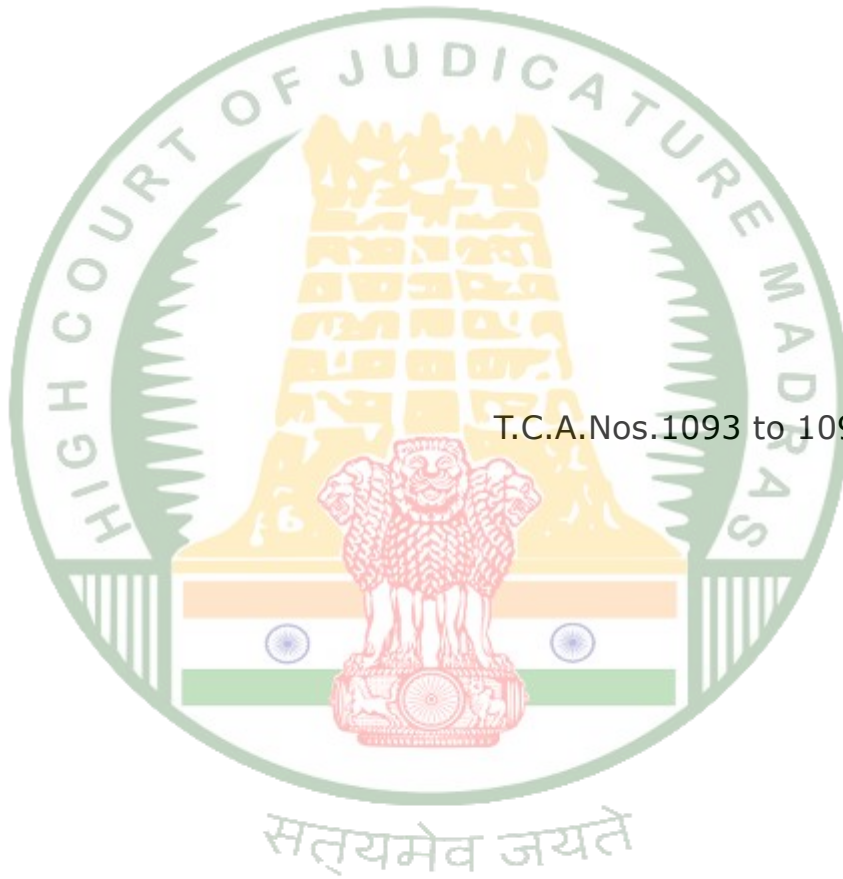
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T.S.Sivagnanam, J.

and

N.Sathishkumar, J.

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