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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM

**THE HON'BLE MR.JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MR.JUSTICE C. SARAVANAN**

T.C.A. Nos. 180 to 182 of 2011

The Commissioner of Income Tax,
Trichy – 1. ..Appellant in all the appeals

Vs.

The Lakshmi Vilas Bank Ltd.,
Salem Road, Kathaparai,
Karur. ..Respondent in all the appeals

Prayer: Tax Case Appeals as against the order dated 09.09.2005 passed in I.T.A. Nos. 186/Mds/2003, 9/MdS/2003 & 10/Mds/2003 respectively by the Income Tax Appellate Tribunal, 'D' Bench, Chennai.

For Appellant in all the appeals :: Mr.M. Swaminathan
Senior Standing Counsel
assisted by
Ms.V. Pushpa

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For Respondent
in all the appeals :: Mr.R. Vijayaraghavan for
M/s. Subbaraya Aiyar
Padmanabhan

**COMMON JUDGMENT**

**S. VAIDYANATHAN,J.**

**AND**

**C. SARAVANAN,J.**

Though these tax case appeals were admitted on 03.08.2011 on the substantial question of law ***'Whether the Income Tax Appellate Tribunal was right in holding that the commercial papers which is an unsecured promissory note issued at discount by highly rated companies would not fall under the definition of interest under Section 2(7) of the Interest Tax Act, 1974?***, today, when these cases were taken up for hearing, Mr.M. Swaminathan, learned Senior Standing Counsel for the appellant submitted that the impugned order passed by the Tribunal is a non-speaking order inasmuch as there is no discussion as to how the decision of this Court in ***Commissioner of Income Tax V. Lakshmi Vilas Bank*** reported in ***(1997) 228 ITR 0697*** was applicable to the facts of the case. It is submitted that the commercial paper issued by

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the respondent bank was in the nature of a promissory note and therefore, the interest was payable by the respondent under the provisions of interest Tax Act 1974.

2. On the other hand, learned counsel for the respondent would draw the attention of this Court to the ***'Draft Guidelines for issue of Commercial Paper (CP)'*** issued by the Reserve Bank of India on 6th July, 2000 wherein guidelines have been provided for issue of Commercial Paper. It is submitted that Commercial Paper was an investment document which is freely traded in the market and it is not a promissory note. In this connection, learned counsel for the respondent has reiterated that the decision of the Madras High Court in ***Commissioner of Income Tax V. Lakshmi Vilas Bank (cited supra)*** stated in the impugned order was applicable to the facts of the case. Learned counsel for the respondent has also relied on the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax V. Sahara India Savings & Investment Corporation Ltd.*** reported in ***(2010) 321 ITR 0371*** wherein the relevant paragraphs read as follows***:***

> *6. In accounting sense, there is a conceptual difference between loans and advances on the one hand and investments on*

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*the other hand. Section 2(7) defines the word "interest" to mean interest on "loans and advances including commitment charges, discount on promissory notes and bills of exchange but not to include interest referred to under Section 42(1-B) of the Reserve Bank of India Act, 1934 as well as discount on treasury bills". Section 2(7), therefore, defines what is interest in the first part and that first part confines interest only to loans and advances, including commitment charges, discount on promissory notes and bills of exchange. Pausing here, it is clear that the interest tax is meant to be levied only on interest accruing on loans and advances but the legislature, in its wisdom, has extended the meaning of the word "interest" to two other items, namely, commitment charges and discount on promissory notes and bills of exchange. In normal accounting sense, "loans and advances", as a concept, is different from commitment charges and discounts and keeping in mind the difference between the three, the legislature, in its wisdom, has specifically included in the definition under Section 2(7) commitment charges as well as discounts. The fact remains that 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". Even the exclusionary part of Section 2(7) excludes only discount on treasury bills as well as interest under Section 42(1-B) of the Reserve Bank of India Act, 1934.*

***7.*** *Reading Section 2(7) as a whole, it is clear that "interest on investments" is not taxable as interest under Section 2(7) of the said 1974 Act.*

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**8.** *It is the case of the Department, however, which needs to be addressed at this stage, that prior to 1-10-1991, the word "interest" in Section 2(7) was defined so as to include any amount chargeable to income tax under the head "Interest on securities". It is the case of the Department that by an amendment w.e.f. 1-10-1991, the said item, namely, "amount chargeable to income tax ... under the head 'Interest on securities' " stood deleted and, consequently, "interest on securities" would fall within the definition of the word "interest" under Section 2(7). .According to the Department, Section 2(7) was not exhaustive and with the amendment w.e.f. 1-10-1991 when "interest on securities" stood excluded, it (interest on securities) would automatically fall within the purview of the word "interest" under Section 2(7) of the 1974 Act. We find no merit in this argument for two reasons. Firstly, as stated above, Section 2(7), read as a whole, focuses only on interests accruing on loans and advances, commitment charges and discount on promissory notes and bills of exchange. It also specifically excludes interest under Section 42(1-B) of the Reserve Bank of India Act as well as discount on treasury bills. It was very easy for Parliament to expressly provide for "interest on investments" to fall under Section 2(7), but that has not been done. The reason is obvious. As stated above, one of the objects of enacting the 1974 Act is by way of an anti-inflationary measure. In an inflationary situation, the cost of borrowing for the Government also increases. One of the ways by which the cost of borrowing can be reduced is to see that companies like the respondent herein are made to invest in bonds and securities so that the Government is able to borrow monies at a cheaper rate as compared to its borrowings in the market. It is*

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*precisely for this reason that Reserve Bank of India, which is a regulator and which is responsible for the credit management of the economy and which is empowered to issue directions from time to time not only with the object of regulating the credit but also to control businesses like non-banking financial companies and residuary non-banking companies by issuing directions under Chapter III-B of the Reserve Bank of India Act, issues directions and one of such directions which has been issued in the present case is called as the Residuary Non-Banking Companies (Reserve Bank) Directions, 1987. These Directions have been issued under Sections 45-J and 45-K of the Reserve Bank of India Act, 1934.*

3. We have considered the arguments advanced by the learned Senior Standing Counsel for the appellant and the learned counsel for the respondent.

4. We are of the view that the order of the Tribunal is cryptic. The Tribunal should have discussed the issue as to whether the 'Commercial Paper' that was issued by the respondent satisfied the definition of 'Interest' under Section 2(7) of the Interest Tax Act, 1974. Mere reference to the decision of this Court in ***Commissioner of Income Tax V. Lakshmi Vilas Bank (cited supra)*** itself would not be sufficient. Therefore, we are inclined to set aside the impugned order and remit the

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case back to the Tribunal for passing fresh orders in accordance with law.

5. Accordingly, the impugned order is set aside and the matter is remitted back to the Tribunal for passing fresh orders qua the issue involved, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order considering the fact that the assessment years pertain to 1998-1999, 1999-2000 & 2000-2001. It is needless to state that when the case is taken up for hearing, the respondent needs to be heard.

6. The Tax Case Appeals are disposed of with the above directions. No costs.

(S.V.N.J.) (C.S.N.J.)
29.11.2022

nv

To

The Lakshmi Vilas Bank Ltd.,
Salem Road, Kathaparai,
Karur.

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