

Cit Vs. Radico Khaitan Ltd.

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SooperKanoon Citation : sooperkanoon.com/495121

Court : Allahabad

Decided On : Sep-14-2004

Reported in : [2005]142TAXMAN681(All)

Appeal No. : IT Appeal No. 27 of 2000 14 September 2004

Appellant : Cit

Respondent : Radico Khaitan Ltd.

Advocate for Pet/Ap. : A.N. Mahajan *for the Revenue* V.B. Upadhaya and Vikram Gulati, *for the Assessee*.

Judgement :

R.K. Agrawal, J.

The present appeal preferred by the revenue under section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been admitted by this court on the following four substantial questions of law

'1. Whether on facts and circumstances of the case, the Tribunal was justified in deleting the interest disallowed on loan given by the assessee to its sister concern for non-business purposes?

2. Whether on facts and circumstances of the case, the Tribunal was justified in directing to allow investment allowance on telephone exchange installed in

fertilizer unit and distillery unit which is engaged in manufacture of articles and things listed in Eleventh Schedule of Income Tax Act, 1961?

3. Whether on facts and circumstances of the case, the Tribunal was legally justified in holding that the ex gratia bonus payments made by the assessee over and above the bonus payable in accordance with the provisions of Bonus Act, 1965 were an allowable deduction?

4. Whether on facts and circumstances of the case, the Tribunal was justified in directing the assessing officer to treat the interest and dividend income as business income while assessing officer has rightly assessed the same as 'Income from other sources'?

2. Briefly stated the facts giving rise to the present appeal are as follows:

The respondent (hereinafter referred to as 'the assessee-company') is a public limited company incorporated under the provisions of the Companies Act. Earlier it was known as the Rampur Distillery and Chemical Company Limited. It is engaged in the manufacture of industrial alcohol, Indian made foreign liquor, country liquor, fertilizers, etc. During the assessment year 1990-91, the previous year of which ended on 31-3-1990, the assessee-company filed the return of income on 31-12-1990. It showed nil income after set off of carry forward loss of Rs. 2,31,67,914. The return of income was processed under section 143(1)(a) of the Act, vide intimation dated 31-8-1991 and the assessing officer had made certain adjustments to the returned income. Regular assessment proceedings were initiated and the Deputy CIT (Assessment), Special Range, Moradabad, vide order dated 26-11-1992, disallowed amongst other, the following items:

(i) Rs. 2,83,635 being the amount of interest on the loan to sister concern, namely M/s. Rampu International Private Limited, Calcutta,

(ii) Rs. 42,526 and Rs. 38,792 in respect of the investment allowance on telephone exchange and diesel generating set installed in the distillery unit and fertilizer unit respectively;

(iii) Rs. 45,927 on account of ex gratia payment which was in addition to the bonus paid to its employees;

(iv) He also treated the interest and dividend income disclosed by the assessee-company under the head 'Income from other sources' and not as 'business income'.

3. In the appeal filed before the CIT (A), the action of the assessing officer was confirmed in respect of the aforementioned points. Feeling aggrieved, the assessee-company preferred a second appeal before the Income Tax Appellate Tribunal, New Delhi. The Tribunal, vide order dated 20-7-1999, had deleted the disallowance of interest of Rs. 2,83,635 on the ground that the loan of Rs. 17.19 lakhs was given to the sister concern M/s. Rampur International Private Limited as early as in the financial year 1985 and the department had not disallowed any of the amount in the assessment. year 1986-87 onwards till the assessment year 1990-91 on that count. Placing reliance on the decision of the Karnataka High Court in the case of CIT v. Sridev Enterprises : [1991]192ITR165(KAR) , it has held that if the assessee-company has advanced certain sum to another company having common partners free of interest and the assessee was paying interest on the money borrowed and in the past year the assessee claim for deduction of interest paid was disallowed then no disallowance can be made in the subsequent years as it is to be presumed that those advances were not out of borrowed fund by the assessee and that is why no disallowance was made in the earlier years and the principle of consistency required that the same point cannot be decided against the assessee in the subsequent years. The Tribunal further held that the copy of the balance sheet filed by the assessee as on 31-12-1985, goes to show that the assessee was having sufficient fund on account of share capital, share application money, reserve and surplus and it was having sufficient fund at its disposal out of which a small sum of Rs. 17.19 lakhs could easily be diverted.

4. In respect of the investment allowance of Rs. 42,526 and Rs. 38,792, the Tribunal had held that the assessee-company is entitled for the investment allowance on the telephone exchange as it is to be treated as plant.

5. in respect of the ex gratia payment of Rs. 45,927, the Tribunal had held that the same is an allowable deduction. So far the taxability of dividend and interest

income is concerned, the Tribunal has held that in the earlier years the same nature of income was treated as income of business and in the absence of any new fact and material, the same type of income cannot be brought under the head 'Income from other sources'. It has further held that there was no increase in the secured loan taken from the financial institution /bank and rather there was a reduction in the balance and, thus, whatever advances was given by the assessee in the year under consideration, was out of current cash profits generated from the business activity of the assessee-company and, thus, the income so derived as interest on such advances is to be treated as income from 'business'and not as 'income from other sources'.

6. We have heard Sri A.N. Mahajan the learned standing counsel for the revenue, and Sri V.B. Upadhaya, learned senior counsel, assisted by Sri Vikram Gulati, on behalf of the respondent assessee-company.

7. Sri A.N. MahaJan, learned counsel, submitted that in respect of other loans and advances made by the assessee-company, it had charged interest whereas only in respect of one company, namely, Ws. Rampur International Private Limited, to whom it has advanced a sum of Rs. 17.19 lakhs no interest has been charged. The assessee-company had borrowed huge amount from the financial institutions/banks on which interest was payable It was maintaining an overdraft account with the bank from which the amount of Rs. 17.19 lakhs had been advanced. Even during the assessment year in question there was a debit balance in the overdraft account and, therefore, the amount of Rs. 17.19 lakhs could not be said to have been borrowed by the assessee-company for the purpose of its business. According to him, proportionate amount of interest paid by the assessee-company has rightly been disallowed by the assessing officer. He further submitted that the inference drawn by the Tribunal that at the time when the amount was advanced to the sister concern, the assessee company had sufficient money on account of share capital, share application money, reserve and surplus, is also incorrect inasmuch as these amounts may not have been available with the assessee-company when the loan was advanced as these amount must have been invested in the fixed assets and other requirement of the assessee-company. He submitted that the Tribunal has committed a manifest

error in holding that no disallowance was warranted. He further submitted that each assessment year is an independent unit of assessment and merely because in the past no disallowance was made in respect of proportionate interest, the Tribunal was not right in applying the principle of estoppel and acquiescence. He relied upon the following decisions:-

(i) Madhav Prasad Jatia v. CIT : [1979]118ITR200(SC)

(ii) Marolia & Sons v. CIT : [1981]129ITR475(All)

(iii) CIT v. HR. Sugar Factory (P) Ltd. : [1991]187ITR363(All)

(iv) CIT v. HR. Sugar Factory (1991) 190 ITR 643

(v) CIT v. Saraya Sugar Mills (P) Ltd. : [1992]193ITR575(All) and

(vi) CIT v. Saraya Sugar Mills (P) Ltd. : [1993]201ITR181(All)

8. So far as the investment allowance is concerned, he submitted that no investment allowance under section 32A of the Act is admissible as the assessee-company is engaged in the manufacture or production of beer, wine and other alcoholic spirits which are mentioned at Item No. 1 in the Eleventh Schedule of the Act. According to him, in view of the specific provisions of sub-section (2A) of section 32A of the Act, investment allowance is not admissible at all. He further submitted that under clause (b) of the second proviso to section 32A of the Act, investment allowance is not admissible to any office appliances and telephone exchange is an office appliance and cannot be said to be a plant.

9. In respect of ex gratia bonus payment made by the assessee-company, he submitted that under section 36(1)(ii) of the Act, the amount of ex gratia payment towards bonus which is over and above the ceiling fixed under the Payment of Bonus Act is not an allowable deduction.

10. In respect of interest and dividend income, he submitted that under section 14 of the Act, heads of income have been specified and all income have been classified under the various heads. Head F specifies 'Income from other sources'.

According to him, under section 56 of the Act income which do not fall under Head A to E of section 14 of the Act are chargeable under the Head F - 'Income from other sources'. He submitted that dividends find a specific mention under clause(i) of sub-section (2) of section 56 of the Act. Likewise, interest income would also fall under section 56 of the Act. He relied upon the following decisions:-

(i) Murli Investment Co. v. CIT (1987) 167 ITR 368; and

(ii) Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT : [1997]227ITR172(SC)

11. Sri V.B. Upadhaya, learned senior counsel, submitted that the Tribunal had found that the assessee-company was having sufficient fund oil account of the share capital, share application money, reserve and surplus and was having sufficient fund at its disposal out of which a small sum of Rs. 17.19 lakhs could easily be diverted and there was nothing on record to prove that it had diverted borrowed fund to the sister concern. This finding has been recorded on examination of the copy of the balance sheet as on 31-12-1985 filed by the assessee-company, which is a pure finding of fact and has not been specifically challenged in the appeal, as no question has been framed in that behalf. He, thus, submitted that the finding of fact cannot be interfered with by this court while deciding the appeal under section 260A of the Act where the appeal lies on substantial question of law. He relied upon the following decisions

(i) Dy. CIT v. Marudhar Hotels (P) Ltd. and

(ii) CIT v. Navyug Oil & Dal Mills

12. On merit, he submitted that as the assessee-company was having sufficient fund with it in the form of share capital, share application money, reserve and surplus, the amount of loan of Rs. 17.19 lakhs advanced by it to its sister concern cannot be linked to borrowed money and, therefore, the Tribunal was justified in deleting the disallowance of proportionate interest. He relied upon the following decisions:-

(i) CIT v. Bombay Samachar Ltd. : [1969]74ITR723(Bom) ;

(ii) Madhav Prasad Jatia's case (supra);

(iii) CIT v. H.P. Lohia : [1993]203ITR928(Cal) and

(iv) Sridev Enterprises' case (supra)

13. On the question as to whether investment allowance in respect of the telephone exchange installed at the assessee-company distillery and fertilizer units should be allowed or not, Sri Upadbaya submitted that to that extent, plea of the assessee-company manufacturing one of the items mentioned in the Eleventh Schedule of the Act was not raised before the Tribunal and, therefore, this question does not arise. He submitted that the telephone exchange has been held to be a plant and, therefore, the assessee-company is entitled to investment allowance. It cannot be treated as a mere office appliance. He relied upon the following decisions

(i) CIT v. Elecon Engg. Co. Ltd. : [1974]96ITR672(Guj)

(ii) CIT v. Elecon Engg. Co. Ltd. : [1987]166ITR66(SC) and

(iii) CIT v. Electronics Research Industries (P) Ltd. : [1991]192ITR20(KAR) .

14. In respect of the ex gratia payment of Rs. 45,927, he submitted that the proviso to section 36(1)(ii) of the Act which prohibited allowance of bonus paid over and above the ceiling fixed under the Payment of Bonus Act, has been omitted with effect from 1-4-1989 and, therefore, it was an allowable deduction.

15. In respect of dividend and interest income, he submitted that for the past several years, the dividend and interest income disclosed by the assessee-company was treated as falling under the head 'Business income' and not under the head 'Income from other sources' and, therefore, the Tribunal was justified in directing the assessing officer to treat the interest and dividend income under the head 'business income'. He relied upon the following decisions:-

(i) CIT v. A.P. Industrial Instructure Corpn. Ltd. : [1989]175ITR361(AP) and

(ii) CIT v. Tamil Nadu Dairy Development Corpn. Ltd. : [1995]216ITR535(Mad) .

16. We have heard the learned counsel for the parties.

Question No. 1

17. It is not in dispute that the assessee-company had advanced a sum of Rs. 17.19 lakhs to its sister concern M/s. Rampur International Private Limited, in the year 1985. It had not charged any interest from the said Company whereas it had been charging interest from other debtors. It had borrowed huge sum from the banks and the financial institutions. In the present assessment year, the assessing officer had disallowed the amount towards proportionate interest on the said advances. The Tribunal after examining the balance sheet for the year ending 31-12-1985 had come to the conclusion that the assessee-company was having sufficient fund on account of share capital, share application money, reserve and surplus and was having sufficient fund at its disposal out of which a small sum of Rs. 17.19 lakhs could easily be diverted. It is well-settled that if an amount has been borrowed not for the business purposes but for some private purposes, then the interest on such borrowings cannot be allowed as a deduction under section 36(1)(ii) of the Act. The Apex Court in the case of Madhaya Prasad Jatia (supra) while considering the provision of section 10(2)(iii) of the Indian Income Tax Act, 1922, which is analogous to section 36(1)(ii) of the Act, has held that for claiming a deduction under section 10(2)(iii) of the Act, three conditions are required to be satisfied in order to enable the assessee to claim a deduction on interest on borrowed capital, namely (a) that the money (capital) must have been borrowed by the assessee; (b) that it must have been borrowed for the purpose of business; and (c) that the assessee must have paid interest on the said amount and claim it as a deduction. The Apex Court has held that the expression 'for the purpose of business' is wider in scope than the expression 'for the purposes of earning income profits or gains' and has held that the expenditure incurred shall be for carrying of the business and the assessee shall incur it in the capacity as a person carrying on the business. If the borrowing was made to meet the personal obligation and not the obligation of the business, such expenditure incurred by the assessee by way of payment of interest thereon was not for carrying on business

and such expenditure can, by no stretch of imagination, be regarded as business expenditure. In the case of Marolia & Sons (supra), this court has held as follows:

'Section 36(1)(iii) of the Income Tax Act deals with the deduction on the amount of interest paid in respect of capital borrowed for the purposes of business or profession. It would be found from clause (iii) of subsection (1) of section 36 of the Act that three conditions must be established by an assessee for getting the benefit under the aforesaid clause :

(1) interest should have been payable,

(2) there should be a borrowing, and

(3) capital must have been borrowed or taken for business purposes.

If the capital borrowed is not utilized for the purposes of the business, the assessee will not be entitled to deduction under this clause. In case, after having borrowed the capital for business purposes, the firm gives the same to its partners for their personal use or utilization, the firm would not be entitled to claim deduction on the amount diverted for utilization for other purposes or by other persons. This question has been the subject-matter of decisions by several High Courts. It appears to be settled that an assessee-firm cannot be entitled to claim deduction under clause (iii) of sub-section (1) of section 36 of the Act on the amount which is not used for the purposes of business but is given to the partners for their personal use. Referencemay bemade to the decisions in Milapchand R. Shah v. CIT : [1965]58ITR525(Mad) and Roopchand Chabildass & Sons v. CIT : [1967]63ITR166(Mad) .' (p. 478)

17.1 In the case of H.R. Sugar Factory (P) Ltd. (supra) this court had found that had the money been not advanced to the Directors, it would have been available to the assessee for its business purpose and to that extent it may not have been necessary to borrow from the bank and, therefore, the difference of interest has rightly been disallowed under section 36(1)(ii) of the Act. The aforesaid decision has been followed by this court in the case of HR. Sugar Factory (P) Ltd. (supra) and Saraya Sugar Mills (P) Ltds case (supra).

17.2 In the case of Bombay Samachar Ltd. (supra) the Bombay High Court has held as follows:

'As we have already pointed out, it is undisputed that the amounts borrowed from outsiders on which interest has been paid have been used for the purpose of the business of the assessee. It appears to have been the view of the Income Tax Officer that if the assessee had collected the outstandings which were due to it from others, it would have been able to reduce its indebtedness and thus save a part of the interest which it had to pay on its own borrowings. The assessee, therefore, was not justified in allowing its outstandings to remain without charging any interest thereon while it was paying interest on the amounts borrowed by it. To the extent, therefore, to which it would have been in a position to collect interest on the outstandings due to it from others, it could not be permitted to claim interest paid by it to outsiders. In our opinion the view taken by the Income Tax Officer is clearly unsustainable. As has been pointed out by the Madhya Pradesh High Court in *Ram Krishna Oil Mills v. CIT* : [1958]34ITR265(Bom) the only conditions required to be satisfied in order to enable the assessee to claim a deduction in respect of the interest under section 10(2)(iii) are, firstly, that money must have been borrowed by the assessee; secondly, it must have been borrowed for the purpose of business and, thirdly, the assessee must have paid interest on the said amount and claimed it as a deduction. It is not the requirement of the provision that the assessee must further show that the borrowing of the capital was necessary for the business so that if at the time of borrowing the assessee had sufficient amount of its own, the deduction could not be allowed. Similarly, the Madras High Court in *Ainna Bai Hajee Issa v. CIT* : [1964]51ITR835(Mad) has held that in deciding whether a claim for interest on borrowing can be allowed the fact that the assessee had ample resources at its disposal and need not have borrowed, is not a relevant matter for consideration. The matter to be decided is whether the amount of interest was paid in fact in respect of the capital borrowed for business.' (p. 730)

17.3 In the case of H.P. Lohia (supra), the Calcutta High Court has held that the assessee had borrowed money for advancing loans to two companies which were written off and, therefore, he was not receiving any interest on the loans advanced

to those two concerns. It, however, did not absolve him of the liability of paying interest to his creditors on the amount borrowed by him and, therefore, there was no justification to exclude interest payable by him on account of interest not receivable by him, could have been disallowed on the ground that the amount advanced by him was not for the purposes of business for which the loan was taken by him. Under the circumstances, there was no reason for disallowing the interest on the amount of loan taken by the assessee.

17.4 In the case of *Sridev Enterprises (supra)*, the Karnataka High Court has held that the consistency and definiteness of approach by the revenue is necessary in the matter of recognizing the nature of an account maintained by the assessee so that the basis of a concluded assessment would not be ignored without actually reopening the assessment.

17.5 From the aforementioned cases, the principle which emerges for allowing the amount of interest paid in respect of capital borrowed is that the following three conditions should be fulfilled:-

(i) the capital must have been borrowed or taken for the purpose of the business or profession;

(ii) the interest should have been payable; and

(iii) if the borrowing is not for the business purpose and is for private purpose or not connected with the business, interest paid on such borrowings cannot be allowed as a deduction under section 36(1)(iii) of the Act.

17.6 Applying the aforesaid principle to the facts of the present case, we find that the Tribunal has recorded a finding that there was sufficient fund available with the assessee-company in the form of capital share, share application money, reserve and surplus other than the borrowed money for diverting a sum of Rs. 17.19 lakhs. Thus, it cannot be said that the amount of loan advanced to the sister concern, namely, M/s. Rampur International Private Limited, was out of the borrowed fund.

17.7 In the case of *East India Pharmaceutical Works Ltd. v. CIT* : [1997]224ITR627(SC) ' the Apex Court while holding that the payment of interest

of Rs. 28,488 on money borrowed for payment of income tax was for meeting the personal liability and such expenditure can never be held to be wholly and exclusively for the purposes of earning income. It found considerable force in the arguments advanced by the learned counsel that the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business, would essentially depend upon whether the entire profits had been pumped into the overdraft account, whether such profits were more than the tax amount paid for the relevant year and other germane factors. Since the appellant had not advanced the contention either before the Tribunal or the High Court, and the amplitude of the question posed before the High Court did not bring within its sweep the contention advanced by the appellant, the Apex Court was of the view that it would not be appropriate for the court to look into the additional papers produced by the appellant for answering the question.

17.8 In view of the findings recorded by the Tribunal that the assessee-company has sufficient fund other than the borrowed money for giving the amount in question as loan to its sister concern, which finding has not been specifically challenged in the present appeal, we are of the considered opinion that the conditions of section 36(1)(iii) of the Act have been complied with and, therefore, the assessee-company was entitled to full allowance of the amount of interest paid by it on borrowed capital. Moreover, the assessing officer himself had not allowed the proportionate amount of interest on the aforesaid loan during the relevant assessment year when the said loan had been advanced by the assessee-company to its sister concern. The Tribunal has rightly deleted the disallowance of proportionate interest on this count.

Question No. 2

18. It is not in dispute that the assessee-company is engaged in the business of manufacture and production of one of the items mentioned in the Eleventh Schedule at serial No. 1, i.e., beer, wine and other alcoholic spirit. In view of the specific provisions contained in sub-section (2A) of section 32A of the Act, investment allowance is not admissible in respect of the plant and machinery installed for the purpose of manufacturing any of the items mentioned in the

Eleventh Schedule. No doubt, it is true that the plea of prohibition under the Eleventh Schedule was not raised but being a pure question of law which does not involve any investigation of fact, the revenue has been permitted to raise this plea in the present appeal. In view of the specific provisions, the assessee-company is not entitled to any investment allowance in respect of the plant and machinery installed for the manufacture of items mentioned in the Eleventh Schedule. However, in respect of the telephone exchange installed in its fertilizer unit, it would be entitled for investment allowance as the telephone exchange will not be an office appliance but would fall under the term plant, as held by the Karnataka High Court in the case of Electronics Research Industries (P) Ltd. (supra), with which we respectfully agree.

Question No. 3

19. The assessment year involved in the present appeal is 1990-91. The proviso to clause (ii) of sub-section (1) of section 36 of the Act, which has been omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989, reads as follows:

'Provided that the deduction in respect of bonus paid to an employee employed in a factory or other establishment to which the provisions of the Payment of Bonus Act, 1965 (21 of 1965), apply shall not exceed the amount of bonus payable under that Act:

Provided further that the amount of the bonus (not being bonus referred to in the first proviso) or commission is reasonable with reference to-

- (a) the pay of the employee and the conditions of his service;
- (b) the profits of the business or profession for the previous year in question; and
- (c) the general practice in similar business or profession.'

The learned counsel for the revenue did not dispute this position.

19.1 Thus, after the omission from 1-4-1989, the ex gratia payment towards bonus is an allowable deduction.

Question No. 4

20. It is not in dispute that the assessee-company had received interest on the deposits/ advances made by it. It was a running concern. The amount of interest has not been received by it on account of delayed payment towards sales or an item relatable to its business. Under section 14 of the Act, various heads of the income have been specified. An item of income can fall under profits and gains of business and profession as the assessee-company in the present case claims. However, if an item of income does not fall under any of the heads enumerated in Head A to E mentioned in section 14 of the Act, it would fall under the residuary head, ie., income from other sources mentioned under Head F. Section 56 of the Act which deals with the income from other sources is also to the same effect.

20.1 As held by the Apex Court in the case of Bihar State Co-operative Bank Ltd. v. CIT : [1960]39ITR114(SC) and S.G. Mercantile Corpn. (P.) Ltd. v. CIT : [1972]83ITR700(SC) , where there is a specific head for the income in question and a specific section providing for the head, this residuary section cannot be called in aid. The Privy Council in the case of CIT v. Basant Rai Takhat Singh (1933) 1 ITR 197 has laid down that the residuary head does not come into operation until the preceding heads are excluded. In the case of Nalinikant Ambalal Mody v. S.A.L. Narayan Row, CIT : [1966]61ITR428(SC) , the Apex Court has affirmed the proposition laid down by the House of Lords in Salisbury House Estate Ltd. v. Fry (Inspector of Taxes) 15 TC 266 and has held that the residuary head of income can be resorted to only if none of the specific heads is applicable to the income in question and if a certain item of income is taxable under one of the specific head, the charge under that head exhausts the taxability of the income, and no part of such income can be brought to charge again under the residuary head. The Apex Court in the case of CIT v. Govinda Choudhury & Sons : [1993]203ITR881(SC) , has held that the interest can be assessed under the head income from other sources only if it cannot be brought within one or other specific heads of charge.

20.2 In the case of Murli Investment Co. (supra), the Rajasthan High Court has held that the Company was investing its surplus fund and was deriving interest

thereon instead of keeping that idle and the income from such investment would be assessable only under section 56 of the Act and not as business income. Similar view has been taken by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). The Apex Court has held as follows:

'The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of which will be chargeable to income tax. Profits and gains of business or profession is only one of heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus funds in its hands for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head 'Capital gains'. Similarly, if a company purchases a rented house and gets rent, such rent will be assessable to tax under section 22 as income from house property. Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable under section 56 of the Act. The company may also, as in this case, keep the surplus funds in short-term deposits in or er to earn interest. Such interest will be chargeable under section 56 of the Act.' (p. 179)

20.3 In the case of A.P. Industrial Infrastructure Corpn. Ltd. (supra), the Andhra Pradesh High Court has held that the interest income earned by keeping the surplus amount in the bank during the interval between receipt and disbursement was to be treated as income from business.

20.4 In the case of Tamil Nadu Dairy Development Corpn. Ltd. (supra), the Madras High Court has taken the similar view.

20.5 In the case of Govinda Choudhury & Sons (supra), the Apex Court was considering a case where an assessee which was engaged in the business of executing government contracts, received interest for delay in payment of amount due to its pursuant to the award given by the arbitrator. The question was whether

the amount of interest should be treated as trading receipt or income from other sources. The Apex Court has held as follows:

'...We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In our view, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the awards and treated as 'income from other sources'. The second question is therefore, answered in favour of the assessee and against the revenue.' (p. 884)

21. Admittedly, in the present case the assessee-company had received interest on loans/advances made by it to its debtors. The amount of interest is not relatable to any late payment of the invoices/bills or compensation/damages. Thus, the amount of interest which it has received cannot, by any stretch of imagination, be treated as income from business but is to be treated under the head 'Income from other sources'.

22. In view of the foregoing discussion, we decide the first and the third question in the affirmative, ie., in favour of the respondent assessee company and against the appellant; the second question is decided partly in favour of the appellant and partly in favour of the respondent and question No. 4 is decided in favour of the appellant. The appeal is accordingly partly allowed. In view of the divided success, the parties are directed to bear their own costs.