

Housing and Urban Development Vs. Dcit, Spl. Range-24

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-17-2003

Judge : R Mehta, Y Kapur

Appellant : Housing and Urban Development

Respondent : Dcit, Spl. Range-24

Judgement :

1. In this appeal filed by the assessee the challenge is to the order of the authorities below who according to the assessee have brought to tax the interest earned by it on the placement of surplus funds with institutions like Steel Authority of India Ltd. (SAIL) within the provisions of the Interest Tax Act, 1974. The assessee has challenged the orders of the authorities below on the grounds enumerated below : - 1. On the facts and circumstances of our case and in law the CIT(A) erred in confirming the treatment of the AO in subjecting to tax the interest earned on deposit of surplus funds within the meaning of Section 7(2) of the Interest Tax Act of 1974.

2. The CIT(A) was not justified in rejecting out plea that chargeable interest of a credit institution should only include any interest earned on loans and advances made by it in terms of the provision contained in section 5 read with section 2(7) of the interest tax act and that there is no warrant in law to include any interest earned on deposits made based on any dictionary meaning.

3. The assessee corporation begs permission to amend/add any ground and permitted to produce all evidence in support of the contentions raised above.

2. At the time of hearing of the appeal the main thrust of the assessee's argument was that the assessee is into the business of financing housing projects promoted by various organizations including the State Government. During the course of the business the assessee some times has surplus funds and in order to have the optimum use of the surplus funds, the funds available are made available to various companies and in this case it was made available to SAIL. According to the assessee the provisions of Section 2(7) of the Interest Tax Act are applicable only to the interest earned from loans and advances and the placement of surplus funds do not fall within the meaning of loan and advances and, therefore, the provisions of Section 2(7) of the Interest Tax Act are not applicable. While advancing his arguments further, it was submitted by the Id. AR for the assessee that the surplus funds are invested after the negotiations are undertaken and the interest is settled and, therefore, it cannot partake the character of loans and advances as expressed under the Interest Tax Act. According to the assessee the authorities below were wrong and have failed to draw a distinction between the loans and advances and deployment of surplus funds which partake the character of deposits. The Id. Counsel in support of his contention drew our attention to the order of the Mumbai bench of the Tribunal in Interest Tax Appeal No.9/Bombay/96.

3. To the arguments raised by the Id. AR, the Id. DR submitted that there is no distinction between the loans and advances and deposits and the deployment of surplus funds which partake the character of deposits. To buttress his arguments further, the Id. DR drew our attention to the meaning of the word 'deposits' and 'loans' as explained in Law Lexicon wherein it has been stated that : "The terms 'loans' and 'deposits' are not mutually exclusive terms.

There are a number of common features between the two. In a sense a deposit is also a loan with this difference that it is a loan with something more. Both are debts repayable. But, when the repayment is to be furnished the real point of distinction between the two concepts emerges. A loan is repayable the minute it is

incurred. But this is not so with a deposit. Either the repayment will depend upon the maturity date fixed therefore or the terms of the agreement relating to the demand on making of which the deposit will become repayable." 4. After having drawn out attention to the Law Lexicon, the Id, DR brought to our notice the meaning of the word 'loans' and deposits u/s 295(1) of the Companies Act. Ld. DR, while referring to the commentary in A Ramada's Companies Act drew out attention to page 19.1 wherein it has been observed that for the purposes of this Section there is not distinction between 'loan' and 'deposit'. It was the submission if the Id. DR that under the Companies Act as far as 'loan' and 'deposit' are concerned, such a definition is immaterial as a deposit like any other loan is only the money lent, except that it is repayable only on demand. It was the case of the Id. DR that in both the case of loans and deposit the relationship is one of debtor and creditor.

5. The Id DR while advancing his arguments drew our attention one again to Section 2(7) of the Interest Tax Act, 1974 which for the sake of brevity are reproduced below : - "interest means interest on loans and advances made in India and includes : a) commitment charges on unutilized 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); 6. The submission of the Id. DR with reference to the interest Tax Act was that the words included in the definition of the Interest Tax Act is the 'loans and advances' and what is not included is deemed to be excluded. The deposits, it was the submission of the Id. DR, having not been included within the definition of the Interest Tax Act, is deemed to have been excluded and once excluded any interest earned on such deposit is liable to be brought to tax within the meaning of the Act.

The Id. DR during the course of hearing drew out attention also to Section 2(28A) of the Income Tax Act which defines interest to mean interest payable in any manner in respect of any money borrowed or debts incurred (including a deposit claimed or other similar rights or obligation) and includes any service fee or other charge in respect of money borrowed or debt incurred or in respect of any credit

facility which has not been utilized. The submission of the Id. DR before us was that once the surplus funds are payable, they partake the character of deposit which are nothing but loan and deposit having been not exempt from tax u/s 2(7) of the Interest Tax Act, they are liable to be taxed.

The Id. DR while making his comments on the order relied upon by the Id. AR submitted that the issue before the Mumbai Bench of the Tribunal was not one before us. He referred to page 29 of the order wherein the Tribunal has observed that : "The dispute has arisen with regard to the interest for bonds, debentures, Government securities. It was the submission of the Id DR that this was a case of LIC which is a statutory body wherein it has to deploy funds in accordance with the directions contained in the statute" 7. The Id. AR further stated that the case of the assessee which is not a statutory body cannot be equated with that of LIC. The Id. DR also referred to the provisions of Section 370 of the Companies Act and the Explanation attached thereto for the purposes that in accordance with the Explanation to Section 370, 'loan' includes any deposit of money made by one company with another company not being a banking company.

According to the Id. DR the deployment of surplus funds with the SAIL partake the character of deposits and since being a deposit it cannot squarely fall within the definition of loan.

8. We have heard the parties and taken ourselves through the record as well as the statutory provisions referred to during the course of hearing. It is not in dispute that the funds have been deployed by the assessee with the SAIL. The question would be whether it is a deposit or a loan. If the funds so deployed would partake the character of loan they would fall within the ambit of Section 2(7) of the Interest Tax Act otherwise not. The word 'loan' is defined to mean in the Chambers 20th Century Oxford Dictionary to mean anything lent, especially money on interest. By placing the surplus funds at the disposal of the SAIL what the assessee literally has done is that they have placed the funds at the disposal of the SAIL on which they are earning interest. It was the case of the assessee that the money has been placed at the disposal of the SAIL under a contract meaning thereby that the SAIL wanted funds and that is why they accepted the money from the assessee and, in

these circumstances, we have no hesitation in saying that the money placed at the disposal of the SAIL would partake the character of a loan for which the compensation in the form of interest is being paid by the SAIL to the assessee. We feel that as far as SAIL is concerned it would be a loan because they have to repay it on the terms and conditions and since the amount is advanced in the form of a loan though it may be stated to have been a deposit with the SAIL, it would fall within the definition of Section 2(7) of the Interest Tax Act. In this particular case the loan and the deposit are so intrinsically connected that it would have been difficult for any one to say that the claim of the deposit made by the assessee would not be a loan. That apart, a perusal of the Law Lexicon referred to above clearly defines what is loan and deposit. That apart we must say that the interest has been paid by the SAIL to the assessee on the money borrowed or debt incurred which has to be the payment made for the compensation of use and enjoyment of the money lent by the assessee and the transaction inter se between the two has to be termed as transaction of money which one accepts as loan or interest and no other transaction. When we say this, we draw support from the definitions of the word and explanations used in Section 370 of the Companies Act as well as Section 295A of the Companies Act wherein loan and deposits have been defined. The judgment relied upon by the counsel for the assessee and placed on the record does not advance the case of the assessee as it was the case of a statutory Corporation being and the interest in this case was sought to be charged from the investment made in Government security which is not the case here. We, therefore, are of the opinion that the assessee has failed to draw a distinction between the loan and advances on the one side and the deposit on the other side and we have no hesitation in saying that in fact there exists none. The amount deposited by the assessee was loan to SAIL on which interest was earned and which interest we must say is eligible to tax under the Interest Tax Act, 1974. The Terminology adopted by the assessee that it was a deposit in view of the discussion above is of no consequence.

9. In view of the discussion above, the appeal of the assessee fails and is hereby dismissed.