

Assistant Commissioner of Vs. Little Flower Kuries and

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Court : Income Tax Appellate Tribunal ITAT Cochin

Decided On : Feb-25-2004

Reported in : (2005)94ITD162(Coch.)

Judge : K Thangal, O Narayanan

Appellant : Assistant Commissioner of

Respondent : Little Flower Kuries and

Judgement :

1. These appeals are by the assessee and Revenue and pertain to the assessment years 1993-94, 1994-95, 1995-96, 1996-97, 1999-2000 and 2000-01. For the sake of convenience, these appeals are disposed of by this consolidated order.
2. By these common appeals, the assessee is challenging the order of the Commissioner (Appeals) vide which the Id. appellate authority held that the provisions of Interest Tax Act are applicable to the assessee.
3. According to the assessee, assessee cannot be treated as a credit institution within the meaning of Section 4(2) of the Interest Tax Act 1974. Assessee also cannot be classified as any other financial company "to bring it into the fold of Interest Tax Act". It is also the case of the that the observation of the Commissioner (Appeals) that the company which receives subscriptions under various Chitties has to be considered as accepting deposits under a scheme is not

correct and without appreciating all the facts of the case. It is also the case of the assessee that assessee cannot be considered as "exclusively or almost exclusively" carrying on two or more classes of business referred to in Sub-section (5A) or (5B) of Section 2 of the Interest Tax Act. According to the assessee, Reserve Bank of India has exempted the company from registration Under Section 45 (1A) of the Reserve Bank of India, Act since the principal business of the assessee is chitty business. It is again the case of the assessee that the Commissioner (Appeals) went wrong in holding that since more than 60% of the income of the assessee is from chitty business, assessee becomes a "credit institution" as per clause (va) of Section 2(5B) of the Interest Tax Act. It is incorrect and contrary to the law.

4. The facts leading to the dispute, briefly, is as under. Assessee is a company running chitty business, hire-purchase and hiring business, and therefore, the assessing officer held that the assessee is exigible to Interest Tax Act for its receipt under interest, hire purchase finance charges etc. Since the assessee did not file any tax return under the Interest Tax Act, notice Under Section 10 was issued on 11-12-96. In response to the above notice, the assessee filed the return declaring Nil income on 16-1-97. Assessee objected to the proposal to bring the asses see under Interest Tax Act. Assessee submitted vide its letter dated 20-2-97 that as per the provisions of Section 4(2) of the Interest Tax Act, interest is chargeable on credit institutions and the interest received by the assessee is not taxable since the assessee is excluded from the purview of the Interest Tax Act. Overruling the above objection, the assessing officer held that assessee is liable to interest tax for all the years under consideration. Aggrieved by the above order, assessee approached the first appellate authority.

5. Before the first appellate authority, it was the case of the assessee that the provisions of Interest Tax Tax Act are not applicable to the assessee and the assessee cannot be treated as a credit institution within the meaning of Section 4(2) of the Interest Tax Act.

It was submitted that Reserve Bank of India has clarified that the provisions of Section 45(1A) are inapplicable to the assessee as the main business of the

assessee was chitty business. It was further submitted that interest/penal interest received from defaulting chitty subscribers cannot be treated as chargeable to Interest Tax Act because it was not an interest on loans and advances.

6. It was also submitted that the assessee-company was not carrying on any of the activities mentioned in clauses (i) to (v) of Section 2(5B) of the Interest Tax Act as its principal business and hence it is not a financial company within the meaning of the above clauses. It was also submitted that assessee will not fall within the ambit of the provisions of Clause (va), since the assessee was not accepting any deposit under any scheme or arrangement. It was further submitted that clause (vi) is also not be applied since the assessee is not "exclusively or almost exclusively" carrying on two or more classes of business referred to in clauses (i) to (va) of Section 2(5B). It was also the case of the assessee before the Commissioner (Appeals) that more than 60% of its income was from chitty business and that about 10% of the income represents interest received on bank deposits. Thus, assessee's income of more than 70% was derived from activities other than those specified in clauses (i) to (va) of Sub-section (5B) of Section 2 of the Interest Tax Act. Assessee also objected to treating the assessee as a credit institution.

7. However, the Id. Commissioner of Income-tax (Appeals) rejected the assessee's claim vide para 5(b) of his order on the following lines : "5(b). I have considered the claims of the appellant. The appellant company admittedly is not a financial company within the meaning of clauses (i) to (v) of Section 2(5B) of the Interest Tax Act.

However, the provisions of clause (va) of Section 2(5B) of the Interest Tax Act defining financial company and consequently a credit institution are relevant at this stage, which are as follows: "(va) a residuary non-banking company (other than a financial company referred to in Sub-clause (i), (ii), (iii), (iv) or (v) , that is to say, a company which receives any deposit under any scheme or arrangement, by whatever name called, in one lump sum or in instalments by way of contributions or subscriptions or by sale of units or certificate or other instruments or in any other manner"; As per the provisions of this clause a company which receives any deposit under any scheme or arrangement, by whatever name called, in one lump

sum or in instalment? by way of contributions or subscriptions or by sale of units or certificates or other instruments or in any other manner is a financial company falling within the definition of a credit institution. In the instant case the appellant company receives subscriptions under various chitty schemes from various subscribers of each chity organised by the appellant. The acceptance of these subscriptions as per the chity agreements with various subscribers is a form of accepting deposit "in instalments by way of contributions or subscriptions or in any other manner" making the appellant liable to be classified as a credit institution. The appellant has stated that more than 60% of its income is from chitty business. This obviously makes the company a credit institution as per clause (va) of Section 2(5B) of the Interest Tax Act. It is not necessary at this stage to examine whether the chitty income is taxable as chargeable interest. What is necessary to examine is whether the appellant company receives any deposit under any scheme or arrangement and whether these receipts constitute a major portion of the appellant's business. As admitted by the appellant a major portion of the appellant's business consists of receipts under various chitties. It may be that the appellant may not advance these subscriptions for the purpose of loans and advances so as to enable the company to earn interest thereon from such loans and advances. It may deploy the funds for giving prizes to the chit subscribers only. In any case the appellant company has been collecting deposits under Chity schemes which makes it liable to interest tax as a credit institution.

Therefore, the claim of the appellant that it is not a credit institution is rejected." Aggrieved by the above order, assessee is in further appeal before the Tribunal.

8. Before us, assessee's representative submitted that Commissioner (Appeals) was wrong in holding that the provisions of Interest Tax Act 1974 are applicable to the assessee. Assessee carried on chitty business, mainly. Assessee submits that it cannot be treated as a "credit institution" within the meaning of Section 4(2) of the Interest Tax Act. Commissioner (Appeals) held that the assessee admittedly is not a financial company within the meaning of Clause (i) to (v) of Section 2(5B) of the Interest Tax Act. After giving the above finding, the Commissioner (Appeals), however, held that assessee comes within the ambit of Clause (va) of Section 2(5B) of the Interest Tax Act. He so held because according to him, assessee receives

subscriptions under various chitty schemes from the subscribers of the chitty. CIT (A) held that this amounts to accepting deposit "in instalments by way of contribution or subscription or in any other manner stated in Clause (va). 'It is the case of the assessee that this finding of the Commissioner (Appeals) is erroneous. It is the case of the assessee that to attract the provisions of Clause (va), the company should receive deposits in one lump sum or in instalments by way of contribution or subscription etc. or in any other manner. The section becomes applicable to an assessee if there is acceptance of "deposit".

The amount received by the assessee cannot be treated as a deposit and this fact has not been properly considered by the Commissioner (Appeals).

9. Clause (va) of Section 2(5B) was introduced by Finance Act, 1992 with effect from 1-4-93 bringing within the ambit of Interest Tax Act a residuary non-banking company if it accepts deposits. An explanatory Circular has been issued by Central Board of Direct Taxes bearing No.636 dated 31-8-92. According to this Circular, the provisions of Clause (va) apply to a residuary non-banking company covered by Notification Number-referred to in the above Circular, bearing No. DFC.55/ DG(0)-87 dated 15-5-1987 issued by Reserve Bank of India. It is the submission of the assessee that the residuary non-banking companies (Reserve Bank) Directions, 1987 contain provisions regulating the activities of such companies. Rule 3 of this direction contains the definition of "deposit". It states "deposit" shall have the same meaning as assigned to it in Section 45-I(bb) of the Reserve Bank of India Act, 1934(2 of 1934).

10. Chapter IIIB of the Reserve Bank of India Act, 1934 contains the definition of 'deposit' as "deposit includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include(i)(iii).... (vii) any amount received by subscription in respect of chit. Explanation I states 'Chit' has the meaning assigned to it in clause (b) of Section 2 of the Chit Funds Act, 1982". Interest Tax Act has not defined what is a 'deposit'. Hence, assessee's representative submitted that the definition given by Reserve Bank of India Act, 1934, if applied, subscriptions received by the assessee from its subscribers cannot be treated as a deposit. Assessee is not a residuary, non-

banking company said to be receiving deposit. The provisions of Clause (va) also cannot be applied. Assessee's representative has placed on record Circular No.636 dated 31-3-92. Assessee's representative has also produced a copy of the direction of RBI in the form of appendix 57 which deals with Residuary non-banking companies (Reserve Bank) Directions 1987 issued by Reserve Bank of India, Department of Financial Companies, Calcutta by Notification No. D.F.C.55/DG(O)-87 dated 15-5-1987.

On the other hand, the Id. department al representative supported the order of the Commissioner (Appeals) . He submitted that any company that receives deposit under any scheme or arrangement, by wahtever name called in one lump sum or in instalments by way of contribution or subscriptions or by sale of units etc. is a financial company falling within the meaning of "credit institution". There is no dispute that assessee receives subscription under various schemes from subscribers to each chitty organised by the assessee. This, in fact, amounts to accepting deposits "in instalements by way of contribution or subscription or in any other manner". Assessee admits that 60% of its income is from chitty business and also 10% of its interest. That means, major portion of the income is from chitty business. The only point, the Id. departmental representative submitted, to be seen is whether the assessee-company receives any deposit by virtue of any scheme or arrangement by whatever name called.

He submitted that it may be true that assessee may not be advancing these amounts to subscribers for the purposes of loan/advances so as to earn income by way of interest from such receipts. No doubt, assessee has collected deposit under chitty scheme. That means, assessee falls within the ambit of 'credit institution'. Hence, the Id. departmental representative submitted, the order of the Commissioner (Appeals) is liable to be upheld.11. Considering the rival submissions and on going through the orders of the revenue authorities, we are of the view that assessee is liable to succeed. The Central Board of Direct Taxes Circular No. 636 dated 31-3-92 gives Explanatory Note on the provisions relating to direct tax. Paras 55(3) and 55(4) of the Note are in relation to clause (va) of Section 2(5B) of the Interest Tax Act. The same is reproduced below: "55(3): When the Interest tax Act was revived last year, the intention was to cover all non-

banking financial companies. It has, however, been found that there are a number of finance and investment companies which earn substantial income from interest on loans and advances and are yet not covered by the definition given in Section 2(5B). These companies receive deposits under schemes or other arrangements, in one lump sum or in instalments by way of contributions or subscriptions or by sale of units or certificates or other instruments. The Reserve Bank of India have, vide Notification No. DFC.55/DG(o)-37 issued on 15th May 1987, treated such financial companies as residuary non-banking companies.

55.4: In view of the fact that the Government's intention is to impose tax on the gross amount of interest earned by all banks, financial institutions and non-banking financial companies, in respect of loans and advances made in India, the Finance Act has included, in the definition of financial company, all residuary non-banking companies." A reading of the above makes it clear that the companies that receive deposits under some scheme or other arrangement in lump sum or by instalments by way of contribution/ subscription, by sale of units or certificates or other instruments are finance and investment companies which earn interest income on loans and advances yet, they do not fall within the definition given in Section 2(5B). The Reserve Bank of India have clarified it vide Notification No. DFC.55/DG(0)-37 dated 15-5-37 that all residuary non-banking companies are covered by the above Notification and state that "deposit" shall have the same meaning assigned to it in Section 45-I(bb) of the Reserve Bank of India Act 1934 - Section 45-I(bb) Reserve Bank of India Act, 1934 - as substituted by Act of 1984 with effect from 15-2-1984, reads under: "Deposit includes and shall be deemed always to have included any receipt of money by way of deposit of loan or in any other form, but does not include - Txplanation - I - 'Chit' has the meaning assigned to it in clause (b) of Section 2 of the Chit Funds Act, 1982".

Thus, it is clear that deposit? include and also deemed to include any receipt of money by way of deposit or loan in whatever form. But, this definition excludes the amount received by way of subscription in respect of chit. That means, chitty company cannot be treated as 'credit institution' for the purpose of Interest Tax Act. As rightly contended by the assessee's representative, since there is no definition of deposit in Interest Tax Act, the definition given in Reserve Bank of

India Act 1934 is to be adopted. The subscriptions received from the subscribers are thus to be excluded from the ambit of 'deposit'. In the light of the above discussion, we are of the view that the orders of the revenue authorities are liable to be cancelled.

Ordered accordingly.

13. These appeals by the Revenue pertain to the assessment years 1993-93, 1994-95, 1995-96, 1996-97, 1999-2000 And 2000-01. The effective common ground in these appeals reads as under: "The learned Commissioner of Income-tax(Appeals)-II, Kochi, erred in holding that no interest is leviable under Section 12 and 12A of the Interest-tax Act, on the ground that as per the decision of the Supreme C, reported in 247 ITR 209, interest Under Section 12 and 12A can be levied only with regard to the income shown in the return and since in the case of the assessee, it has returned Nil interest no interest is leviable Under Section 12 and 12A of the I.T. Act.

The learned CIT(Appeals) ought to have noticed that the Supreme Court decision cited in the order does not relate to charging of interest Under Section 12 and 12A of the Interest tax Act and that it related only to charging interest Under Section 234A and 234B of the I.T. Act. The learned - CIT(Appeals)ought to have also found that references to returned chargeable interest in Section 12 and 12A are in respect of computing the interest payable by the assessee, as per the provisions of Section 9 of the Interest tax Act." Since we have held hereinabove that the assessee is not liable under the Interest Tax Act, these appeals by the revenue have become in fructuous and they are dismissed as such.

14. In the Result, the appeals by the assessee are allowed and the appeals by the Revenue are dismissed.

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