

Union Bank of India Vs. Additional Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-13-2007

Reported in : (2007)108TTJ(Mum.)720

Judge : P Kumar, P M Devi

Appellant : Union Bank of India

Respondent : Additional Commissioner of

Judgement :

1. The short issue requiring our adjudication in these appeals is whether or not the interest component of a finance leasing amount received by the assessee bank is liable to be included in chargeable interest' within meaning of Section 2(7) of the Interest-tax Act, 1974 (the Act, in short). The assessment years involved are 1996-97 to 1998-99 and the impugned assessments are framed under Section 8(3) of the Act.

2. The assessee before us is a nationalised bank. In the course of its carrying on business, it entered into several leasing transactions. The assets were claimed to have been owned by the assessee bank and accordingly, depreciation was claimed in respect of those assets.

Revenue, on the other hand, was of the view that these leasing transactions are de facto finance transactions and the actual ownership of the assets actually vested in the lessee. The depreciation was on that basis declined by the AO.

Accordingly, a component of the lease rentals received by the assessee bank was held to be in the nature of interest receipts. In the impugned assessment order, the AO has held that since this receipt is in the nature of interest, the same is liable to be included in the definition of chargeable interest under Section 2(7) of the Interest-tax Act. Aggrieved, assessee carried the matter in appeal before the Commissioner (Appeals), but without any success. The assessee is not satisfied and is in further appeal before us. In the meantime, when the dispute finally travelled to the Tribunal, one of our coordinate Benches held that what "the assessee has entered into are only loans or finance transactions" and that documentation as operating leasing is only done with a view to claim depreciation benefits. The finding about these transactions being in the nature of de facto finance transactions having received finality, the short question before us is whether or not the interest earned by the assessee from such transactions is includible in 'chargeable interest' under Section 2(7) of the Act.

3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. Section 2(5) of the Act defines 'chargeable interest as aggregate of interest under Section 2(7) of the Act. Section 2(7), in turn, defines interest as follows: (7) '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 exchanges drawn or made in India...

A plain reading of the above definition shows that it is only interest on loans and advances', apart from what is specifically included in Section 2(7)(a) and (b). It is not the Revenue's case that the case of the assessee is covered by the scope of Clauses (a) and (b) of Sub-section (7). All that we are required to examine, therefore, is whether or not interest component of a finance leasing transaction can be said to be 'interest on loans and advances'.

5. We have taken note of the fact that a co-ordinate Bench of this Tribunal has, vide order dt. 8th Sept., 2006, held that "we are of the opinion that there are sufficient findings in the orders of the CIT(A) to show that what the assessee has

entered into are only loan or finance transactions and so documented as to give colour of lease transactions...". There is no categorical finding that the lease transactions in question are in the nature of transactions for 'loans and advances'. The scope of expression 'finance transaction' is clearly much wider than that 'loans and advances' because there can be several modes of financing other than loans and advances also. Take, for example, purchase of debtors, subscribing to debentures or other securities, placing inter-corporate deposit, selling a machinery or equipment on hire-purchases basis, or extending finance leasing on the assets. At this stage, it is important to be alive to the fact that as the expressions 'loans' and 'advances' are used together and following the principle of *noscitur a sociis*, the meaning of more general of these terms, i.e. advances, is to be restricted to a sense analogous to that of less general, i.e. loan. When there are two or more words susceptible to analogous meaning, they are deemed to be used together in their cognate sense. The meaning of expression 'advances', therefore, is to be read down as 'advances in the nature of loans'. A co-ordinate Bench of this Tribunal, in the case of *Utakash Fincap (P) Ltd v. ITO* has held that an interest income (interest on inter-corporate deposit in that case) clearly falls within meaning of 'interest on loans and advances', it would not be taxable under the Interest-tax Act. Therefore, even if a finance lease could be a mode of financing, it does not necessarily mean that what can be attributed to 'interest component' in a finance leasing transaction is interest on 'loans or advances'. The expression 'loan' has been defined in the case of *Life Insurance Corporation of India v. Jt. CIT* (2002) 74 TTJ (Mumbai) 624 : (2002) 82 ITD 749 (Mumbai) by stating that "when a person lends money to the other, with or without interest, it is loan".

As for the advances, the co-ordinate Bench observed that "the term 'advances' may have several meanings, but for our purposes it only means advances which are in the nature of loans". It would thus follow that unless there is lending of money by one person to another, it cannot be said to be loan or advance. The next question then arises whether extending 'finance lease' amounts to lending money. In our considered view, while finance lease is a mode of financial accommodation, it is a step short of loan or advance'. A loan or advance has to be a direct monetary transaction, which 'finance leasing' is not. In fact, it is an alternate to loan or advance, it is a source of long-term funds and serves as alternative to

long-term debt financing. In our considered view, therefore, while a part of the finance lease payment is inherently in the nature of interest inasmuch as it is compensation for time value of money, it cannot be termed as 'interest on loans and advances' which is condition precedent for its inclusion in chargeable interest under the Interest-tax Act. As held by the co-ordinate Benches time and again, merely because a payment is in the nature of interest, it does not mean that it is interest on loans and advances. In the landmark case of LIC of India (supra), a co-ordinate Bench has held that only interest on loans made can be brought to tax under the Interest-tax Act. In Utkarsh Fincap's case (supra), interest received on inter-corporate deposits, which are nothing but de facto financing transactions, was held to be not includible in 'chargeable interest' for the purposes of Interest-tax Act. It is thus clear that merely because a receipt is in the nature of interest, it is not sufficient that it can be brought to tax under the Interest-tax Act; it must also be interest on 'loans and advances'. In the present case, while lease financing is held to be in the nature of mode of loan or finance, lease financing cannot be said to be a loan simpliciter and unless that condition is satisfied, there cannot be an occasion to bring it to tax under the Interest-tax Act. We, therefore, uphold the grievance of the assessee.

6. For the reasons set out above, we direct the AO to exclude lease rental component attributable to interest from 'chargeable interest' brought to tax under the Interest-tax Act. The assessee gets the relief accordingly.

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