

**Bfil Finance Ltd. Vs. Ito**

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**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** May-09-2007

**Judge :** P Kumar, P M Devi

**Appellant :** Bfil Finance Ltd.

**Respondent :** ito

**Judgement :**

1. The appeals of the assessee are directed against Commissioner (Appeals)'s separate orders dated 22-9-2003 for the assessment years 1996-97 and 1997-98. In both these appeals the assessee is aggrieved by the order of the Commissioner (Appeals) in confirming the interest tax on the overdue interest of Rs. 98,96,440 for the assessment year 1997-98 and Rs. 1,15,79,794 for the assessment year 1996-97 on the lease rental payments and hire purchase instalments.

2. Brief facts of the case are that the assessee is a credit institution. Subsequent to the assessments for assessment years 1996-97 and 1997-98, the Assessing Officer noticed from the records that the assessee-company has not offered overdue interest receipts for taxation purposes. Accordingly, notice under Section 10 of the Interest-tax Act, 1974 was issued to the assessee. Subsequently notice under Section 8(1) was also issued in reply to which the assessee submitted that the overdue interest is not liable for inclusion in the chargeable interest under Interest-tax Act. The Assessing Officer was not convinced with the assessee's explanation and held that the overdue interest is nothing but interest receipts which has to be included in the chargeable interest. He therefore computed the

same as chargeable interest. Aggrieved, assessee filed an appeal before the Commissioner (Appeals) who considered various judicial pronouncements as well as the contentions raised by the assessee and confirmed the order of the assessing officer. The assessee is in second appeal before us.

3. The learned Counsel for the assessee submitted that under the Interest-tax Act what is chargeable is only the interest on loans and advances made by the assessee and it does not include all receipts in the nature of interest. Thus, according to him, the interest on overdue amount paid to the assessee which is in the nature of compensation against the delayed payment on account of bill discounting transactions, hire purchase instalments, lease rental payments etc.

cannot be termed as interest on loans and advances and this is not exigible to tax under the Interest-tax Act. In support of his contentions he relied upon the following decisions 4. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the lease rental payments and hire purchase instalments have been found to be in the nature of financing arrangements and therefore interest on the delayed payment also attains the nature of interest on loans and advances and therefore taxable under the Interest-tax Act. In support of his contentions he relied upon the decision of the Karnataka High Court in the case of State Bank of Mysore v. CIT (1989) 175 ITR 6073.

5. Having heard both the parties and having considered their rival contentions, we find that the assessee-company, a credit institution, is liable to pay interest tax on the interest earned by it from loans and advances advanced by it. The assessee has taken the stand that the amounts in dispute are overdue interest on the delayed payments on account of bill discounting transactions, hire purchase instalments and lease rental payments. It is therefore necessary to examine whether they would satisfy the definition of 'interest' under the Interest-tax Act. The term 'interest' has been defined under Section 2(7) of the Interest-tax Act as under 'Interest' means interest on loans and advances made in India and includes (a) commitment charges on unutilised portion of any credit sanctioned for being availed in India; and (b) discount on promissory notes and bills of exchange drawn or made in India, (i) interest referred in Sub-Section (b) of Section 42 of the R.B.I.

Act and This definition has been extensively considered and analysed threadbare by the 'A' Bench of this Tribunal in the case of LIC of India v. Jt.

CIT (2002) 82 ITD 749. In the said case the Tribunal was dealing with the issue as to whether Government of India securities, debentures and bonds are loans and advances and the interest therefrom is exigible to interest tax. After considering the issue at length, it was held that only the interest on loans and advances made with the sole purpose of financing the borrower is to be taxed. After considering the decisions of the Apex court in the cases of Mahalakshmi OU Mills v. State of AP and P. Kasilingam v. P.S.G. College of Technology on the expressions "means and includes" and "means" used in the definition clauses, and after considering the definition of the term "interest", it was held that when only the term 'means' is used, it gives a hard and fast definition whereas when only 'includes' is used, it enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. On the other hand, when the term "means and includes" is used, it indicates an exhaustive explanation of the meaning. Thus, it was observed that there may be some other items also which, though strictly, may not be interest, but may be having some characteristics of interest and considering the meaning of the expression "means and includes" as explained in the above two decisions of the Supreme Court, no more items can be included in the definition except the two specifically included by the Legislature. The Madhya Pradesh High Court in the case of State Bank of Indore (supra), was in seisin of a situation where the assessee claimed that the damages received for delayed payment was in the nature of compensation for the damages and was not interest on loans and advances and thus not exigible to interest, tax under the Interest-tax Act. The court held that the right to charge the amount for delay in the payment of bills accrued to the assessee by virtue of the provisions of Section 32 of the Negotiable Instruments Act, 1881 and in accordance with the terms of the agreement entered into by the assessee with its constituents in pursuance of which bills were purchased by the assessee. On account of the delayed payments of the bills purchased by the assessee, the assessee became entitled to liquidated damages by way of compensation as stipulated in the agreement. The right of the assessee to charge the amount did not, therefore, arise on account of any delay

for repayment on any loans or advances made by the assessee. The provisions of Interest-tax Act were attracted only in respect of interest on loans and advances and therefore the amount charged by the assessee for delayed payment of the bills could not be held to be "interest on loans and advances" and is not exigible to tax under the Interest-tax Act.

This very same view was also expressed by the Kerala High Court in the case of State Bank of Travancore (supra), wherein it was held that the character of an overdue bills is wholly distinct from loans and advances, and the interest on the loans and advances alone is taxable under the Interest-tax Act. The character of an overdue bill is not synonymous with loans and advances. Therefore the interest on the overdue bills is to be excluded from chargeable interest under the Income Tax Act, 1974.

6. The 'J' Bench of this Tribunal in the case of Central Bank of India (supra) had an occasion to consider whether the service charges received by a bank from its credit cardholders or overdue payments can be considered as interest on loans and advances liable to interest tax, and it was held that the said charges are not exigible to interest tax.

6.1 The learned DR has placed reliance on the decision of the Karnataka High Court in the case of State Bank of Mysore v. CIT ' wherein it was held that discount on bills is a form of advance or loan granted to its customer by a bank and therefore, any amount collected by bank for delayed payment of that amount would be interest, whatever may be the nomenclature and be chargeable interest under Section 2(7) of Interest-tax Act. This decision has already been considered by the Tribunal in the case of LIC of India (supra).

7. All the above decisions relied upon by the assessee clinch the issue that only the interest on the loans and advances is chargeable under the Interest-tax Act. As the expression "means and includes" is used in the definition of interest, it is an exhaustive definition and cannot bring all receipts in the nature of interest under its purview. In the case on hand, the overdue interest is against the delayed payments on account of bill discounting transactions, hire purchase instalments and lease rental payments. Thus, it is clear that this overdue interest tax is in the

nature of the compensation for the damages caused to the assessee due to the delayed payments and thus the issue is squarely covered by the above decisions. In this view of the matter, we quash the order of the assessing officer and allow assessee's appeals.

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