

THE COMMISSIONER OF INCOME TAX-KOLHAPUR

A

v.

THE RATNAKAR BANK LTD.

(Civil Appeal Nos.6088-6090 of 2008)

OCTOBER 13, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

*Interest Tax Act, 1974 – s.2(7) r/w s.4 – Chargeable interest – Interest on Government securities – Distinction between investment/securities and loans/advances – Supreme Court decision in Corporation Bank's case that interest earned by assessee-bank on government securities is not chargeable to tax under s.2(7) – Applicability of.*

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**Dispute arose as to whether interest earned by the assessee (Respondent-bank) on government securities was chargeable to tax under s.2(7) of the Interest Tax Act, 1974. The Income Tax Appellate Tribunal held that it was not chargeable. The order of Tribunal was upheld by the High Court. Hence the present appeals by the Revenue.**

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**Disposing of the appeals, the Court**

**HELD: The stand of assessee-Respondent that the interest earned was on government securities only is denied by the appellant. Let the Tribunal examine the factual position as to whether the interest involved in the present case is on government securities. If that be so, the ratio of the decision in Corporation Bank's case will apply to the facts of the present case and if the interest earned is not solely on government securities, the ratio of the decision will not apply. [Para 5] [375 H, 376 A-B]**

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*Commissioner of Income Tax v. Corporation Bank (2008) 166 Taxman 388 – referred to.*

**A CASE LAW REFERENCE**

(2008) 166 Taxman 388 referred to Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6088-6090 of 2008

**B** From the final Judgment and Order dated 4.12.2002 of the High Court of Judicature at Bombay in Income Tax Appeal Nos. 1267, 1268 and 1347 of 2000

**C** Mohan Prasaran, ASG, V. Shekhar, H. Raghavendra Rao, Gaurav Dhingra, D.L. Chidananda and B.V. Balaram Das for the Appellants.

**D** Jayashree Wad, Ashish Wad, Neeraj Kumar, Chirag S. Dav, Rajesh Kumar, Sathish Aggarwal, V. Prabhakar, Ramjee Prasad, M.K.D. Namboodiry, R.S. Suri, Chinmoy Khaladker, S.K. Nandy and Revathy Raghavan (for M/s. J.S. Wad & Co.) for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

**E** 2. Challenge in these appeals is to the judgment of final order passed by the Bombay High Court in a group of appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short the 'Act') read with Section 24 of the Interest Tax Act, 1974 (in short the 'Interest Act'). Question involved was whether interest earned by the assessee bank on government securities was liable to be assessed under Section 2(7) of the Interest Act? The Income Tax Appellate Tribunal (in short the 'Tribunal') held that it was not chargeable. The High Court by the impugned judgment upheld the view of the Tribunal. The revenue filed the present appeals against the judgment of the High Court. It was submitted by learned counsel for the appellant that the Tribunal and the High Court were not justified in holding that loans and advances do not include interest on securities, bonds, debentures and therefore not liable to tax under the provisions of the Interest Act. It is submitted that interest on securities falls

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within the meaning of "Interest chargeable to tax" as defined under Section 2(7) of the Interest Act. A

3. Learned counsel for the respondent assessee-Bank on the other hand supported the judgment of the Tribunal as upheld by the High Court. B

4. A similar question came up for consideration before this Court in *Commissioner of Income Tax v. Corporation Bank* (2008 (166) Taxman 388). This court held as follows: B

"Leave granted in special leave petitions. C

The short point which arises in this batch of civil appeals is whether interest earned by the assessee-banks on dated Government securities was liable to be assessed under section 2(7) read with Section 4 of the Interest Tax Act, 1974. In our view, there is a basic difference between loans and advances on the one hand and investments/securities on the other. This difference is indicated in the provisions of the Income tax Act, the Companies Act as well as the Bank Regulation Act. These aspects have been discussed in detail in two decisions of the Bombay High Court, namely *Discount and Finance House of India Ltd. v. S.K. Bhardwaj*, CIT reported in MANU/MH/0628/2002, as also in another decision of the Bombay High Court reported in MANU/MH/0629/2002 in the case of *CIT v. United Western Bank Ltd.* It is not in dispute that the revenue has accepted the aforesaid two judgments of the Bombay High Court. We are in agreement with the view expressed by the Bombay High Court. D E F

For the aforesaid reasons there is no merit in the civil appeals filed by the department. The same are dismissed. No order as to costs." G

5. Learned counsel for the appellant submitted that this Court's decision related to the interest on government securities. Learned counsel for the assessee submitted that in the instant case the interest earned was on government securities H

- A only. The stand is denied by learned counsel for the appellant. Let the Tribunal examine the factual position as to whether the interest involved in the present case is on government securities. If that be so, the ratio of the decision in *Corporation Bank's* case (supra) will apply to the facts of the present case and if the
- B interest earned is not solely on government securities, the ratio of the decision will not apply.

6. The appeals are disposed of accordingly.

B.B.B.

Appeals disposed of.