

**SUPREME COURT OF INDIA**

Motor General Finance Limited

Vs.

Commissioner of Income Tax

C.A.No.1479 of 2004

(N. Santosh Hegde and B. P. Singh JJ.)

25.02.2004

**JUDGMENT**

**N. Santosh Hegde, J.**

1. Heard learned counsel for the parties. Delay condoned. Leave granted.
2. The only question that arises for our consideration in this case is whether the amount advanced by the appellant to its subsidiary in the relevant year was out of the profit earned by the company for the said year or was from the funds borrowed by the appellant. In para. 6 of the impugned judgment, the High Court has observed (see<sup>1</sup>) (page 452) :

"Pursuant to and in furtherance of the aforesaid direction, an opportunity was given to the assessee to place additional material. The assessee merely furnished the statement of the deposits made in the bank account on those dates, on which the advance amounting to Rs. 50 lakhs was made to the sister concern. It, however, despite the direction did not furnish the copy of a bank statement to show as to whether there had been a credit balance or a debit balance in the bank accounts on those dates. In this situation, it was observed:

'If there was a debit balance, then it could safely be inferred that interest bearing overdraft facility of the bank was utilised to make those advances. But the assessee till date has not furnished any such statement. In view of this fact, the disallowance of Rs. 10 lakhs is to be sustained'." \*

3. The High Court in the impugned judgment has observed that in spite of giving opportunity to the appellant, it has not filed the necessary statement before the Commissioner of Income-tax. It is primarily based on this finding of fact that the High Court dismissed the statutory appeal filed by the appellant.

<sup>1</sup>2001 Indlaw DEL 383