SUPREME COURT OF INDIA

State Bank of Patiala Through General Manager

Vs.

Commissioner of Income Tax

C.A.No.5212-5220 of 2007

(A.K.Sikri and R.F.Nariman,JJ.,)

18.11.2015

JUDGMENT

R.F.Nariman.J.,

1. Leave granted in special leave petition (civil) nos. 13359 of 2015 and 13357 of 2015.

2. There are 25 appeals that have been posted for hearing before us. They are concerned primarily with interest that is received by various banks after bills of exchange have been discounted by them and a party defaults and hence has to pay compensation by way of interest as payment is made after the date stipulated in the bill of exchange. The precise question that arises before us is whether such payment of compensation to the said banks is "interest" liable to tax under the Interest Tax Act, 1974.

3. The facts in all the cases are similar. The bank makes purchases of bills of exchange from its customers and charges commission thereon for services rendered by it. The discounted bills so purchased are then presented to the parties concerned for realization. If on presentation the bill is realized within time, no charges are levied by the bank. In case the bills are not realized in time but the other party pays the value of the bill beyond the stipulated time, a certain amount in the form of interest is charged by the bank on a fixed percentage basis for every day of default. This amount is credited by the bank in its interest account.

4. On these broad facts there is a sharp cleavage of opinion between the High Courts. The Madhya Pradesh High Court, Kerala High Court, Andhra Pradesh High Court, Madras High Court and Rajasthan High Court have all decided that such amounts are not chargeable to tax as "chargeable interest" under the Interest Tax Act. On the other hand, the Karnataka High Court and the Punjab and Haryana High Court have differed from this view and have stated that such amount would be so chargeable.

5. The entire case hinges on the construction of Section 2(7) of the Interest Tax Act, 1974 which defines "interest" as follows:-

> "Section 2(7), Interest Tax Act, 1974
>
> 2. In this Act, unless the context otherwise requires,
>
> (7) "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 of in India; and
>
> (b) discount on promissory notes and bills of exchange drawn or made in India,
> but does not include−
>
> (/) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);
>
> (//) discount on treasury bills;"

6. Under Section 4 of the said Act, there shall be charged on every scheduled bank for every assessment year a tax in respect of chargeable interest of the previous year at the rate of 7%.

7. The first important thing to notice is that the definition of interest contained in the Interest Tax Act, 1974 is a narrow one, and is exhaustive as it is a 'means and includes' definition. In *P. Kasilingam v. P.S.G. College of Technology,*[1], this Court, when dealing with The Tamil Nadu Private Colleges (Regulation) Act, 1976, stated as follows:-

> "A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition".

(See : *Gough v. Gough*[2] *; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court*[3] The word 'includes' when used, 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. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See : *Dilworth v. Commissioner of Stamps*[4] *(Lord Watson); Mahalakshmi Oil Mills v. State of A.P*[5]. [at para 19]

8. The precise question that arises before us is whether compensation that can be traced to Section 32 of the Negotiable Instruments Act, 1881 can be regarded as interest on loans and advances. Section 32 of the Negotiable Instruments Act states as follows:-

> "Section 32. Liability of maker of note and acceptor of bill. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default."

9. It will be seen that when default of payment takes place, the acceptor of the bill of exchange is bound to compensate any party to the bill for any loss or damage sustained by him and caused by such default. In most cases such loss or damage is a liquidated amount which can be calculated from the rate mentioned on the face of the bill of exchange.

10. The first thing that will be noticed is that the interest on which tax is payable under the Interest Tax Act is primarily on loans and advances made in India. By a deeming fiction, discount on bills of exchange made in India is also included. It is clear, therefore, that discount on bills of exchange would obviously not come within the expression "loans and advances made in India", and consequently any amount that becomes payable by way of compensation after a bill is discounted by the Bank would not be an amount which would be "on loans and advances made in India".

11. Shri A.K. Sanghi, learned senior advocate appearing on behalf of the revenue basically placed for our consideration the reasoning of the Karnataka High Court judgment and adopted that reasoning as his argument. On the other hand, Shri Sanjay Jhanwar, learned counsel for the assessees, placed before us the reasoning of the High Courts in his favour and adopted the same as his argument. He also argued that a loan of money may result in a debt but every debt does not involve a loan. He further argued that the transaction of drawing, accepting, discounting or re-discounting of bills of exchange can be bifurcated into three separate categories, and that the drawer of a bill may discount the bill of exchange with the bank, which would not result into a relationship of debtor and creditor with the bank. It thus becomes imperative to first find out what in fact the High Courts have held on this vexed question.

12. The Karnataka High Court in *State Bank of Mysore v. Commissioner of I.T., Karnataka-I, Bangalore*[6], has reasoned thus
:

"Sri Sarangan, learned counsel for assessee relying on a decision of the Madhya Pradesh High Court in C.I.T. v.State Bank of Indore (69 CTR (MP) 147) contended that though this sum of money may be interest in its wider sense including both interest proper and interest by way of damages, still the provisions of Income Tax Act are not attracted since what can be brought within the purview of the Act is only interest on loans and advances. The amount charged by the assessee on delayed payment of bills cannot be held to interest on loans and advances and it was not exigible to tax under the Interest Tax Act. He also relied upon Sec. 32 of the Negotiable Instruments Act and contended that the said provision contemplates only compensation and not the interest at all. When the Bank discounts a bill what happens is the drawee gets a credit from the Bank to the extent of the amount covered by the Bill. This position has been explained in LAW OF BANKING By Paget, 9th Edition at page 415 thus:

"The discount of a bill is the purchase of it with, normally, a right of recourse and for a sum less than its face value. The discounter is free to deal with the Instrument as he pleases. Discount is a negotiation. Other things being equal there is no practical or legal distinction between the ordinary negotiation of a bill and its being discounted except in the sum paid on it. Discounting is a means of lending as is pledge."

It is stated in Byles on BILL OF EXCHANGE (24th Edition) at page 282 as follows:

"A banker clearly gives value for a bill when he discounts it, the transaction consisting of the purchase of the bill at a discount, i.e. allowing the interest for the time the bill has to run, subject in the event of dishonour to a right of recovery from the person for whom it is discounted."

The practice of the Bank itself, at the time of discounting is as disclosed in the letter used to be sent along with the intimation of discount which showed that in case of delayed payment an overdue interest at a particular rate had to be collected if not paid on presentation. These facts are sufficient to hold that the amount in question is interest under Sec. 2(7) of the Interest Tax Act. It is settled law that interest is damages or compensation for delayed payment of money due. Therefore the expression 'compensation' in Section 32 of the Negotiable Instruments Act will include interest paid by way of damages or compensation for delayed payments. We have already held that Discounting of Bills is a form of advance or loan, and hence compensation paid on delayed payment of money due thereon is interest on loans and advances. Discount on bill is a form of advance or loan granted to its customer by a Bank and if that be the true position as indicated by Paget any amount collected by the Bank for delayed payment of that amount cannot be anything but interest, whatever may be the nomenclature, and is chargeable interest for the purpose of Interest Tax Act." [at pages 610 - 611]

13. The *Punjab and Haryana High Court in CIT v. State Bank of Patiala*[7] has merely reiterated the aforesaid view.

14. On the other hand, the Madhya Pradesh High Court in *Commissioner of Income-Tax v. State Bank of Indore*[8], has reasoned thus:-

> "Now the right to charge the amount for delay in 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 delayed payment of bills purchased by the assessee, the assessee became entitled to liquidated damages by way of compensation, as stipulated in the agreement. The right to charge that amount by the assessee did not, therefore, arise on account of any delay in repayment of any loan or advance made by the assessee. That right accrued on account of default in the payment of the bills. It may be that the amount payable by way of compensation for detention of a sum of money due, can be said to be covered by the expression "interest" in its widest sense, including both interest proper and interest by way of damages. But the provisions of the Interest-tax Act are attracted only in the case of interest on loans and advances. The amount charged by the assessee for delayed payment of bills cannot be held to be "interest on loans and advances". In our opinion, therefore, the Tribunal was not right in holding that the amounts in question charged by the assessee for delayed payment of bills were in the nature of interest on advances and exigible to tax under the Interest-tax Act." [at page 28]

The Kerala *High Court in Commissioner of Income Tax vs. State Bank of Travancore*[9], in arriving at the same conclusion as the Madhya Pradesh High Court, has, however, adopted a different line of reasoning in the following terms:-

> "These overdue bills are presented to the bank by the makers for the purpose of their recovery. As far as the makers are concerned, there may be justified or required circumstances for them to approach the bank. The bank has ready facilities for recovery, more statutory powers of stringent character and, therefore, the practice gets established that the makers hand over the overdue bills to the bank for recovery. It is thereafter that the bank sets in motion. In other words, what is undertaken by the bank is the recovery of the amount covered by the bill and in regard to which, by virtue of Section 32 of the Negotiable Instruments Act, 1881, a statutory liability is created with regard to the prompt payment. The details that are available in the context would show that the origin of the amount which is the subject-matter of an overdue bill gets snapped. In other words, the moment the maker presents the overdue bill to the bank for recovery, it becomes a document negotiable in itself on its own strength empowering the bank to effect recovery and creating the liabilities of the parties as regards prompt payment thereof. In such a situation, ignoring the intermittent acrobatics as to whether the amount can be understood as interest or could continue to have the character of its description as compensation in accordance with the provisions of Section 32 of the Negotiable Instruments Act, 1881, would be wholly

unnecessary, at least for the purpose of consideration as to whether the amount can assume the character of "chargeable interest". It is elementary in the context that taxation liability has to be understood and established and unless this is apparent from the material on record, the imposition of tax does not get justified. In other words, unless the amount which is sought to be chargeable as the chargeable interest has any necessary relationship with loans and advances, such an attempt to understand the amount alone would not satisfy the requirement of justification."

15. Likewise, the Andhra Pradesh High Court in *Commissioner of Income Tax v. State Bank of Hyderabad*[10], has also dissented from the Karnataka High Court's view. In addition, the Andhra Pradesh High Court has reasoned thus:

> "It is not uncommon that banks purchase Bills of Exchange from their customers and make payments, on being satisfied that they are in order. Whenever the purchase of Bills of Exchange takes place, the purported transaction comes to be governed by Section 32 of the Negotiable Instrument Act. The basic transaction of borrowing and lending is required to be between the persons described as "maker" and "acceptor" under Section 32 of the Negotiable Instrument Act. The person who purchased the Bills of Exchange becomes the "bearer" thereof. Section 32 of the Negotiable Instrument Act, defines the liability of the concerned persons to discharge their respective obligations. However, it is difficult to imagine that the purchaser of the Bills of Exchange can be treated as a person who has advanced the loans, to the original borrower. For all practical purposes a different transaction altogether, comes into existence."

The Madras High Court in C*ommissioner of Income Tax v. Cholamandalam Investment and Finance Co. Ltd.*[11], has simply followed the Kerala High Court's view, and the Rajasthan High Court in a judgment dated 12.11.2014, which is the impugned judgment in Civil Appeal No.4988 of 2015, has reasoned thus:-

> "The assessee-bank got right to charge the amount for the delay in payment of bills accrued to the assessee by virtue of the provisions of Sec. 32 of the Negotiable Instrument Act, 1881 and in accordance with the terms of the agreement, that its constituents (borrowers), the bills were purchased by the assessee and on account of the delayed payment of bills, the assessee became entitled to liquidated damages by way of compensation from the borrower. The right to charge that amount by the assessee did not, therefore, arise on account of any delay in re-payment of any loan or advances made by the assessee. It may be that the amount payable by way of compensation for detention of a sum of money due, can be said to be covered by the expression "interest" in its widest sense including interest proper and interest by way of damages but the provision of the Interest Tax Act can be said to be attracted only in case of interest received on loans and advances. However, the transaction ends on the due date occurs and the relationship of borrower lender ends. In our view, the scope and definition of the term "interest" cannot be interpreted to bring within its

fold any income that is booked by an assessee under the head interest. The character of an overdue bill is not synonymous with the loans and advances and, therefore, it will not fall within the ambit and scope of interest u/s 2 (7) of the Interest Tax Act. The Parliament in its own wisdom has not included any amount that is recovered in the form of interest, penalty or otherwise under the definition of Interest and had it been so, such nature of amount as contended by the revenue could have been brought within the ambit and scope of interest. We are further of the view that on the due date/cutoff date whatever amount has been recovered by the assessee bank, will certainly fall in the nature of interest, but once the due date/cutoff date is over, any amount received after that date by the bank, would be in the nature of compensation/penalty/liquidated damages and will not be "interest". It is well settled proposition of law that the way in which entries are made by an assessee in its books of account or the nomenclature given to a transaction by the parties is not determinative of the due character/nature of that transaction. The definition as we have pointed out of "interest", shall not cover the amount received by the assessee after the due date. We have gone through the judgments rendered by various High Courts as quoted above and are not in conformity with the view of Karnataka and Punjab and Haryana High Court and we concur with the view of Madhya Pradesh & Kerala High Court. Recently the Telangana and Andhra Pradesh High Court also had an occasion to consider the same issue in the case of CIT Vs. State Bank of Hyderabad: (2014) 367 ITR 128 and after considering the same issue, as is being examined by this Court and have come to the conclusion that the amount received after due date is not in the nature of interest. Accordingly, in our view, the amount received as "overdue interest" in inland/foreign demand bills is not liable to be taxed as interest under the Interest Tax Act and we answer this question in favour of the assessee and against the revenue."

We are of the view that the Karnataka High Court's reasoning is fallacious for the simple reason that Section 2(7) itself makes a distinction between loans and advances made in India and discount on bills of exchange drawn or made in India. It is obvious that if discounted bills of exchange were also to be treated as loans and advances made in India there would be no need to extend the definition of "interest" to include discount on bills of exchange. Indeed, this matter is no longer res integra. In *CIT v. Sahara India Savings & Investment Corpn. Ltd.*[12], this Court while dealing with the definition contained in Section 2(7) of the Interest Tax Act, held:- "Section 2(5) defines "chargeable interest" to mean total amount of interest referred to in Section 5, computed in the manner laid down in Section 6. In other words, the "scope of chargeable interest" is defined under Section 5 whereas "computation of chargeable interest" is under Section 6. Section 2(7) is the heart of the matter as far as the present case is concerned. In accounting sense, there is a conceptual difference between loans and advances on the one hand and investments on the other hand. Section 2(7) defines the word "interest" to mean interest on "loans and advances including commitment charges, discount on promissory notes and bills of exchange

but not to include interest referred to under Section 42(1-B) of the Reserve Bank of India Act, 1934 as well as discount on treasury bills".

Section 2(7), therefore, defines what is interest in the first part and that first part confines interest only to loans and advances, including commitment charges, discount on promissory notes and bills of exchange. Pausing here, it is clear that the interest tax is meant to be levied only on interest accruing on loans and advances but the legislature, in its wisdom, has extended the meaning of the word "interest" to two other items, namely, commitment charges and discount on promissory notes and bills of exchange. In normal accounting sense, "loans and advances", as a concept, is different from commitment charges and discounts and keeping in mind the difference between the three, the legislature, in its wisdom, has specifically included in the definition under Section 2(7) commitment charges as well as discounts. The fact remains that interest on loans and advances will not cover under Section 2(7) interest on bonds and debentures bought by an assessee as and by way of "investment". Even the exclusionary part of Section 2(7) excludes only discount on treasury bills as well as interest under Section 42(1-B) of the Reserve Bank of India Act, 1934." [at paras 5 - 7]

16. The Karnataka High Court's view is directly contrary to the view of this Court, and, therefore, cannot be countenanced. "Loans and advances" has been held to be different from "discounts" and the legislature has kept in mind the difference between the two. It is clear therefore that the right to charge for overdue interest by the assessee banks did not arise on account of any delay in repayment of any loan or advance made by the said banks. That right arose on account of default in the payment of amounts due under a discounted bill of exchange. It is well settled that a subject can be brought to tax only by a clear statutory provision in that behalf. Interest is chargeable to tax under the Interest Tax Act only if it arises directly from a loan or advance. This is clear from the use of the word "on" in Section 2(7) of the Act. Interest payable "on" a discounted bill of exchange cannot therefore be equated with interest payable "on" a loan or advance. This being the case, it is clear that the reasoning contained in the High Courts which differ from the Karnataka view is obviously correct but for the reasons given by us.

17. It will be interesting to notice at this stage that the expression "interest" is also defined under the Income Tax Act. Section 2(28A) defines interest as follows:-

> "2. Definitions.--- In this Act, unless the context otherwise requires. [(28A) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.]"

18. It will be noticed that this definition is much wider than that contained in Section 2(7) of the Interest Tax Act, 1974. The expression "payable in any manner in respect of any

moneys borrowed" is an expression of considerable width. It will be noticed that the aforesaid language of the definition section contained in the Income Tax Act is broader than that contained in the Interest Tax Act in three respects. Firstly, interest can be payable in any manner whatsoever. Secondly, the expression "in respect of" includes interest arising even indirectly out of a money transaction, unlike the word "on" contained in Section 2(7) which, we have already seen, connotes a direct arising of payment of interest out of a loan or advance. And thirdly, "any moneys borrowed" must be contrasted with "loan or advances". The former expression would certainly bring within its ken moneys borrowed by means other than by way of loans or advances. We therefore conclude that the Interest Tax Act, unlike the Income Tax Act, has focused only on a very narrow taxable event which does not include within its ken interest payable on default in payment of amounts due under a discounted bill of exchange.

19. In fact, when we come to the second point agitated in some of the appeals by revenue namely as to whether guarantee fees paid to the Deposit Insurance and Credit Guarantee Corporation could be included in the definition of interest in Section 2(7) of the Interest Tax Act, 1974, it will be clear that such definition does not include any service fee or other charges in respect of monies borrowed or debt incurred, again unlike the definition of 'interest' under the Income Tax Act. We find that the Rajasthan High Court in the impugned judgment in Civil Appeal No.4988 of 2015 is correct when it observed:-

> "On conjoint reading of the definition of interest, which has been quoted herein above and under the Interest Tax Act in para 4 (supra), it is noticed that the Interest Tax Act, does not include the term "any service fee or other charges in respect of money charge or debt incurred." under its ambit and putting to test the principle of harmonious interpretation, it is evident that the parliament in its wisdom has chosen not to add the aforesaid terminology under the Interest Tax Act, and what has not been mentioned neither be added nor is 22 required to be read in between the lines. We have already observed about principles of interpretation in para 8.5 and 8.6 (supra) and mere crediting the said amount as interest will certainly not entitle the revenue to treat the same as interest. Hon'ble Apex Court in the case of Sutlej Cotton Mills and Godhra Electricity (supra) have clearly expressed that mere crediting the amount under a head is not determinative of the real nature and real intent and purpose of the transaction is required to be seen. Therefore, we hold that the amount recovered by the assessee from the constituents (borrower) cannot be taxed as interest in the hands of the assessee. On perusal of definition, it is distinctively clear that such charges recovered by the bank cannot be equated to the term interest under the Act. Though the receipt of Guarantee Fees received from constituents (borrowers) is not linked to what is paid to DICGC as insurance cover on behalf of depositors, the issue is not relevant for the reason stated by us herein above."

20. In the circumstances, we dismiss the appeals of revenue and allow the appeals of the assessees and set aside the judgments in favour of revenue.

Judgment Referred.

[1]*(1995) Supp (2) SCC 0348*
[2]*(1891) 2 QB 0665 : 60 LJ Qb 726*
[3]*(1990) 3 SCC 0682, 717 : 1991 SCC (L&S) 71]*
[4]*(1899) AC 99, 0105-106 : (1895-9) All ER Rep Ext 1576*
[5]*(1989) 1 SCC 0164, 169 : 1989 SCC (Tax) 56*
[6]*(1989) 175 ITR 0607*
[7]*(2008) 300 ITR 0395 (P&H)*
[8]*(1988) 172 ITR 0024*
[9]*(1997) 228 ITR 0040 (Ker)*
[10]*(2014) 367 ITR 0128 (AP)*
[11]*(2008) 296 ITR 0601 (Mad)*
[12]*(2009) 17 SCC 0043*