

THE COMMISSIONER OF INCOME TAX, II,
TIRUCHIRAPALLI

v.

CITY UNION BANK LTD.
(Civil Appeal No. 2690 of 2006)

OCTOBER 13, 2008

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

Interest Tax Act, 1974:

s. 2(7) – Interest earned by Bank on Government Securities – HELD: The Tribunal would examine the factual position and accordingly decide in view of the decision of Supreme Court – Income Tax Act, 1961.

In the instant appeal, the question before the Court was as to whether interest earned by assessee Bank on Government Securities was liable to be assessed u/s 2(7) of the Interest Act, 1974.

Disposing of the appeal, the Court

HELD: Let the Tribunal examine the factual position as to whether the interest involved in the instant case is on government securities. If that be so, the ratio of the decision in the case of *Corporation Bank** will apply to the facts of the case and if the interest earned is not solely on government securities, the same will not apply. [para 4] [387-H; 388-A]

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

CASE LAW REFERENCE

2008(166) Taxman 388 referred to para 3

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2690
of 2006

From the final Judgment and Order dated 20.10.2005 of
the High Court of Judicature at Madras in T.C. (A) No. 797 &
798 of 2005

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

C 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 Raghvan (for M/s. J.S. Wad & Co.) for
the Respondents.

D The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to
the judgment of final order passed by the Madras 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
E 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
F Court by the impugned judgment upheld the view of the Tribunal.
The revenue filed the present appeal 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
G securities, bonds, debentures and therefore not liable to tax
under the provisions of the Interest Act. It is submitted that interest
on securities falls within the meaning of "Interest chargeable
to tax" as defined under Section 2(7) of the Interest Act.

H 2. Learned counsel for the respondent, assessee-Bank
on the other hand supported the judgment of the Tribunal as

upheld by the High Court.

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3. 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:

“Leave granted in special leave petitions.

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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.

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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.”

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

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A case (supra) 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.

5. The appeal is disposed of accordingly.

B R.P.

Appeal disposed of.