RESERVED

Court No. - 24
Case :- INCOME TAX APPEAL No. - 184 of 2005
[Assessment Year - 1992-93]
Appellant :- Commissioner Of Income Tax (Central), Kanpur
Respondent :- M/S Sahara India Mutual Benefit Co. Ltd.,Lucknow
Counsel for Appellant :- P.Agrawal
Counsel for Respondent :- Waseeq Uddin Ahmed,Amit Shukla

ALONG WITH

Case :- INCOME TAX APPEAL No. - 185 of 2005
[Assessment Year - 1993-94]
Appellant :- Commissioner Of Income Tax (Central), Kanpur
Respondent :- M/S Sahara India Mutual Benefit Co. Ltd.,Lucknow
Counsel for Appellant :- P.Agrawal
Counsel for Respondent :- Waseeq Uddin Ahmed

ALONG WITH

Case :- INCOME TAX APPEAL No. - 56 of 2006
[Assessment Year - 1994-95]
Appellant :- Commissioner Of Income Tax (Central), Kanpur
Respondent :- M/S Sahara India Mutual Benefit Co. Ltd., Lucknow
Counsel for Appellant :- P. Agrawal,D.D.Chopra
Counsel for Respondent :- Wasequddin Ahmad

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Hon'ble Rajiv Sharma,J.
Hon'ble Dr. Satish Chandra,J.

In the aforesaid appeals preferred by the Department under Section 260A of the Income-Tax Act, 1961, against the judgments passed by the Income Tax Appellate Tribunal, Lucknow for different assessment years relating to identical facts and circumstances and as such the same, is being answered by means of the common judgment.

The details of the Income Tax Appeals are as under:-

ITA No.	Assessment Year	Judgment & Order dated
184/2005	1992-93	12.05.2005 passed in ITA No. 1258/Alld/96;
185/2005	1993-94	12.05.2005 passed in ITA No. 1690/Alld/96;
56/2006	1994-95	19.07.2005 passed in ITA No. 341/Alld/99.

On 23.03.2010, a Coordinate Bench of this Court has admitted the **Appeal No. 184 of 2005,** on the following substantial questions of law:-

> *"1. Whether the transfer of investors' deposit to the tune of 18 to 20% by the respondent-Assessee, M/s. Sahara India Ltd. as agent's money, amounts to colourable exercise of power and accordingly, the addition made by the Assessing Officer restricting the investment to 3% was correct and the deletion of the said amount by the appellate authority is substantially illegal, being non application of mind to the facts, circumstances and evidence on record?*
>
> *2. Whether the order passed by the Appellate Tribunal is substantially illegal being non-speaking, perverse and based on unfounded facts ?"*

On 01.04.2008, a Coordinate Bench of this Court has admitted the **Appeal No.185 of 2005**, on the following substantial question of law:-

> *"1. Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in deleting the addition of Rs.4,38,91,176/- made by the Assessing Officer by restricting the expenses claimed by the respondent as paid/reimbursed to its agent M/s. Sahara India to 3% of the total deposits collected, without appreciating that the memorandum of understanding between the respondent and M/s. Sahara India was only a colourable device resorted to defraud the revenue and that necessary details to prove that the expenses had been incurred wholly and exclusively for the business purposes could not be furnished by the respondent.*
>
> *2. Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in deleting the aforesaid addition of Rs.4,38,91,176/- without appreciating that mere*

issue of debit notes by M/s Sahara India did not amount to discharge of onus by the respondent that expenses as mentioned in the debit note had been incurred wholly and exclusively for the business purposes specially when no supporting details were supplied by the respondent.

3. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in deleting the aforesaid addition of Rs.4,38,91,176/- by observing that the Assessing Officer himself while completing the re-assessment proceedings for the assessment year 1992-93 in the case of M/s Sahara India Savings & Investment Corporation Ltd., had allowed the similar expenses claimed by the respondent in that case without appreciating that while completing the re-assessment proceedings, the Assessing Officer was bound by the directions given by the Hon'ble Tribunal in its order dated 31.01.2001 while setting aside the assessment in the case of M/s Sahara India Savings & Investment Corporation Ltd. and the department had not accepted the observations made by the Hon'ble Tribunal in its aforesaid order dated 31.1.2001 and appeal u/s 260A had been filed by the department before the Hon'ble Court against the said order of the Hon'ble Tribunal.*

4. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in holding that no interest income was assessable in the hand of the respondent due to non charging of interest on the amount due from its agent M/s. Sahara India, even though the respondent was a finance company and its business was earning of income by investing its funds.*

5. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in holding that no interest income was assessable in the hands of the respondent due to charging of interest at concessional rate on amount due from its directors, employees and other sister concerns of the Sahara Group, without appreciating that the respondent by not charging interest at concessional rate on the aforesaid amounts had abandoned/surrendered*

its income of its directors, employees and other sister concerns of the Sahara Group and that the said arrangement between the respondent and its directors, employees and sister concerns was only a colourable device entered into by them to defraud the revenue.

6. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in holding that even though the revised return filed by the assessee was invalid, the claim made therein in regard to the sum of Rs.1,10,30,490/- could not be ignored as the respondent was entitled to make claim of expenses any time before the completion of the assessment.*

On 23.03.2010, a Coordinate Bench of this Court has framed the following substantial questions of law in the **Appeal No. 185 of 2005**:-

"1. Whether the transfer of investors' deposit to the tune of 18 to 20% by the respondent-Assessee, M/s. Sahara India Ltd. as agent's money, amounts to colourable exercise of power and accordingly, the addition made by the Assessing Officer restricting the investment to 3% was correct and the deletion of the said amount by the appellate authority is substantially illegal, being non application of mind to the facts, circumstances and evidence on record?

2. *Whether the order passed by the Appellate Tribunal is substantially illegal being non-speaking, perverse and based on unfounded facts ?"*

On 06.02.2006, another Coordinate Bench of this Court has admitted the **Appeal No.56 of 2006** on the following substantial questions of law:-

"1. Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in deleting the addition of

Rs.4,80,45,534/- made by the Assessing Officer by restricting the expenses claimed by the respondent as paid/reimbursed to its agent M/s. Sahara India to 3% of the total deposits collected, without appreciating that the memorandum of understanding between the respondent and M/s. Sahara India was only a colourable device resorted to defraud the revenue and that necessary details to prove that the expenses had been incurred wholly and exclusively for the business purposes could not be furnished by the respondent.

2. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT was justified in law in deleting the aforesaid addition of Rs.4,80,45,534/- without appreciating that the expenses were not verifiable from the books of account of the respondent and supporting vouchers were not produced either by the respondent or its agent.*

3. *Whether in view of the facts and in the circumstances of the case and in the circumstances of the case, the Hon'ble ITAT erred in law in holding that no interest income was assessable in the hands of the respondent due to non charging of interest on the amount due from its agent M/s. Sahara India, even though the respondent was a finance company and its business was earning of income by investing its funds.*

4. *Whether in view of the facts and in the circumstances of the case, the Hon'ble ITAT erred in law in deleting the addition of Rs.60,00,000/- Rs.21,09,011/- and Rs.1,13,58,762/- respectively made on account of disallowance of interest on borrowing without appreciating that had the respondent not advanced interest free loans/loans at concessional rate of interest to its sister concerns, the need of the respondent for borrowing on which interest paid by it would have been less to the same extent".*

On perusal of the substantial questions of law, on which the aforesaid appeals are admitted, it is reflected that only

two issue emerges for adjudication on the facts and circumstances of the cases, viz., first issue is pertaining to the addition on expenditure; and the second issue is pertaining to the interest.

The brief facts of the case are that the assessee company was incorporated with a view to engage itself in the financial business by encouraging saving habits among its members and accordingly to accept deposits from its members only. The said transactions will not in any manner and shall not carry on the way be in violation to the provisions Banking Regulations Act, 1949 and Price Chits & Money Circulations Scheme (Banning) Act, 1978. As the members of the company are scattered all over the country and company cannot established its infrastructure throughout the country, so, the assessee company has entered into an agreement with M/s. Sahara India, a partnership firm constituted in January 1982 with the head office at Lucknow to collect the funds. M/s. Sahara India has developed/built-up a large infrastructure throughout the country. At the relevant time, it has various well equipped 1000 establishments spread all over the country with expert manpower. M/s. Sahara India has developed sufficient expertise for promoting business of savings and finance. As per agreement between the assessee company and M/s. Sahara India dated 01.01.1991, M/s. Sahara India shall works as agent to the

assessee company for collecting money, leading money, supply of receipts and documents and communicating various schemes and proposals launched by the assessee company from time to time. M/s. Sahara India was also authorized to collect the requisite amount from the members for its savings schemes and the so collected amount through its branches shall be send it to the assessee company. M/s. Sahara India shall submit to the assessee company, the statement of account or such other information as the company may require. For this purpose, the expenses were paid.

During the course of assessment proceedings, the Assessing Officer has found that the payment to M/s. Sahara India accounted for 18.85% of the total collection made during the year. As the evidence for such expenses were not filed, so, the Assessing Officer observed that the said expenditure is not allowable deduction. However, the Assessing Officer has allowed expenses to the extent of 3% of the total deposits.

The balance expenditure was disallowed by the Assessing Officer, who made the addition accordingly. However, the first appellate authority has deleted the addition, which was upheld by the Tribunal. Not being satisfied, the Department has filed the present appeals.

With this background, Sri D.D. Chopra, learned counsel for the Department has relied on the order passed by the Assessing

Officer. He submits that the Assessing Officer has allowed the expenditure @ 3% of the total collection, but the CIT(A) vide its order dated 26.03.2001 has allowed the expenditure upto the extent of 4.5% of the total deposit.

At the strength of written submissions, learned counsel for the Department submits that the Tribunal has erred on facts and in law in deleting the addition claimed as paid/reimbursed expenses to its agent M/s. Sahara India. The impugned order suffers from material illegality in so far as the Tribunal has failed to appreciate that the said claim of payment of "service charges" and reimbursement of expenses to M/s. Sahara India is completely unreasonable and unsustainable in so far as the assessee has not only failed to prove the actual disbursement of such payments but also failed to justify the quantum of the aforesaid payment which amounted to about 18.85% of the collection made during the year. Therefore, no benefit can legitimately accrue to the assessee as an "operational expenses" under the Act.

Learned counsel also submits that the Tribunal has ignored the facts apparent on record and the finding of the Assessing Officer that the assessee had entered into an MoU with M/s. Sahara India whereby the latter had agreed to act as a collection agent for the assessee. The assessee has relied on the said MoU to justify the "operational expenses" paid to M/s. Sahara India

and has claimed the same to be wholly and exclusively for the purpose of the business of the assessee. However, the Assessing Officer has found that the documents produced by the assessee were insufficient to prove that the payments had infact ever been made to M/s. Sahara India. However, the Tribunal by order dated 30.06.1998 has allowed "operational expenditure" at 4.5% as against the 3% applied by the Assessing Officer. However, on a miscellaneous application by the assessee against the said order dated 30.06.1998, the Tribunal has recalled the said order vide a subsequent order dated 14.02.2000. The said order of recall dated 14.02.2000 has been challenged by the Department and is presently pending before the Hon'ble Allahabad High Court, Allahabad interalia on the ground that the Tribunal does not have the power to recall its own order.

Further, it was observed by the Assessing Officer that while different sister concerns of the Sahara Group had similar MoUs for appointing M/s. Sahara India as their sole collection agent, the percentage of expenses paid to M/s. Sahara India by the said concerns were considerably less than the 18.85% paid by the assessee. Therefore, the Assessing Officer, in his wisdom, has applied the test of reasonableness and fixed 3% as reasonable expenses since the same percentage had been paid/reimbursed by a sister concern of the assessee, being M/s. Sahara India Savings and Investment Corporation Ltd.

Learned counsel further submits that the impugned order suffers from material illegality in so far as the Tribunal has failed to appreciate that the assessee had only produced debit notes issued by M/s. Sahara India in support of the claim of the expenses, the mere production of a debit note does not necessarily mean that the expenses claimed are related to or incurred wholly and exclusively for the business of the assessee. Therefore, the Assessing Officer has concluded from the material available on record that the assessee has employed a colourable device to defraud the revenue and the real purpose being to avoid the incidence of tax. Lastly, he made a request that the impugned order passed by the Tribunal may kindly be set aside.

On the other hand, Sri J.N. Mathur, learned Senior Advocate assisted by Sri Waseequddin Ahmed, learned counsel for the assessee has justified the impugned order passed by the Tribunal. He submits that there is no basis in the action of the Assessing Officer to restrict the claim for deduction of the expenditure. In fact, the services rendered by M/s. Sahara India as an agent is not doubted and the expenditure so claimed is supported by a valid agreement and debit notes issued by the agent which is also not been disputed. In fact, as a consequence of the efforts put it by the agent the deposits mobilized on behalf of the assessee have increased manifold during the assessment year under consideration.

He also submits that in fact the deduction is only a reimbursement of the actual expenses incurred and, hence, the question of same being excessive and unreasonable does not arise and further no basis has been recorded by the Assessing Officer that the expenditure is in excess of 3% of the deposits mobilized has to be disallowed. In support of the aforesaid submission, counsel for the respondent had placed reliance on the ratio laid down in the following cases :-

(i) Jwala Prasad Radha Krishna vs. Commissioner of India Tax, [1992] 198 ITR 415;

(ii) Highways Construction Co. Pvt. Ltd. vs. Commissioner of Income-tax, [1993] 199 ITR 702;

(iii) India Finance & Construction Co. Pvt. Ltd. vs. B.N. Panda, Deputy Commissioner of Income-Tax & Anr., [1993] 200 ITR 710;

(iv) Universal Subscription Agency P. Ltd. vs. Joint Commissioner of Income-Tax, [2007] 293 ITR 244;

(v) Goetze (India) Ltd. vs. Commissioner of Income-Tax, [2006] 284 ITR 323 (SC);

(vi) Commissioner of Income-Tax vs. Pruthvi Brokers and Shareholders P. Ltd., [2012] 349 ITR 336 (Bom);

(vii) Commissioner of Income-Tax vs. Jai Parabolic Springs Ltd., [2008] 306 ITR 42 (Del);

(viii) Commissioner of Income-Tax vs. Escorts Auto Components Ltd., [2010] 323 ITR 11 (P&H); and

(ix) Smt. Raj Rani Gulati vs. Commissioner of Income-Tax, [2012] 346 ITR 543 (All);

Lastly, he made a request that all the appeals filed by the

Department may kindly be dismissed.

After hearing both the parties and on perusal of the record, it appears that assessee company is a mutual benefit company duly registered with the Central Government carrying on business of mobilization of deposits from the general public at large. It is making investments in accordance with N.B.F.C. Directives issued by the Reserve Bank of India, which have to be mandatorily followed by the assessee company.

M/s. Sahara India firm was having the infrastructure throughout the country and this infrastructure was used for collection of the funds on behalf of the assessee company. This infrastructure also includes skilled staff for which no salary was paid by the assessee company, but was paid by the collecting agent i.e. M/s. Sahara India.

Initially, the assessee claimed the expenditure @ 17.5% to 18% collection charges of the total deposit, but the Assessing Officer on estimate basis has allowed only 3% of the collection charges. The first appellate authority and the second appellate authority on the basis of the estimate restricted the same @ 4.5%.

Needless to mention that entire infrastructure belongs to M/s. Sahara India. The expenditure are genuine. These expenditure were likely to be incurred by the assessee company, or to be paid to the M/s. Sahara India. The expenses so claimed

pertains to the establishment, travelling, stationery and printing, advertisement and publicity and business development and these expenses were related to the business of the assessee. The same fund were allocated as per Clause 8 of the MoU between the parties. The said expenses were duly supported by the vouchers as observed by the CIT(A) in his order. But since these expenses were incurred by M/s. Sahara India, so the vouchers were in possession of that firm and that the assessee after having satisfied itself about the correctness of these expenses had accepted the debit note of M/s. Sahara India and credited in their account the amount by issuing debit vouchers. During the course of arguments, no doubt was raised about the genuineness of the said expenditure. When the expenses were incurred wholly and exclusively for the purpose of the business, the same are allowable. To this effect, a number of case laws has already been discussed in the appellate order and the same need not to be repeated. Thus, unless a case has been made out that the payment was not genuine and what was borrowed was not true then there is no scope for any interference. Moreover, the AO made the addition on estimate basis. The first appellate authority as well as Tribunal restricted the same on estimate basis. The estimation is a question of law, as per the ratio laid down in the following cases :-

(i) Commissioner (Custom) vs. Stoneman Marble, (2011) 2 SCC 758;

(ii) Vijay K. Talwar vs. CIT, (2011) 1 SCC 673;

(iii) New Plaza Restaurant vs. ITO, 309 ITR 259 (HP); and

(iv) Sanjay Oil Cake vs. CIT, 316 ITR 274 (Gujarat).

Hence, no question of law is emerging from the impugned order. Therefore, we upheld the order of the appellate authority for the reasons mentioned therein. Thus, the first issue is decided in favour of the assessee and against the revenue.

The second issue is pertaining to the payment of interest. The Assessing Officer observed in its order that the assessee had taken a loan from M/s. Sahara India Firm as working capital on which no interest was charged. It was also observed that the interest pertaining to the funds of the assessee were utilized for non-business purpose by advancing the free loan to the sister concern. Therefore, the AO had observed that the interest on the borrowing to the extent of interest not charged on the interest free loan given to M/s. Sahara India is not allowable. So, he charged the interest @ 24% per annum. Finally, the AO has observed that the interest paid on the borrowing to the extent of interest not charged will have to be added to the income of the assessee. However, the first appellate authority as well as Tribunal have deleted the addition. Being aggrieved, the Department is before this Court.

Sri D.D. Chopra, learned counsel for the Department, at

the strength of written submission, submits that it was observed by the Assessing Officer that the assessee had given a loan of Rs.2,50,00,000/- to M/s. Sahara India in the form of working capital on which no interest was charged. The AO was also observed that interest bearing funds of the assessee were utilized for non-business purpose by advancing the said interest free loan to a sister concerns. Therefore, the Assessing Officer had disallowed interest of Rs.60,00,000/- on the borrowings to the extent of interest not charged on the interest-free loan given to M/s. Sahara India, by charging interest @ 24% per annum. Learned counsel also submits that the assessee had shown a debt of Rs.1,17,16,752/- exceeding six months given to SISICOL on which no interest was charged. The Assessing Officer, therefore, disallowed an amount of Rs.21,09,011/- out of the interest paid on borrowings to the extent of interest not charged on the aforesaid interest free loan given to SISICOL, by taking a rate of 18%. Similarly, interest at a concessional rate of 18% was being charged by the assessee on unsecured loans given to its sister concern Sahara India Financial Corporation Limited while the assessee itself was paying a rate of 24% on the unsecured loans raised by it. Thus, there was loss of 6%, and as such, the Assessing Officer had rightly observed that the assessee had abandoned a claim of the difference of the interest rates i.e. 6% on the unsecured loans given, and disallowed an

amount of Rs.1,13,58,762/- out of the interest paid on borrowings.

The Tribunal and the CIT(A) have failed to appreciate that the Assessing Officer had rightly made an addition of Rs.34,96,173/- on account of interest assessable in the hands of the assessee since the assessee had abandoned/surrendered its income in favour of its sister concern and agent M/s. Sahara India by not charging any interest on the balance of Rs.23,30,78,196/-. It is also a submission of the learned counsel for the Department that while the assessee was claiming deductions on loans taken, it was not charging any interest from its sister firm in respect of the loans/advances it had allowed forward. Therefore, the Assessing Officer has rightly applied an interest of 18% on the amount due and made an addition of Rs.34,96,173/- to the taxable income of the assessee.

Further, learned counsel for the appellant-department submits that the impugned order suffers from material infirmity in the light of the recent judgment of this Hon'ble Court in ***Commissioner of Income Tax vs. Smt. Swapna Roy, 331 ITR 367,*** wherein this Hon'ble Court has concluded that -

> *"The condition precedent to avail of the benefit of Section 57(iii) of the Act is that the investment must be proper and justified. Proper investment means correct investment with intention to earn profit. Where there was no question of any income from the source against which the interest on the borrowed funds could*

> *be set off, the interest paid by the company on borrowed funds could not be allowed as deduction either under Section 36(1)(iii) or under Section 57(iii) of the Act."*

The above mentioned decision of this Hon'ble Court applies squarely to the present matter, both on similarity of facts and on the question of law involved. A similar view has consistently been adopted by the High Courts of Madras, Bombay and Gujarat as well while interpreting the nature and scope of allowing tax benefit under Section 57(iii) of the Act. The same are reported as ***CIT vs. Sujani Textiles Pvt. Ltd., 151 ITR 653, CIT vs. Amritaben R. Shah, 238 ITR 777*** and ***Sarabhai Sons vs. CIT, 201 ITR 464.*** Therefore, in view of the fact that the whole nature of the loan transaction involved the creation of an artificial liability in order to set off the existing and future real income of the assessee and thereby to avoid the incidence of taxation, the impugned order is erroneous in law and deserves to be set aside.

On the other hand, Sri J.N. Mathur, learned Senior Counsel assisted by Sri Waseequddin Ahmed, learned counsel for the assessee submits that the addition on account of interest is made by the Assessing Officer on notional basis in respect of funds due by M/s. Sahara India to the assessee. According to the Assessing Officer, the assessee had not charged any interest from M/s. Sahara India in respect of the balance due from M/s.

Sahara India to the assessee. The Assessing Officer worked out the average balance by taking the balance outstanding at the beginning of the year and at the end of the year and dividing the same by two and on the amount so arrived at, calculated interest @ 18% per annum and, accordingly, made the addition for the assessment year under consideration.

Learned counsel further submits that the first appellate authority in terms of the understanding arrived at between the assessee and M/s. Sahara India i.e.

> *"if there was a delay in transmitting the deposits mobilized by Sahara India on behalf of the assessee for a period of excess of two months, then, the assessee could charge interest."*

As the said amount was not in excess of the said period of two months, so no interest was charged.

He also submits that it is an admitted position that the transactions between Sahara India and the assessee are purely business transactions. There is no dispute that Sahara India mobilized deposits for the assessee along with other entities in the group. There is no dispute that the amount outstanding as on 31.03.1992 is less than two months deposits mobilized. It is therefore, clear that there is no advancement of funds by the assessee to the agent without interest. The whole case of the Assessing Officer is that the assessee ought to have charged interest on the amount outstanding from the firm and on a

failure on the part of the assessee to do so, it was upon to him to make a notional addition @ 18%, which is not desirable in law. For this purpose he relied on the ratio laid down in the case of ***Jwala Prasad Radha Krishna vs. Commissioner of India Tax, [1992] 198 ITR 415 (supra); Highways Construction Co. Pvt. Ltd. vs. Commissioner of Income-tax, [1993] 199 ITR 702 (supra); and India Finance & Construction Co. Pvt. Ltd. vs. B.N. Panda, Deputy Commissioner of Income-Tax & Anr., [1993] 200 ITR 710.***

Lastly, he made a request that the appeals may kindly be dismissed.

After hearing both the parties and on perusal of the record, it appears that as per the Memorandum of Understanding, M/s. Sahara India had incurred the total expenditure by including the items like bad debts, depreciation, deferred revenue expenses, interest paid on schemes, interest paid to companies for delayed transmission of funds and debit balance of schemes, because these expenses had nothing to do with the business of above companies.

From the record, it appears that as per the MoU, the assessee's business has certainly increased manifold. The MoU was signed on 01.01.1991 (F.Y. 1990-91) and in the first nine months, the assessee's total collection was more than Rs.4.38 crores. In the financial year 1992-93, the collection was more

than Rs.26 crores. This all shows that the assessee's signing of MoU with M/s. Sahara India was not for any extra-business consideration and that the assessee has certainly benefited out of this MoU. It was purely a business transaction.

In the instant case, M/s. Sahara India is the collecting agent not only of the assessee but also of various other companies. As per MoU, the assessee charges interest from M/s. Sahara India where delay in transmission of funds exceeds two months. From the record, it appears that the assessee has charged interest on the balance of Rs.13,80,08,484/- and no interest was paid on the balance of Rs.6,49,86,400/-, as the same did not exceed two months. When the parties have agreed not to charge the interest, as per the condition laid down in the MoU i.e. ***"if the remittance is within the less than two months"***, then the AO cannot compel to do so.

Needless to mention that yardstick will have to be applied from the businessman's point of view and certainly not according to the AO, as per the ratio laid down in the case of ***Voltamp Transformers (P) Ltd. vs. CIT, (1981) 129 ITR 105 (Guj); CIT vs. Walchand & Co., 65 ITR 381 (SC)***. It is only the assessee, who knows the commercial and business relations and the situation thereof and department is not supposed to interfere as per the ratio laid down in the case of ***Kewal Chand vs. CIT, 183 ITR 207, 211 (Cal)***.

In the case of ***Highways Construction Co. Pvt. Ltd. vs. Commissioner of Income-tax, [1993] 199 ITR 702 (supra),*** the Gauhati High Court observed that -

> *"...If the assessee had not bargained for interest, or had not collected interest, we fail to see how the income-tax authorities can fix a notional interest as due, or collected by the assessee. Our attention has not been invited to any provision of the Income-tax Act empowering the income-tax authorities to include in the income interest which was not due or not collected".*

In the instant case, the addition was made by the AO on notional interest which was not in the existence. So, the first appellate authority as well as the Tribunal have rightly deleted.

In the light of above discussion and by considering the totality of the facts and circumstances of the case, we find no reason to interfere with impugned orders passed by the Tribunal. The same are hereby sustained along with reasons mentioned therein.

The answer to the substantial questions of law are in favour of the assessee and against the department.

In view of above, all the appeals filed by the department are dismissed, as stated above.

Order Date : 09/10/2013
Rakesh/-