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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

R-7 & 8

\+ **ITA 348/2003**

HOUSING & URBAN DEVELOPMENT CORPN. LTD.

..... Appellant

Through: Ms. Neha Sangwan, Advocate for M. Chirag M. Shroff, Advocate on record.

versus

THE DY. COMMISSIONER OF INCOME TAX

..... Respondents

Through: Mr. Ashok K. Manchanda, Sr. Standing Counsel for ITD

\+ **ITA 247/2004**

HOUSING & URBAN DEV. CORPN. LTD.

..... Appellant

Through: Ms. Neha Sangwan, Advocate for M. Chirag M. Shroff, Advocate on record.

versus

COMMISSIONER OF INCOME TAX

..... Respondents

Through: Mr. Ashok K. Manchanda, Sr. Standing Counsel for ITD

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% 21.07.2016

1. The common question framed in both these appeals filed by Housing and Urban Development Corporation Ltd. (HUDCO) against the orders

dated 17th March, 2003 and 8th January, 2004 of the Income Tax Appellate Tribunal (ITAT) for Assessment Years 1994-95 and 1995-96 respectively reads as under:

> "Whether the appellate Tribunal has substantially erred in law and in the facts of the case, in holding that the Assesse's deposits with SAIL amounted to loan and/or advance within the meaning of Section 2(7) of the Interest Act as amended with effect from 1st October, 1991."

2. HUDCO is in the business of financing housing projects promoted by various organisations including the State Governments. It is stated that during the course of its business, HUDCO deposits with various companies the surplus funds that are available to it. In the AYs in question, surplus funds were deposited by HUDCO with the Steel Authority of India Limited (SAIL).

3. The Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [CIT(A)] rejected the plea of HUDCO that the interest earned on the deposit did not fall within the definition of 'interest' under terms of Section 2 (7) of the Interest Tax Act, 1974 (ITA). The ITAT by the aforementioned impugned orders affirmed the orders of the AO and the CIT (A). It concluded that since money had been placed at the disposal of the SAIL under a contract, it could partake the character of a loan for which compensation of interest has been paid by SAIL to the Assessee. The ITAT further observed that "as far as SAIL is concerned would be a loan because they have to repay it on the terms and conditions and since the amount is advanced in the form of a loan though it may be stated to have been deposit with the SAIL, it would fall within the definition of Section 2(7) of the

Interest Tax Act." The ITAT concluded that the terminology adopted by HUDCO "is of no consequence".

4. Ms. Neha Sangwan, learned counsel for HUDCO drew the attention of the Court to a decision of the Special Bench of the ITAT which dealt with the same issue, involving the assessments of HUDCO the for the AYs 1993-94, 1996-97 and 1992-93 (Interest Appeal Nos. 6, 7 and 40/2000). The question addressed by the Special Bench reads as under:

> "Whether on facts and in the circumstances of the case, the interest earned by the assessee corporation from Investments made by way of short term deposits, with public undertakings and also in the form of securities and bonds etc. can be covered under the definition of "Loans and Advances" chargeable to tax under section 2(7) read with Section 5 of the Interest Tax Act."

5. After discussing the definition of interest as contained in Section 2(7) of the ITA and the decisions of the Supreme Court as well as of the High Courts, the Special Bench concluded that there is a distinction between the expression 'deposit' and the term 'loans and advances'. It was held:

> "20. ..... Furthermore "loans" and "deposits" cannot be taken to be identical in meaning when a recourse is taken to the provisions contained under the Companies Act, 1956. Section 58A and section 227 of the Companies Act, 1956 in itself clearly place distinction between the two expressions. The explanation added to Section 370 of the Companies Act, 1956 by the Companies (Amendment) Act, 1988 for including deposits for the purpose of loan was for a limited purpose of inter corporate transaction and a similar amendment has not been made in the Act under which the issue is being considered. The revenue's plea that the decision rendered by Bombay Bench of the Tribunal in LIC v. JCIT was in respect

of statutory Corporation also does not render any assistance to the issue under consideration, since the statute under consideration does not provide for any dichotomy on the applicability of its provision on the basis of status of an assessee.

21. From the following speech of Finance Minister given at the time of introducing the act, it can be inferred that interest on deposit is not to be included in the definition of interest under this act:

> "These institutions would reimburse themselves by making necessary adjustments in the interest rates changed from borrowers. The proposed tax is expected to raise the cost of borrowing and yield revenue to the Government."

The interest was not to be borne by the lender but by the borrower. In cases of lending made before 1.10.1991 credit institutions were specifically empowered to vary the rate of lending so as to reimburse of the extra charge going to fall on them by the introduction of the act. Section 26C was specifically introduced in the act for this purposes. Now in case of deposit there is no such power with the depositor to recover the said amount from the depositee. This again indicates that the two expressions are different.

22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions "loans" and "deposits" are to be taken different and distinction can be summed up by stating that in the case of loan the needy person approaches the lender for obtaining the loan there from. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of this legal position it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in section 2(7) of the Act and as such would not be liable to interest tax. The answer to the question under reference in our humble opinion is that investments made by way of short term

deposits and also in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of 'interest' defined under section 2(7) of the Act."

6. The Special Bench then remanded the issue arising for the said three AYs to the AO for a fresh decision in light of the decision. Ms. Sangwan states that to the best of the information of HUDCO, the aforementioned decision of the Special Bench, which was delivered on 25th November, 2005 (subsequent to the order of the ITAT forming the subject matter of the present appeals), was not challenged and has attained finality.

7. Mr. Ashok K. Manchanda, learned Senior standing counsel for the Revenue first submitted that the definition of 'interest' under Section 2(7) of the ITA would include interest on deposits as well. According to him this was evident from the language of the definition. He submitted that since 'deposit' did not feature in the excluded category of the definition, it should be taken to be included within expression 'loans and advances'.

8. Section 2(7) of the ITA reads as under:

"(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 –

(i) interest referred to in sub-section (1B) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills;"

9. The definition to the extent it uses the word 'means' purports to be exhaustive. However, it has both an 'includes' and a 'does not include' portion. Apart from interest on 'loans and advances', what is included are only two categories: (i) commitments charges and (ii) discounts on promissory notes and bills. There is no other transaction that is contemplated under the inclusive portion. As far as exclusionary portion is concerned, there are again only two categories excluded i.e. (i) interest referred to in Section 1B of Section 42 of the Reserve Bank of India Act and (ii) discount on treasury bills. There is no scope of going beyond the above definition of 'interest'. When a definition uses an expression means and that is followed by 'interest on loans and advances' it should be considered as being exhaustive of the entire definition. However, the legislature has intended to 'include' other two transactions under the definition. Those two transactions do not include interest on deposits. It is not therefore possible to accept the submission of Mr. Manchanda that the expression 'interest on loan and advances', occurring in Section 2(7) of the Act should include 'interest on deposits' as well notwithstanding that there is no reference to such interest in the definition itself.

10. The Special Bench of the ITAT was conscious of this submission made before it and has rejected it and in view of this Court rightly. What the ITAT appears to have done in the impugned order is to re-characterise the contract

entered into between HUDCO and SAIL for the purpose of the former placing deposits with the latter as a loan transaction. There was no occasion for the ITAT to do so only with a view to bringing it within the definition of Section 2(7) of the ITA, when the plain language of the statute does not contemplate interest on deposits as being included.

11. Apart from the above, the Special Bench of the ITAT has answered the question in favour of HUDCO for the AYs 1992-93, 1993-94, 1996-97. The present appeals pertain to AYs 1994-95 and 1995-96. Therefore, applying the rule of consistency, the Court holds that there is no reason why the Revenue should not be asked to follow the judgment rendered by the Special Bench of ITAT which view has been accepted by it and has attained finality.

12. For the aforesaid reasons, the question framed in both appeals is answered in negative i.e. in favour of the Assessee and against the Revenue. The impugned orders of the ITAT in both the appeals are set aside and both the appeals are allowed with no orders as to costs.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 21, 2016
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