

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 68 / 2004

S B B J

----Appellant

Versus

C I T & Ors

----Respondent

For Appellant(s) : Mr. P.K. Kasliwal

For Respondent(s) : Mr. R.B. Mathur

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

31/01/2017

1. By way of this appeal, the appellant has assailed the judgment and order of the Tribunal whereby Tribunal has partly allowed the appeal of the assessee and dismissed the appeal of the department and modified the order of CIT(A).
2. This court while admitting the appeal on 12.7.2004 had framed following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amounts charged at Rs.3,15,78,889/- by the assessee for the delayed payments of bills are in the nature of interest on advances and liable to be taxed under the Interest Tax Act, 1974?

2. Whether, overdue interest on Inland, Foreign demand bills collected by the appellant Bank, by way of "Liquidated Damages" from the persons (who are not the borrowers of the Bank) can be regarded as "Chargeable Interest" under the Interest Tax Act, 1974?"

3. The facts of the case are that appellant is a banking

company carrying on its business of banking. The appellant Bank during the course of banking business discount bills of its constituents and collects amount from the third party on whom the bills are drawn. For such services, the Bank charges discounts from constituents. Such discounts as recovered by the Bank from its constituents is offered for taxation, but the liquidated damages or overdue charges charged by the Bank from the third party on whom the bills are drawn is not treated by the appellant bank as chargeable interest under the Interest Tax Act. The appellant Bank while filing the interest tax return on 30.11.95 for the assessment year 1995-96 did not include in its taxable interest, the amount, which is received as liquidated damages or overdue charges at Rs.3,15,79,889/- for overdue payment on demand bills. According to the appellant, these sums did not represent income at all. The Assessing Officer issued a notice to the appellant Bank u/s 8(1) of the Act to explain the reasons for not inclusion of such income in the return.

4. Learned counsel for the appellant Mr. P.K. Kasliwal submits that controversy involved in this case is squarely covered by the Division Bench judgment of this Court in **D.B. Income Tax Appeal No.201/2005 (Commissioner of Income Tax, Jaipur-II, Jaipur Vs. State Bank of Bikaner & Jaipur)** decided on 12.11.2014 wherein it has been held as under:-

"We have considered the rival contentions and in our view, the term interest as defined under the Interest Tax Act is distinctive as against the term "Interest" defined under the Income Tax Act, 1961 defines Interest as under:-

"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 charges in respect of money as charge or debt incurred or in respect of any credit facility which has not been utilized".

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 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.

The question of law is decided in favour of the assessee and against the revenue."

5. And the same was followed subsequently by this court in D.B. Income Tax Appeal No.98/2004 dated 3.1.2017.
6. Counsel for the respondent has not disputed the aforesaid factual matrix.
7. In that view of the matter, in view of the two decisions of this court, both the issues are answered in favour of the assessee and against the Department.
8. The appeal stands allowed.

(VINIT KUMAR MATHUR)J.

(K.S. JHAVERI)J.

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