

**(2003) 04 AHC CK 0243****Allahabad High Court****Case No:** IT Appeal No. 298 of 1999 22 April 2003

Commissioner of Income Tax

APPELLANT

Vs

Benares State Bank Ltd.

RESPONDENT

Date of Decision: April 22, 2003

Acts Referred:

- Companies (Profits) Surtax Act, 1964 - Section 6, 8

Citation: (2004) 139 TAXMAN 268

Hon'ble Judges: Sudhir Narain, J; D.P. Gupta, J

Bench: Full Bench

Advocate: Shambhu Chopra, for the Revenue S.K. Garg, for the Assessee, for the Appellant;

Final Decision: Dismissed

### **Judgement**

This appeal arises against the order of the Income Tax Appellate Tribunal passed in December, 1998, in I.T.A. No. 4 (All) of 1991 in relation to the assessment year 1986-87. The proceedings were taken against the assessee on the return being filed declaring the chargeable profits under the Companies (Profits) Surtax Act, 1964, at Rs. 1,03,950 filed on 18-3-1989. It was in response to the notice issued u/s 8(a) of the Companies (Profits) Surtax Act, 1964.

2. The Deputy Commissioner of Income Tax calculated the surtax at Rs. 32,41,000. Against the decision of the Deputy Commissioner of Income Tax, the department preferred three appeals u/s 6(2) of the Surtax Act. The appeals for the assessment years 1984-85 and 1985-86 were dismissed and for the assessment year 1986-87 it was partly allowed. The department preferred a ST Appeal No. 4 of 1987, in respect of the assessment year 1986-87 on the ground that the appellate authority was not justified in directing the assessment of the assessee as per the order of the Commissioner (Appeals) and has worked out the charge of disputed amount at Rs. 84.44 lakhs only. The Tribunal had held that the interest on the sticky loans is not

includible for the purpose of computing Income Tax and it cannot be included for the purpose of said tax. This order of the Tribunal has been challenged in the present appeal.

3. We have heard Sri Shambhu Chopra, learned standing counsel for the appellant, and Sri S.K. Garg, learned counsel for the respondent.

4. Learned counsel for the appellant has submitted that the view taken by the Tribunal that the interest on the sticky advance is not to be included for the purpose of Income Tax assessment is erroneous. He has placed reliance upon the decision in State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, ; Banque Nationale De Paris Vs. Commissioner of Income Tax, and Kerala Financial Corporation Vs. Commissioner of Income Tax, . The decision in Kerala Financial Corp'n's case (supra) has been specifically overruled in UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal, .

5. The Companies (Profits) Surtax Act, 1964, defines chargeable profits as under :

"(5) chargeable profits means the total income of an assessee computed under the Income Tax Act, 1961 (43 of 1961), for any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule;"

In view of the aforesaid decision, the interest on the sticky loans cannot be included in the Income Tax and, accordingly, no surcharge can be included for the purpose of surtax.

There is no merit in the appeal. It is hereby dismissed.