

**(1989) 03 DEL CK 0047**

**Delhi High Court**

**Case No:** Income-tax Case No. 176 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Carvanserai Ltd.

RESPONDENT

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**Date of Decision:** March 31, 1989

**Citation:** (1992) 102 CTR 125 : (1991) 192 ITR 684

**Hon'ble Judges:** C.L. Choudhary, J; B.N. Kirpal, J

**Bench:** Division Bench

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### **Judgement**

B.N. Kirpal, J.

The Commissioner of Income Tax has filed this petition u/s 256(2) of the Income Tax Act, 1961, seeking a direction that the Tribunal should state the case and refer two questions of law to this court :

2. It appears that the respondent-company was formed with the primary object of setting up a hotel. Accordingly to its memorandum of association, a large number of business activities could be undertaken by the respondent. For the purposes of this petition, the three objects which are relevant are as follows :

3. Firstly clause 14 of the main objects read as under :

"14. To invest in companies, firms, co-operative societies and all institutions with these objects and to aid the same by loan, guarantee or other manner deemed fit by the company."

4. Thereafter, comes Part B of the memorandum containing the objects and clause 9 thereof reads as follows :

"9. To invest any moneys of the company not for the time being required for any of the purposes of the company in such investments, (other than shares or stock in the company) as may be thought proper and to hold, sell or otherwise deal with such investments including, in accordance with law then prevalent, investments in corporations, firms and other associations in which any member or employee may

then be interested."

5. The last part of the memorandum contains the other objects and clauses 30 and 31 thereof read as follows :

"(30) To carry on business as financiers and as guarantors upon payments of commission and to undertake and carry out all such operations and transactions as an individual capitalist or agent may lawfully undertaken and carry out.

(31) To advance, deposit with or lend money, securities and property to or receive loans or grants or deposits, and give guarantees."

6. The assessed obtained a loan of Rs. 74 lakhs primarily for the purpose of constructing a hotel. The hotel project did not start and part of the money was deposited with other companies belonging to the same group. Interest was earned from them and the Income Tax Officer sought to assess the same under the head "Other sources." The assessed, on the other hand, contended that the interest income should be treated under the head "Business." The Tribunal referred to clauses 30 and 31 of the aforesaid objects and came to the conclusion that because the purpose for which the company was incorporated was to set up a hotel and to do business as financiers, the interest income was liable to be taxed under the head "Business."

7. We find that the Tribunal did refer to the aforesaid clause 9, but gave no reason as to why the said clause was not applicable. Furthermore, no reference was at all made to clause 14 of the main objects clause of the memorandum. The Tribunal also did not refer to or consider the fact that the deposits were made by the respondent-company with other companies which were under the same management.

8. The interpretation of all these clauses, namely, clause 14 of the main objects, clause 9 of incidental clauses and clauses 30 and 31 of the other objects does give rise to a question of law and the Tribunal was wrong in coming to the conclusion that no question of law arose.

9. The second question relates to the year in which credit has to be given to the tax deducted at source. This question involves the interpretation of section 199 of the Income Tax Act, as it stood at the relevant time, and the Tribunal ought to have referred the same.

10. For the aforesaid reasons, we allow this petition and direct the Tribunal to state the case and refer the following two questions of law to this court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law holding that the income from interest was from a business activity and not from "other sources" ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessed would be entitled to the benefit of the tax deducted at source in the period subsequent to the accounting period relevant to the assessment year 1974-75 ?"

11. There will be no order as to costs.