

**(2002) 07 MAD CK 0237**

**Madras High Court**

**Case No:** Tax Cases No"s. 1254 to 1256 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Dadha Plantations (P.) Ltd.

RESPONDENT

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**Date of Decision:** July 10, 2002

**Acts Referred:**

- Income Tax Act, 1961 - Section 40A(8)

**Citation:** (2002) 258 ITR 639

**Hon'ble Judges:** V.S. Sirpurkar, J; N.V. Balasubramanian, J

**Bench:** Division Bench

**Advocate:** J. Naresh Kumar, for the Appellant; R. Meenakshisundaram, for the Respondent

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### **Judgement**

N. V. Balasubramanian, J.

At the instance of the Revenue, the Income Tax Appellate Tribunal has stated the case and referred the following common questions of law with regard to the interpretation of Section 40A(8) of the Income Tax Act, 1961, in relation to the assessment years 1981-82, 1982-83 and 1983-84 of the assessee.

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that no disallowance of interest should be made on interest payments made to the directors and shareholders on the credit balances in the current accounts held by them with the assessee in terms of Section 40A(8) of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the interest payment made to the directors and shareholders on their deposits with the assessee-company is excepted by the provisions of Section 40A(8) on the basis of the ratio of the decision laid down by the Madhya Pradesh High Court in the case of [Commissioner of Income Tax Vs. Kalani Asbestos \(P.\) Ltd., ?](#)"

The assessee is a private limited company and during the course of assessment proceedings, the Assessing Officer found that the assessee-company had made certain payments of interest to the shareholders and directors of the company. The Income Tax Officer held that the provisions of Section 40A(8) of the Act were attracted to the payment of interest to the directors and the shareholders and disallowed 15 per cent. of the interest so paid. The Commissioner of Income Tax (Appeals) on appeal, deleted the disallowance of interest made by the Income Tax Officer and that order was also confirmed by the Income Tax Appellate Tribunal. It is against the order of the Income Tax Appellate Tribunal, the present reference has been made.

Heard Mr. J. Naresh Kumar, learned junior standing counsel for the Revenue, and Mr. R. Meenakshisundaram, learned counsel for the respondent. We find that the company had made payments of interest to the shareholders and directors on the credit balances lying in their current accounts and they were made not in the capacity of depositors. We hold that the credit balance in the current account of the shareholders or the directors cannot be regarded as a deposit made by them and they were not deposits made by them. The term "deposit" has a meaning of its own, and, in our opinion, it does not include a mere credit balance lying in the current account of the shareholders or the directors of the company. The legal relationship between the company and the deposit holders is far different from the legal relationship of the company and the shareholders and the terms of deposit would be different from the terms on which interest was paid on the amounts lying in the credit balance of the shareholders. There is also no evidence to show that there was an agreement to treat the credit balance of the account holders as deposits. The Madhya Pradesh High Court in [Commissioner of Income Tax Vs. Kalani Asbestos \(P.\) Ltd.](#), has taken a similar view. Hence, we hold that the Appellate Tribunal was correct in law in holding that no disallowance of interest is called for by invoking Section 40A(8) of the Act as the interest payments were made to the shareholders and directors on the credit balances in that current accounts not in the capacity as deposit holder nor the amounts so lying can be regarded as deposit.

Accordingly, the common questions of law referred to us are answered against the Revenue and in favour of the assessee. No costs.