

**(2012) 10 MAD CK 0190**

**Madras High Court**

**Case No:** T.C. (A) No. 455 of 2008 and M.P. No. 1 of 2012

Indian Bank

APPELLANT

Vs

Deputy Commissioner of Income  
Tax

RESPONDENT

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**Date of Decision:** Oct. 30, 2012

**Acts Referred:**

- Income Tax Act, 1961 - Section 115J, 250(4), 28, 37

**Citation:** (2013) 2 MLJ 232 : (2013) 213 TAXMAN 389

**Hon'ble Judges:** K. Ravichandra Baabu, J; Chitra Venkataraman, J

**Bench:** Division Bench

**Advocate:** Anita Sumanth, for the Appellant; T. Ravikumar, for the Respondent

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### **Judgement**

Chitra Venkataraman, J.

The assessee is on appeal as against the order of the Income Tax Appellate Tribunal, Chennai Bench A dated 25th October, 2007 in I.T.A. No. 1079/MDS/2003 relating to the assessment year 1991-92 and this Court admitted the above tax case appeal on the following questions of law:-

1. Whether on the facts and circumstances of the case, the Tribunal is right in law in not accepting the appellant's claim with regard to the broken period interest in its entirety and whether the Tribunal is right in law in classifying the securities as permanent and current and restricting the claim in regard to the broken period interest on securities ?
- 2, Whether on the facts and circumstances of the case, the Tribunal is right in law in confirming the assessment of income under the head "undisclosed income" ?
3. Whether, on the facts and circumstances of the case, the Tribunal is right in law in not considering the following grounds specifically raised before it and ought not to have allowed the same while disposing of the appeal ?:

(a) Estimated expenditure relating to securities

(b) Disallowance of estimated expenditure relating to securities in computing the income u/s 115J of the Act.

(c) Disallowance of bonus

(d) Deletion of additional tax

Even though the fourth question is not referred to in the order of admission, yet, considering the nature of the question raised, we include the following as the fourth question of law to be answered by this Court.

(4) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in not accepting the appellant's contention with regard to the appreciation in the value of investments and whether the Tribunal ought not to have held that the appreciation in the value of investments is not liable to be included as income ?

It is seen from the facts narrated that in the course of its banking business, the assessee bought and sold securities as per Reserve Bank of India guidelines. Some of the securities are held as investments, some of them are dealt as stock-in-trade. It is stated that in respect of some of the securities, at the time of purchase, interest would have already accrued to the seller from whom the securities are purchased. Since interest are to be paid only on specified due date, by reason of the sale, before this date, seller would not be entitled to receive the interest. Thus, whenever the assessee purchased any security before the due dates for payment of interest, the assessee/purchaser pays the interest accrued from last due date till date of purchase to the seller and then gets himself reimbursed as and when interest become due and paid. In cases, where the assessee is a seller, it received broken period interest as against similar interest paid by Bank in respect of sale of the securities i.e., the assessee received broken period interest of Rs. 45,81,84,242/- as against similar interest paid by the bank to the purchasers to the tune of Rs. 39,73,67,506/-. The assessee claimed the loss on the difference of this interest received and paid on the ground that the securities in which the assessee was investing constituted part of its stock-in-trade in the banking business, The Assessing Officer, however, rejected the contention of the assessee by following the decision in the case of [Vijaya Bank Ltd. Vs. Additional Commissioner of Income Tax, Bangalore](#),

2. Apart from this issue, there was yet another issue before the Assessing Officer in respect of payment of additional interest to the tune Rs. 14,73,91,000/- on the deposits received from Public Sector Undertakings. It is seen from the facts herein that on the auditing of the accounts of M/s. Chandrakala and Co., a proprietary concern, who acted as broker in purchase and sales of shares and Government and Semi-Government securities, it was observed that the assessee had purchased

various securities from Bank of Madura Ltd. and others through M/s. Chandrakala and Co., at a rate higher than the market price. Thus, when it paid the said amount through M/s. Chandrakala and Co., while granting the brokerage to M/s. Chandrakala and Co., it directed the said broker to take demand drafts payable for various Public Sector Undertakings through M/s. Chandrakala and Co. as by way of additional interest on Fixed Deposits kept by the PSUs. The assessee admitted this fact vide its letter dated 16.03.1994 stating that such course of action was taken at the instance of the Bank. The Assessing Officer viewed that the assessee had not accounted for this in the books of account, and further the claim regarding payment of the additional interest of Rs. 14,73,91,000/- on the deposits given by the Public Sector Undertakings being contrary to the Reserve Bank of India guidelines, directing interest at 8% as prevalent at that time, was against the public policy and the deduction was liable to be rejected. Thus, the additional interest made by the assessee by inflating the purchases and subsequently received back from the broker and paid through demand drafts directly to the aforesaid PSUs could not be accepted as correct reflection of the accounts. Further, the Assessing Officer pointed out to the letter dated 17.03.1994, wherein, the assessee was called upon to file the confirmation letters from the Fixed deposit holders as regards the receipt of additional interest sent by the Bank through the demand drafts taken by M/s. Chandrakala and Co. Although the assessee had furnished the confirmation letters from the PSUs as to their deposits with the assessee and the rate of interest confirmed, no confirmation as to receipt of those demand drafts were filed by three of the deposit holders viz., 1) M/s. ONGC Ltd., 2) M/s. Nuclear Power Corporation and 3) M/s. Bharat Dynamics Ltd. It was also pointed out that while there was a entry relating to the interest payable as per the RBI guidelines and another entry was passed on for the amount of additional interest paid and that entry was debited to Suspense Account. According to the assessee, the drafts taken were in fact accounted for under the account entries of the PSUs only. Since the payment of interest is regulated by RBI, the Assessing Officer rejected the case of the assessee that the account of Rs. 14,73,91,000/- paid as an additional interest was infraction of law and hence, not admissible as expenditure u/s 37 of the income tax Act, 1961. Apart from this issue, the Assessing Officer also disallowed certain expenditure incurred by the assessee. Aggrieved by the order of assessment, the assessee went on appeal before the Commissioner of income tax (Appeals).

3. As regards the claim for broken period interest, the assessee distinguished its case from Vijaya Bank Ltd.'s case (supra). The assessee contended that it had consistently taken the stand that the securities, in which the assessee was investing constituted part of its stock-in-trade in the banking business; these securities were purchased and sold by the assessee in the course of business of banking and not as investments; consequently, the assessee was claiming loss on investment in securities based on valuation of these securities at cost or market value, whichever is lower, which is a recognised mode of valuation of the stock-in-trade of a business.

The assessee pointed out that the RBI guidelines mattered very little as regards the determination of whether the securities for the purpose of income tax are stock in trade or capital investments, for, both should be treated as stock-in-trade for the purpose of valuation.

4. As regards the claim on the payment of additional interest, which was added as an income from undisclosed sources to the tune of Rs. 14,73,91,000/- and Rs. 2,01,08,420/-, which represented the balance in the inflated cost of security, the assessee contended that during the relevant period of year, there was difficulty in raising money from call money market to its fund requirement by paying heavy interest as high as 72%. Further, by reason of the situation faced by all the Banks all over India, Banks encouraged calling for deposits from PSUs, who had sufficient funds and were willing to invest, provided, they were compensated with reasonable return. At the relevant point of time, since the banks were advised to pay not more than 8% interest as per the RBI guidelines, on such short term deposits and the PSUs were not willing to deposit their funds on short term basis with the Banks at this rate, there was an informal negotiation between the banks and the PSUs on the basis of which it was agreed that the PSUs would be compensated at a rate marginally higher than the usual rate payable as per RBI guidelines. In order to meet the contingency, the assessee decided to purchase securities through M/s. Chandrakala and Co., by paying M/s. Chandrakala and Co., a price, which was an inflated one with a specific direction to M/s. Chandrakala and Co. that after meeting the brokerage and expenses, the differential amount would be used for getting demand drafts to the PSUs. As far as the payment of additional interest on the deposits received by the Bank from the PSUs, the assessee stated that the said amount was paid to M/s. Chandrakala and Co., for the purpose of taking drafts for paying the interest to PSUs; that the said broker took the drafts in the PSUs' names and handed over the same to the Bank. As far as the commercial profits of Rs. 2,01,08,420/- was concerned, the same was retained by M/s. Chandrakala and Co., and assessed at the hands of M/s. Chandrakala and Co. In the circumstances, the question of adding the said amount as the income from undisclosed sources did not arise. The assessee pointed out that the rejection of the claim for deduction on the amount of additional interest paid, was without any basis.

5. As regards the expenditure incurred by the assessee, relating to the expenditure on securities, on bonus payment of interest, artificial inflation in the cost of securities and subsequent revaluation of securities at market value, the assessee challenged these issues before the Commissioner of income tax (Appeals).

6. On consideration of issues regarding the broken period interest relief as well as on the valuation of stock of securities, the CIT (Appeals) called for a report from the income tax Officer, It is seen from the order of the Commissioner of income tax (Appeals) that since there were divergent views held by the Commissioner of income tax (Appeals) with regard to ITA. No. 71/2000-01 for the assessment year 1993-94 as

investments and for ITA. No. 375/2001-02 for the assessment year 1990-91 as investments in securities constituting current securities and stock in trade, the CIT (Appeals) thought it fit to get enquiries made u/s 250(4) of the income tax Act through the Assessing Officer on the following issues:-

- (i) What is the nature of securities held by the appellant Bank viz., Whether it is investment or stock in trade ?
- (ii) Whether as per RBI Guidelines of 1993, records are maintained in regard to permanent and current securities ?
- (iii) Whether these securities have been shown in the Balance-sheet under the head "investment" or "current assets"?

After examining the issues in detail, the records maintained by the assessee Bank in respect of securities based on the RBI guidelines on the subject, the Assessing Officer filed his report dated 11.02.2003. The Assessing Officer observed that "though the assessee submitted the details on 05.02.2003 and 07.02.2003, they explained their inability to produce books of accounts, invoices and notes related to assessment year 1987-88". However, on going through the materials available, the Officer observed that the assessee was preparing profit and loss account and Balance sheet as per the Banking Regulations Act, 1949 and as per the balance sheet, the Government securities purchased were shown under "Investment". There were classification under the schedule investments. However, there was no column in the balance sheet showing Government securities as stock-in-trade; that the profits on securities were offered as Business income and submitted that there was no change in the method of valuation of the securities from the assessment year 1987-88 to that date.

7. Going through the detailed report filed by the Assessing Officer, the Commissioner of income tax (Appeals) pointed out that the details were available as regards the securities held as investments and securities held as stock-in-trade, as regards the valuation of these securities, as regards the broken period interest. The First Appellate Authority pointed out that in view of the securities held as "permanent securities" falling under the category of investment and "current securities" falling under the category of stock-in-trade, the interest for the broken period in respect of permanent securities was taken as capital outlay based on the decision of the Supreme Court in the case of Vijaya Bank Ltd."s case (supra). The interest in respect of current securities, which are held in stock-in-trade has to be allowed as the revenue expenditure based on the Bombay High Court decision in the case of [American Express International Banking Corporation Vs. Commissioner of Income Tax](#), Thus, the Assessing Officer was directed to disallow the broken period interest in respect of the permanent securities held as the investment and allow the interest for a broken period in respect of current securities held as a stock-in-trade. The assessee's appeal was thus partly allowed.

8. However, on the aspect of valuation, the Commissioner of income tax (Appeals) pointed out that the assessee itself had booked the appreciation in the value of securities as the profit in the accounts. Pointing out to the likely-hood of distortion of profits of the securities held as stock-in-trade, if the depreciation was allowed and the appreciation was not taxed as income, the Commissioner of income tax (Appeals) pointed out that while the assessee had not offered the appreciation to tax, depreciation alone was claimed as an expenditure. Thus, there being no matching principle applied, the Commissioner of income tax (Appeals) felt it necessary to direct the Assessing Officer to add the appreciation in respect of permanent securities held as investment and not in respect of current securities held as stock-in-trade, which were to be valued on cost or market value, whichever was lower.

9. As regards the dispute relating to additional interest paid to the Public Sector Undertakings, the commission paid to the broker viz., M/s. Chandrakala and Co., referring to the Banking Regulation Act, 1949, the Commissioner of income tax (Appeals) held that when there was a ceiling on interest rate on short term deposits as 8%, any payment over and above the permissible limit, being contrary to law, was to be allowed as deduction u/s 37 of the Act.

10. Pointing out that the inflation in the cost of securities purchased and the additional amount paid to M/s. Chandrakala and Co., for onward transmission to PSUs as colourable device to make the additional payment to various PSUs, the CIT (Appeals) rejected the assessee's case and thereby confirmed the order of the Assessing Officer. However, he rejected the Assessing Officer view that the extra money had been generated outside the books. All the transactions relating to excess payment to M/s. Chandrakala & Co., and artificial inflation in the cost of securities had passed through the books of account of the assessee and therefore the issue in the present case would be regarding the admissibility of deduction claimed by the Bank. Thus, when the expenditure claimed was held to be contrary to the directions of the RBI, the assessee was not entitled to the deduction of a sum of Rs. 14,73,91,000/-.

11. As regards the commission retained by M/s. Chandrakala and Co., to the tune of Rs. 2,01,08,420/-, the Commissioner of income tax (Appeals) pointed out that it was evident that from the order of the Assessing Officer that M/s. Chandrakala & Co., had already been paid a sum of Rs. 1,66,700/- as commission for the services rendered by the Bank in the course of purchase and sale of securities. In the circumstances, the amounts retained to an extent of Rs. 2,01,08,420/- could not be treated as an admissible expenditure.

12. As regards the claim of the assessee on the estimated expenditure relating to securities, u/s 115J of the income tax Act, 1961, the CIT (Appeals) confirmed the order of assessment. Aggrieved by the same, the assessee went on appeal before the Income Tax Appellate Tribunal.

13. As far as the first issue relating to broken period of interest is concerned, after referring to the decision in Vijaya Bank Ltd.'s case (supra) and the case in American Express International Banking Corpn.'s case (supra), the Income Tax Appellate Tribunal pointed out that the investment by the Bank is normally bifurcated into current and permanent investments; as per the RBI directions, banks should not keep more than 70% of their investments in the permanent category from the accounting year 1992-93; since a perusal of the order of the Assessing Officer showed that no such enquiry made and that however, as the Bank bifurcated the permanent and current investments, the nature of income could be determined only by the classification made. Thus, the Tribunal set aside the order of the Commissioner of income tax (Appeals) and restored the matter to the files of the Assessing Officer for fresh consideration.

14. As regards the valuation of the securities is concerned, the Income Tax Appellate Tribunal confirmed the order of the CIT (Appeals).

15. As regards the claim for expenditure on payment of additional interest and commission, here too, the Tribunal confirmed the order of the Commissioner of income tax (Appeals) that the additional payment being contrary to the RBI guidelines, the assessee was not entitled to the relief u/s 37 of the IT Act.

16. It is seen from the order of the Income Tax Appellate Tribunal that it did not consider the grounds relating to the claim on estimated expenditure on securities, disallowance relating to securities u/s 115J of the Act, disallowance of bonus and additional tax.

17. Learned counsel appearing for the assessee placed heavy reliance on the decision of the Apex Court reported in the case of [United Commercial Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal-III, Calcutta](#), and submitted that the Apex Court had considered the question of valuation of securities held as investment and securities held as stock-in-trade and the same to be valued on cost or market value, whichever was lower. She submitted that even though under the Banking guidelines, the dichotomy is maintained for valuing the stock-in-trade at cost for the purpose of statutory balance sheet and valuation was at cost or market value, whichever is lower for the purpose of income tax return, the investment has to be taken stock-in-trade for the purpose of granting deduction. In the circumstances, the learned counsel for the assessee submitted that the view of the Tribunal in remanding the matter back to the Assessing Officer to consider this dichotomy cannot be sustained.

18. As far as this contention is concerned, while we do not agree with the assessee's contention that parity must be maintained with regard to securities held as investment and securities held as stock in trade as stock in trade for the purpose of working out and granting relief for broken period interest, as rightly contended by learned counsel for the assessee, we do not find there exists any necessity in

remanding the matter back to the Assessing Officer to do this exercise once again.

19. As seen earlier, in the course of the hearing of the appeal, the Commissioner of income tax (Appeals) called for a report from the Assessing Officer, We have already stated in preceding paragraph, the circumstances under which, the CIT (Appeals) sought for report from the Assessing Officer. After the receipt of report from the Assessing Officer, and after hearing the assessee, the CIT (Appeals) pointed out that to the securities held under the head permanent securities and current securities and on an analysis of the facts, applying the decision of the Vijaya Bank Ltd."s case (supra), the CIT (Appeals) pointed out that the interest payment for the broken period in respect of permanent securities has to be taken as capital outlay. However, payment of interest on securities, which are held in stock-in-trade, has to be allowed as the revenue expenditure based on the decision of Bombay High Court in the case of American Express International Banking Corpn."s case (supra).

20. A reading of the decision of the Bombay High Court reported in American Express International Banking Corpn."s case (supra) show the extensive consideration on the said issue. The Bombay High Court pointed out that in respect of securities held as stock-in-trade, income being assessable u/s 28 of the Act, the assessee was entitled to deduction for the broken period. After citing the decision in Vijaya Bank Ltd"s case (supra), distinguishing the case of the assessee on the securities held as stock-in-trade, the Bombay High Court pointed out that the decision in Vijaya Bank Ltd"s case (supra) would have no application to the case, where securities were held as trading assets and interest income were assessed as business income u/s 28 of the Act. The Bombay High Court referred to the decision of the Supreme Court in [Commissioner of Income Tax, Andhra Pradesh Vs. Cocanada Radhaswami Bank Ltd.,](#) wherein, it was held that income from securities treated as trading assets could come u/s 28 of the IT Act. Thus in the context of the said decisions, the Bombay High Court held that in respect of securities held as trading assets, broken period interest earned by the Bank and paid by the assessee was entitled to be considered for deduction.

21. We are in entire agreement with the decision of the Bombay High Court. The said decision was followed by the decision in the case of [Sri Hanuman Sugar and Industries Ltd. Vs. Commissioner of Income Tax,](#) and the said decision was taken on appeal by the Revenue. As already stated in the decision in the case [Sri Hanuman Sugar and Industries Ltd. Vs. Commissioner of Income Tax,](#) the SLP filed by the Revenue against the judgment dated 9th January 2002, following American Express International Banking Corpn."s case (supra), was rejected by the Apex Court, A similar SLP filed by the Revenue in the case of CIT v. Union Bank was also rejected as reported in 268 ITR 216 (ST). Considering the fact that the CIT (Appeals) had considered the issue in detail after the remand report, we do not find any substance in remanding the matter once again back to the Assessing Officer for the self same exercise. Hence, we confirm the order of the CIT (Appeals) as there is no necessity



for remand. The order of the Commissioner income tax (Appeals) based on the remand report thus stands confirmed.

22. As regards the question of closing stock valuation of investments and stock-in-trade is concerned, the income Tax Appellate Tribunal had confirmed the order of the CIT (Appeals). Learned counsel for the assessee placed heavy reliance in the case of United Commercial Bank (supra), which laid down the principle on valuation of securities. We find that from the order of the CIT (Appeals) while the assessee claimed depreciation on the appreciated value of the securities, there was corresponding offering of income on the enhanced value of the securities. Consequently, the CIT (Appeals) directed the Assessing Officer to add appreciation in respect of permanent securities and not current securities held as stock-in-trade, which are to be valued on cost or market value, whichever is lower. In the decision in the case of United Commercial Bank (supra), the Apex Court pointed out that the assessee was valuing stock-in-trade at cost for the purpose of statutory balance sheet as required under the RBI guidelines and for Income Tax return, valuation was at cost or market value, whichever was lower. The Apex Court pointed out as under:- Preparation of the balance sheet in accordance with the statutory provision would not disentitle the assessee in submitting the income tax return on the real taxable income in accordance with the method of accounting adopted by the assessee consistently and regularly. That cannot be discarded by the departmental authorities on the ground that the assessee was maintaining the balance-sheet in the statutory form on the basis of the cost of the investments. In such cases, there is no question of following two different methods for valuing its stock-in-trade (investments) because the bank was required to prepare the balance-sheet in the prescribed form and it had no option to change it. For the purpose of income tax as stated earlier, what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case.

23. Applying the said decision to the facts of the case herein, no error or fault could be found in the order of the Commissioner of income tax (Appeals) as confirmed by the Income Tax Appellate Tribunal in remanding the issue back to the Assessing Officer. We make it clear that securities held as stock-in-trade and investment being stock in trade are to be treated on par and to be valued either at the cost or market price, whichever is lower. In the circumstances, keeping in the background the decision in the case of United Commercial Bank (supra), we direct the Assessing Officer to redo the valuation in respect of stock-in-trade at cost or market value, whichever is lower.

24. As regards the question of disallowance on the payment of additional interest on deposits made by Public Sector Undertakings are concerned, learned counsel appearing for the assessee pointed out that the interest was made to the PSUs on the investments made by them and as per the Reserve Bank of India circular dated

27th April 1992, there is no inhibition in receiving the investment from PSUs and there is no ceiling on interest to be paid to them. She pointed out that the assessee had taken the plea that it had received deposits from PSUs, yet what was received was not deposits, but were investments. We do not think that the assessee would be permitted to change the character of the receipts at this stage since the consistent stand taken by the assessee was that it received it as only Fixed Deposits, on which it had paid additional interest.

25. As far as the assessee's claim on payment of additional interest is concerned, while confirming the Assessing Officer's view that the payments were contrary to the RBI guidelines, the First Appellate Authority as well as the Income Tax Appellate Tribunal held that all that the assessee could pay as per the RBI guidelines was 8% interest only and any amount paid over and above the permissible limit was against the public policy, hence, hit by Explanation 237 of the income tax Act, 1961. As far as this line of reasoning is concerned, we find from the Circular issued by the RBI that there is ceiling on interest payable in current account/saving bank account and discretion is available on interest to be paid on term deposits. The circular reads as under:-

#### 5. Interest rates on term deposits

1. Banks are free to fix interest rates on term deposits.
2. The banks are required to offer uniform rates on deposits for the same maturity upto Rs. 15 lakh.
3. In case of deposits of over Rs. 15 lakh, banks may discriminate in the matter of rate of interest between one deposit and another, accepted on the same date and for the same maturity, on the basis of the size of deposit.
4. Banks are required to disclose in advance the schedule of interest rates payable on deposits including deposits on which differential rate of interest will be paid by the banks. Interest rates paid by a bank shall be as per the schedule and the same shall not be subject to negotiation between the bank and the depositor.
5. Banks are required to review their interest rate structure on term deposits of different maturities and take appropriate action to make them comparable with the rates offered by the commercial banks.

Applying the said circular to the facts of the case herein, we hold that the assessee is entitled to succeed on its claim for deduction u/s 37 of the Act and the view of the Income Tax Appellate Tribunal that payment of additional interest on Fixed Deposits by PSUs as contrary to public policy cannot be sustained. Even though learned Standing counsel for the Revenue submitted that such circular was not the subject matter placed before the Income Tax Appellate Tribunal or other authorities and that the payment was contrary to the RBI guidelines, yet, we find that when the Revenue had not disputed the deposits by the PSUs, the payment of interest is

guided by the RBI circulars and that the assessee had paid the additional interest through Demand Drafts purchased through M/s. Chandrakala and Co., and that only in the case of three Public Sector Undertakings viz., ONGC, Nuclear Power Corporation and Bharat Dynamics, had denied the receipt of the Demand Drafts, applying the Circular, we do not find any justifiable ground on the submission made by the Revenue that payment of additional interest would be contrary to the guidelines issued by the RBI. Even in respect of three of the PSUs viz., ONGC, Nuclear Power Corporation and Bharat Dynamics Limited, it is seen from the judgment of the CBI Court that in C.C. No. 17 of 99 dated 27th April 2004, which related to the criminal prosecution of M. Gopalakrishnan, the Chairman and Managing Director of Indian Bank and T. Jayachandran, Proprietor of M/s. Chandrakala and Co., that on the evidence let in, it was found that the amount paid to these PSUs were properly accounted for and disclosed to Income Tax Authorities. It is seen from the judgment of the CBI Court that the additional interest paid to Bharat Dynamics Limited was credited to the account of Bharat Dynamics with Andhra Bank, Connaught Circle Branch, New Delhi, So too in the case of Nuclear Power Corporation and ONGC. It is of relevance that in our judgment dated 29.10.2012 in T.C. Nos. 366 to 368 of 2005, W.P. Nos. 38858 to 38860 of 2005, W.P. Nos. 7279 and 25811 to 25813 of 2008 and W.P. No. 17040 of 2011, relating to M/s. Chandrakala & Co., we have pointed out to the judgment of the CBI Court regarding admission of Bharat Dynamics as regards the receipt of Demand Drafts from the assessee and accepted the case of the assessee on the taking of drafts at the instance of the Indian Bank for payment to the PSUs. Thus going by the above facts, we have no hesitation in setting aside the order of the Tribunal and accept the assessee's case for deduction that the payment of the additional interest was as per RBI Circular and that it was not against public policy.

26. As far as the question regarding (a) Estimated expenditure relating to securities; (b) Disallowance of estimated expenditure relating to securities in computing the income u/s 115J of the Act; (c) Disallowance of bonus and (d) Deletion of additional tax, which are the issues raised in Ground No. 3, a perusal of the order of the Income Tax Appellate Tribunal shows that although the question was raised before the Tribunal, there was no consideration by the Tribunal under the said issues. In the circumstances, we have no hesitation in accepting the assessee's contention that the Tribunal be directed to consider these issues and pass orders on merits.

27. In the circumstances, the assessee's Tax Case on the question of granting deduction on the expenditure made by way of additional interest made to the PSUs and the commission paid to the broker viz., M/s. Chandrakala & Co., as falling u/s 37 of the Act, is allowed and we answer the second question of law in favour of the assessee. As far as the broken period interest on the stock-in-trade and permanent securities are concerned, there is no justification for remanding the matter back to the Assessing Officer and that the order of Commissioner of income tax (Appeals) merits acceptance, consequently, the first question is answered in favour of the

assessee.

28. Thus, as regards the valuation on the securities held by the assessee, while we confirm the order of the Income Tax Appellate Tribunal, which confirmed the order of the Commissioner of income tax (Appeals), whose view was based on carrying out the report from the Assessing Officer, following the decision in the case of United Commercial Bank (supra), we hold that the securities held as stock-in-trade and investments are to be valued at cost or market price, whichever is lower.

29. However, the third question of law stands remanded back to the Assessing Officer since a perusal of the order of the Income Tax Appellate Tribunal shows that there was no consideration on the issues referred to the third question.

30. We may point out here that during the course of hearing of this appeal and the appeal by the broker in T.C. No. 366 to 368 of 2005 etc. batch, we directed the parties to appeal to the Central Board of Direct Taxes (CBDT) on the question of additional interest payment to PSUs on the score that the interest payment had already been assessed at the hands of the Bank and hence there was no revenue loss. It is however reported by learned Standing Counsel for the Revenue that the Board had rejected the petition by the appellant herein and the broker and left the matter to be decided by this Court. Thus, having gone through the facts and the law and after considering our decision in the case of [T. Jayachandran Vs. Deputy Commissioner of Income Tax, Special Range-III](#), we have no hesitation in accepting the plea of the assessee on the claim for deduction in additional interest payment to PSUs as not hit by public policy and hence deductible u/s 37 of the Act. In the result, the Tax Case (Appeal) is partly allowed. No costs. Consequently, connected MP is closed.