
(2003) 04 BOM CK 0014

Bombay High Court

Case No: Income Tax Reference No. 220 of 1995

The Commissioner of
Income Tax

APPELLANT

Vs

Bank of Maharashtra

RESPONDENT

Date of Decision: April 17, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 256(1)
- Interest Tax Act, 1974 - Section 5

Citation: (2003) 6 BomCR 93 : (2003) 184 CTR 138 : (2003) 264 ITR 568 : (2004) 1 MhLj 111 : (2003) 130 TAXMAN 113

Hon'ble Judges: S.H. Kapadia, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: R.V. Desai and P.S. Jetley, instructed by L.S. Shetty, for the Appellant; A. Ramakrishna and Molina P. Thakur, for the Respondent

Judgement

S.H. Kapadia, J.

The assessee is a Banking Company. The Assessment Years with which we are concerned with in this Reference are 1983-84 to 1986-87 for which the relevant accounting periods ended on 31st December of each previous year. The matter arises u/s 5 of the Interest Tax Act, 1974.

FACTS:

2. The assessee - Bank of Maharashtra filed its Return of Chargeable Interest amounting to Rs. 17.39 crores. It claimed deduction to the extent of rediscounting charges paid to IDBI and other Credit Institutions under the Rediscounting/Refinancing Scheme. This was disallowed by the ITO, inter alia, on the ground that u/s 5 of the Interest Tax Act, the rediscounting charges/refinancing charges constituted interest and since u/s 5 of that Act, the gross receipt of interest is chargeable to tax, the assessee bank was not entitled to

claim deduction for rediscounting charges paid by Bank of Maharashtra to IDBI. Being aggrieved, the assessee bank carried the matter in appeal to the Commissioner of Income Tax (Appeals) on the ground that while computing Chargeable Interest, the AO has wrongly disallowed interest and discount paid to IDBI (participating Financial Institution). However, Commissioner (Appeals) directed the AO to allow deduction in respect of interest and rediscounting charges paid to the participating Financial Institution. This view was confirmed by the Tribunal. Hence, the Department has come by way of Reference u/s 256(1) of the Income Tax Act to this Court for our opinion.

3. The question referred to us is as follows:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that (i) interest paid by the assessee to the participating Financial Institutions on loan and (ii) discount on promissory notes/bills of RBI, IDBI and other Financial Institutions are allowable as a deduction in arriving at the chargeable interest under the Interest Tax Act, 1974?"

ARGUMENTS:

4. Mr. R.V. Desai, learned senior counsel appearing on behalf of the Department contended that interest and discount paid by the assessee to IDBI and RBI (participating Financial Institutions) from part of the gross receipt of interest received by the assessee from its customer/borrower/drawer of the Bills of Exchange and, in the circumstances, the AO was right in not allowing deduction in respect of interest and discount paid by the assessee bank to IDBI and RBI (participating Financial Institutions). In this connection, our attention was invited to Section 5 of the Interest Tax Act, 1974. It was argued that u/s 5 of the Interest Tax Act, the scope of Chargeable Interest has been defined and the expression Chargeable Interest of any previous year of a Credit Institution has to be the total amount of interest accruing or arising to the Credit Institution in that previous year. Mr. Desai contended that under the above circumstances, interest and discount paid to the participating Financial Institutions did not constitute deduction under the Act. He submitted that the total amount of interest and discount received by Bank of Maharashtra from its borrowers constituted Chargeable Interest u/s 5 of the Interest Tax Act and, therefore, the AO was right in not allowing deduction in respect of interest and deduction paid to the participating Financial Institutions.

FINDINGS:

5. We do not find any merit in the arguments of the department. Assessee is Bank of Maharashtra. It is a Nationalized Bank. RBI has sanctioned Schemes for participating of Financial Institutions like IDBI, ICICI, RBI, LIC etc. in the matter of lending by Nationalized Banks. For this purpose, funds are disbursed by Participating Institutions to the Nationalized Banks at a lower rate of interest in cases where the funds are disbursed for specified Projects approved by Participating Financial Institutions. This is a finding of fact,

which is not disputed by the department. Hence, when the Bank receives interest from its borrower, it pays rediscounting charges to the Financial Institutions, participating in their advance. Therefore, in this case, the claim of the assessee-Bank is that rediscounting charges paid by it to the Participating Financial Institution stood excluded from the expression "chargeable interest" u/s 5 of the Interest Tax Act, 1974. this argument of the assessee-Bank is correct. The title to the rediscounting charges vests in the Participating Financial Institution which is IDBI in this case. That title does not vest in the assessee-Bank. Therefore, the rediscounting charges cannot be taxed as interest accruing or arising to the assessee-Bank u/s 5 of the Interest Tax Act. A bare reading of Section 5 of the Interest Tax Act shows that the chargeable interest of any Credit Institution shall be the total amount of interest accruing or arising to the Credit Institution. In this case, the rediscounting charges has not accrued or arisen to the assessee-Bank. Hence it cannot form part of chargeable interest in the hands of the assessee-Bank u/s 5 of the Interest Tax Act. The interest received by the assessee-Bank excluding the rediscounting charges would certainly fall within the ambit of Section 5 of the Interest Tax Act. Our view is supported by the judgment of the Karnataka High Court in the case of [Commissioner of Income Tax Vs. Canara Bank, .](#)

CONCLUSION:

6. Subject to above, we answer the Question referred to us in the affirmative i.e. in favour of the assessee-Bank and against the department.
7. Accordingly, this Reference is disposed of. No order as to costs.