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**(2001) 05 DEL CK 0164**

**Delhi High Court**

**Case No:** Income-tax Reference No. 109 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Orissa Cement Ltd.

RESPONDENT

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**Date of Decision:** May 17, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 256(2)

**Citation:** (2001) 5 AD 432(1) : (2001) 93 DLT 245(1) : (2001) 59 DRJ 640 : (2001) 252 ITR 878

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** R.C. Pandey, Prem Lata Bansal and Ajay Jha, for the Appellant;

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### **Judgement**

Arijit Pasayat, C.J.

Pursuant to the directions given by this court on an application made u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), the Income Tax Appellate Tribunal, Delhi Bench "D" (for short "the Tribunal"), has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no disallowance could be made out of the interest paid by the assessed on its borrowed capital by reference to the funds advanced by it to its subsidiary company ?"

2. The factual position in a nutshell is as follows :

The assessed is a company incorporated under the Companies Act, 1956 (in short "the Companies Act"). At the relevant point of time it carried on business of manufacture and sale of cement. It had advanced an interest-free loan of Rs. 20,00,000 to its subsidiary, Utkal Investment Ltd., on three dates. The Income Tax Officer, took the view that the assessed-company was paying interest at a heavy rate on its own borrowings and the funds had been advanced voluntarily to the

subsidiary company which amounted to diversion of income from its own hands. The assessed had raised loans from the banks and other depositors in two assessment years, i.e., 1976-77 and 1975-76, to the extent of Rs. 87,31,060 and Rs. 1,13,97,286, respectively. Interest at 11 to 15 per cent, was paid to the depositors and banks. Accordingly, the Income Tax Officer brought to tax a sum of Rs. 48,000 representing interest on the loans at 12 per cent, per annum. The assessed's stand that the amount had been advanced out of the sale proceeds and not out of the borrowed funds was not accepted. In appeal, the Commissioner of Income Tax (Appeals), held that no disallowance out of the interest paid by the assessed on its own borrowings could be made. He recorded a positive finding that the advance to the subsidiary company did come out of the sale proceeds. The Revenue carried the matter in appeal before the Tribunal. Considering the factual aspects the Tribunal upheld the Commissioner of Income Tax (Appeals) views. A prayer for reference was made which was rejected. Subsequently pursuant to the directions given by this court, the question as set out above has been referred for opinion.

3. We have heard learned counsel for the Revenue. There is no appearance of behalf of the assessed in spite of notice. Learned counsel for the Revenue submitted that when the assessed had paid interest to the depositors and the banks, there was no reason why it should have given money without interest to the subsidiary company.

4. We find that a finding of fact has been recorded by the Commissioner of Income Tax (Appeals) and the Tribunal to the effect that the advance to the subsidiary company came out of the sale proceeds and not out of the funds borrowed from the depositors and the banks. The conclusion is essentially factual, giving rise to no question of law. We, Therefore, decline to answer the question referred.

5. The reference application is accordingly returned unanswered.