IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.425 OF 2003

Bank of India, having office at
Express Towers, Nariman Point,
Mumbai-400 021 ***...Appellant***

V/s.

Deputy Commissioner of Income Tax, Special Range-15, Mumbai. ***...Respondents***

Mr. Subhash S. Shetty *with Mr. Atul K. Jasani for the Appellant.*

Ms. Samiksha R. Kanani *for the Respondent.*

CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Dated: 12 JUNE 2025.

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. This Appeal under Section 260A of the Income-tax Act, 1961 has been filed by the Assessee and pertains to the assessment year 1992-93. The appeal was admitted on following substantial question of law :-

> *Whether on the facts and in the circumstances of the case the Tribunal was justified in coming to the conclusion that the subsidy of Rs.12,93,55,595/- received by the Appellant from Reserve Bank of India under the Export Credit (Interest Subsidy) Scheme, 1968 forms part of assessable interest under section 2(7) of the Interest Tax Act, 1974.*

2. Facts giving rise to filing of this appeal are that the Appellant is a Public Sector Banking Company formed with the principal object of engaging in banking activity which *inter alia* comprising of receiving deposits from the public and deploying such deposits with borrowers as advances with a view to earn interest income. The Assessee filed return of income for the year 1992-93 and declared net chargeable interest at Rs.4,46,54,29,457/-. In the said return Assessee did not include the interest subsidy of Rs.12,93,55,596/- as chargeable interest received by it from the Reserve Bank of India (**RBI)** on the ground that the said subsidy does not fall within Section 4 of the Interest Tax Act, 1974 (hereinafter referred to as **the Act**). The case of the Assessee was selected for assessment under Section 8 of the Act.

3. The Assessee filed the requisite details and explanation during the course of assessment proceedings in respect of various issues raised by the Revenue. The Assessing Authority however, by an order dated 24 March 1995, by placing reliance on decision of the Karnataka High Court in ***CIT vs. Vijaya Bank***[1] *inter alia* saddled the Assessee with the interest tax on the interest subsidy of Rs.12,93,55,595/- received from the Assessee from the RBI under Export Credit (Interest Subsidy) Scheme, 1968 (**the Scheme)**. The Assessor computed assessable chargeable interest at Rs.705,64,57,822/-. Being aggrieved by the said order the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax

1 (1989) 175 ITR 811

(Appeals) by order dated 31 January 1996 affirmed the order passed by Assessing Officer and dismissed the appeal preferred by the Assessee. Thereafter the Assessee assailed the order before the Income Tax Appellate Tribunal (**the Tribunal)**. The Tribunal by placing reliance on decision of the Karnataka High Court in ***CIT V/s. Vijaya Bank*** (supra) and the orders passed in Assessee's own cases, in relation to previous years, dismissed the appeal. In the aforesaid factual background this appeal has been filed.

4. Learned counsel for the Assessee while inviting the attention of this Court to Section 2(7) of the Act submitted that amount of subsidy received by the Assessee from the RBI on the Scheme cannot be treated as 'interest' under Section 2(7) of the Act. It is submitted that the issue involved in the instant appeal is no longer *res integra.* In support of the aforesaid submission reliance has been placed on decisions of the Supreme Court in ***State Bank of Patiala V/s. Commissioner of Income -Tax***[2] and ***Muthoot Leasing and Finance Ltd. and Another V/s. Commissioner of Income-Tax***[3]***.*** It is pointed out that issue has been answered in favour of the Assessee by the Division Bench of Delhi High Court in ***Punjab National Bank V/s. Commissioner of Income-Tax***[4]. It is further pointed out that the Special Leave Petition preferred by the Revenue against aforesaid decision has been dismissed by the Supreme Court. In support of his submission reference has also been made to another decision of the Division Bench of

2 (2016) 383 ITR 244(SC)
3 (2023) 450 ITR 496 (SC)
4 (2011) 332 ITR 337 (Delhi)

Delhi High Court in ***P.N.B. V/s. Commissioner of Income Tax***[5] as well as decision of Rajasthan High Court in ***Commissioner of Income-Tax, Jaipur-II V/s. State of Bank of Bikaner & Jaipur***[6]**.**

5. On the other hand, the learned counsel for the Revenue submitted that real nature of payment received by the Assessee from the RBI is required to be assessed. It is further submitted that the aforesaid amount is paid to the Assessee to compensate the Bank for interest shortfall due to concessional export credit. It is contended that it is deferred or indirect interest income and the Court must look at the real nature of transaction nor merely its form or label. It is contended that Section 2(7) of the Act uses the expression 'means' and 'includes' and therefore the expression 'includes' suggests an inclusive and expansive scope, which permits inclusion of indirect interest receipts, which arise in relation to loan and advances. It is submitted that amount of subsidy payable to the Assessee arises out of compensation for interest on loan and therefore it partakes the character of interest. In support of her submissions, reference has been made to the Division Bench decision of the Madhya Pradesh High Court in ***State Bank of Indore V/s. Commissioner of Income-tax***[7]

6. We have considered the rival submissions made by both the learned counsel appearing for the parties and perused the records.

---

5 (2010) 2 taxmann.com 137 (Delhi)
6 (2015) 63 taxmann.com 103 (Rajasthan)
7 (2004) 140 Taxman 500 (MP) (2004

7. The solitary question for consideration is whether the amount of subsidy received by the Assessee from RBI under the Scheme can be treated as ‘interest’ as defined under Section 2(7) of the Act. Before proceeding further it is apposite to take note of Section 2(7) of the Act, which reads as under:-

> 2(7) “interest” means interest on loans and advances made in India and includes-
>
> (a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and
>
> (b) discount on promissory notes and bills of exchange drawn or made in India, but does not include-
>
> (i) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934(2 of 1934);
>
> (ii) discount on treasury bills;

8. The Supreme Court in ***State Bank of Patiala*** (supra) dealt with Section 2(7) of the Act and *inter alia;* held that unlike the Income Tax Act in a very narrow taxable event which does not include within its ken interest payable on default in payment of amounts due under a discounted bill of exchange. In paragraph 15 it was held as under:

> *“15 …In our view, the scope and definition of the term 'interest' cannot be interpreted to bring within its fold any income that is booked by an assessee under the head interest. The character of an overdue bill is not synonymous with the loans and advances and, therefore,*

> *it will not fall within the ambit and scope of interest under section 2(7) of the Interest-tax Act. Parliament in its own wisdom has not included any amount that is recovered in the form of interest, penalty or otherwise under the definition of interest and had it been so, such nature of amount as contended by the Revenue could have been brought within the ambit and scope of interest.*

9. In ***Muthoot Leasing and Finance Ltd. and Another (supra),*** it was *inter alia;* held that character of overdue bill is not synonymous to loans and advances and therefore, it will not fall within the scope and ambit of interest under Part-I of Section 2(7) of the Act. It was further held that interest is chargeable to tax under the Act only if it arises directly from a loan or advance and not otherwise. It is well settled in law that in construing fiscal statutes and in determining the liability of the subject to tax one must have regard to the strict letter of law. It is equally well settled legal proposition that if a case is not covered within the four corners of provision of taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature. ***[SEE : AV FERNANDEZ VS. STATE OF KERALA, AIR 1957 SC 657].*** It is equally settled proposition in law that before taxing any person it must be shown that he falls within ambit of charging section by clear words used in the Section. *[**SEE : COMMISSIONER OF WEALTH TAX, GUJARAT VS. ELLIS BRIDGE GYMKHANA, AIR 1998 SC 120.]***

10. In the backdrop of aforesaid principles, we may now revert to the facts of the case in hand. In the instant case, no

loan or advance was given by the assessee to the RBI. Therefore, any amount received by the assessee from the RBI in the form of a subsidy or compensation for loss on interest by whatever name it may be called, would not convert the amount received by the assessee from the RBI to interest, as defined under Section 2(7) of the Act. The amount of subsidy received by the Assessee is not relatable in loan or advance given by the assessee to the RBI and therefore, the amount of subsidy can neither be treated as commitment charges nor discount on promissory notes on bill of exchange drawn or made in India. Therefore, the amount of subsidy received by the assessee from the RBI under section 42(1B) of the RBI Act, 1934 cannot be treated as interest chargeable under Section 4 of the Act. It is pertinent to note that similar view was taken by a Division Bench of Delhi High Court in ***PUNJAB NATIONAL BANK VS. COMMISSIONER OF INCOME TAX[8].*** Against the aforesaid decision of Delhi High Court, the Revenue preferred an SLP before the Supreme Court which has been dismissed.

11. In view of the preceding analysis, the substantial question of law is answered in the negative. In the result, the impugned orders dated 31st January 1996 and 15th January 2003 passed by the Tribunal are quashed and set aside. In the result, the appeal preferred by the Assessee is allowed.

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**

8 ***(2011) 332 ITR 337 (Delhi)***