

Court No. - 3

Case :- INCOME TAX APPEAL No. - 141 of 2005

Appellant :- The Commissioner Of Income Tax-I,Lucknow

Respondent :- M/S Sahu Investment Mutual Benefit Co.Ltd.

Counsel for Appellant :- D.D. Chopra,Pushpila Bist, Manish Misra

Counsel for Respondent :- S.K.Garg,Waseequddin Ahmad

Hon'ble Sudhir Agarwal,J.

Hon'ble Ravindra Nath Mishra-II,J.

1. Heard Sri Manish Misra, learned counsel for appellant and Sri Ashish Bansal, Advocate holding brief of Sri S.K. Garg, learned counsel for respondent.

2. This appeal under Section 260-A of Income Tax Act, 1961 (*hereinafter referred to as the "Act, 1961"*) has arisen from judgment and order dated 29.04.2005 passed by Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (*hereinafter referred to as the "Tribunal"*) in I.T.A. No. 552/Alld/2000, C.O. No. 23/Luc/2003, ITA 243/Alld/2000 for Assessment Year (*hereinafter referred to as the "A.Y."*) 1993-94.

3. Appeal was admitted on the following substantial questions of law:

1. Whether on the facts and circumstances of case Tribunal is justified in deleting the disallowance out of interest / commission paid by Assessee to depositors, to the extent it has less charged from Promoters and their relatives and their sister concerns?

2. Whether on the facts and circumstances of case, Tribunal is justified in ignoring ratio of decision laid down by Jurisdictional High Court in H.R. Sugar Factory P. Ltd. 187 ITR 363?

4. M/s Sahu Investment Mutual Benefit Co. Ltd. (*hereinafter referred to as the "Assessee"*) is a Mutual Benefit Company. As per Memorandum

of Association, main objectives of Assessee are, (i) to receive deposits from shareholders and (ii) to lend money to shareholders. A Mutual Benefit Company is supposed to take deposits/ give advances only to its members or shareholders.

5. During the A.Y. 1993-94, Rs. 1,12,14,665.30 was paid as interest on deposits. Interest on deposit scheme is calculated on product basis. Further interest is calculated on quarterly compounding basis in F.D.R. Schemes and half yearly basis in other schemes. Further a sum of Rs. 38,13,119.10 was debited in profit and loss account towards commission to agents, for procuring these deposits. Against this, total receipt from interest was Rs. 1,27,50,047.20 and Rs. 7,87,014.36 from Banks. Assessing Officer calculated commission on interest paid/payable on deposits as 34%. Administrative and establishment expenses were claimed as Rs. 27,84,389/-. Besides, Assessee Company also paid Interest Tax as Rs. 3,08,544/-.

6. During relevant A.Y. 1993-94, Assessee had five Directors, namely, (i) Sri C.L. Sahu, (ii) Sri K.C. Tripathi, (iii) Sri Anil Sahu, (iv) Sri A.K. Gupta and (v) Sri C.B. Gupta. Assessee has been accumulating losses in several past years. As on 01.04.1992 losses were reflected at Rs. 44,53,045/-. Borrowed funds were utilized in advancing loans (unsecured as per Assessing Officer) as under:

"a) Angalia Finance (P) Ltd. (A subsidiary Co.

<i>of the Assessee Company)</i>	27,23,776.10
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<i>b) Other unsecured loans</i>	8,72,33,760.00"
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7. M/s Angalia Finance (P) Ltd., a subsidiary company of Assessee was advanced unsecured loan at the rate of interest of 19% per annum. Other advances made to Authorized Signatories of sister concerns, as under:

Name of the party	Rate of intt. charged during the year	Amount outstanding as on 31.3.93
1. Mr. Santosh Kr. Sahu	18%	5,86,983.00
2. Mrs. Veermati Sahu	16%	4,76,128.00
3. Mr. Sanjay Kr. Sahu	16%	11,11,118.00
4. Mr. Ajay Kr. Sahu	16%	56,40,687.00
5. M/s Sahu Enterprises (P) Ltd.	21%	72,13,856.00
6. Mrs. Nirmala Sahu	16%	46,23,496.31
7. M/s Sahu Instalments (P) Ltd.	21%	23,72,523.00
8. Mr. Ram Narain Sahu	16%	37,92,257.00
9. Mrs. Manisha Sahu	16%	1,30,755.00
10. Mr. Neeraj Kr. Sahu	16%	12,27,277.00
11. Mr. Vijay Kr. Sahu	16%	20,67,682.48
12. Mr. Subhash Kr. Sahu	16%	12,40,984.20
13. Mr. Laxmi Narain Sahu	16%	14,16,599.00
14. M/s Gemini Continental (P) Ltd.	21%	9,19,392.00
15. Mrs. Meera Sahu	16%	3,88,724.50
16. M/s Sahu Exhibitors (P) Ltd.	21%	48,24,216.00
17. Mrs. Vimla Sahu	16%	4,12,991.00
18. Ms. Rachna Sahu	16%	1,27,717.00
19. Mr. Akash Sahu	16%	1,27,717.00
20. Ms. Sapna Sahu	16%	1,27,763.00
21. Mrs. Nisha Sahu	16%	1,10,445.00
22. M/s Sahu Leasing (P) Ltd.	20%	2,53,59,980.68
23. M/s Sahu Construction (P) Ltd.	23%	67,06,931.00
24. M/s Norton Electronic Systems (P) Ltd.	23%	56,75,033.00
25. Mrs. Kiran Sahu	16%	1,12,230.00

8. Interest rates earlier being 20% in A.Y. 1992-93 was reduced to 16% in A.Y. 1993-94. Assessing Officer (*hereinafter referred to as the "A.O."*) found that Assessee has paid compound interest including commission charges on various deposit schemes at higher rate. Interest has been charged on unsecured loans, from above persons, at simple interest at 16% per annum, thus resulting in interest received/

receivable of Rs. 1,24,41,611.51 as against Rs. 1,51,91,943.03 paid by Assessee as interest and commission to obtain these deposits under various schemes. There is thus a difference of loss, which varies from Rs. 27 lacs and odd.

9. By this system, Assessee has received funds from public in the form of various types of deposits, by paying a high rate of interest, and commission to agents, and advanced these funds in the form of unsecured loans mainly to sister concerns at a very low rate of interest. It is pertinent to mention that in cases of loans, other than to sister concerns, Assessee has charged interest upto 28% p.a. also.

10. It was also noticed from the books of accounts produced, that, interest has been paid to depositors under various schemes on product basis with quarterly/ half yearly compounding of interest but interest charged from Authorized Signatories or their related business concerns has been calculated on simple interest basis and that too without quarterly/ half yearly compounding.

11. A.O. took the view that expenditure in regard to payment of interest on borrowings has not been incurred wholly and exclusively for business purposes by resorting to colourable device for siphoning the profit to its sister concerns and a few selected share holders amongst total share holders numbering 30,000.

12. In the case of Assessee, funds have been borrowed in the form of various types of deposits, from public for which not only high interest but also heavy Commission has been paid. Subsequently, funds have been deployed by Assessee, percentage wise in following manner:

i) secured loans (Higher Purchase, Pledge of gold and FDRs)	7.5% of total funds available
ii) Unsecured loans to sister concerns including subsidiary company	90.0% of total funds available
iii) Others	2.5% of total funds available

13. A.O. thus held that Assessee has not used funds for its own business but has merely advanced in the form of unsecured loans, at a low rate of interest of 16% per annum, in majority of cases to sister concerns. In this way it has incurred loss, year after year, and has shown a loss of Rs. 41,76,919/- during the year itself as per profit and loss account. A.O., therefore, disallowed interest charged less from sister concerns and said that it cannot be allowed as "deduction". It held that instead of 16% interest, amount chargeable shall be taken as 24.50%. In the result it disallowed interest and commission of Rs. 29,20,123/-.

14. In appeal preferred by Assessee before Commissioner of Income Tax (Appeals) (*hereinafter referred to as the "CIT(A)"*), it examined statutory character of a "Mutual Benefit Company" and found that in terms of Government of India's notification dated 31.07.1987, issued by Ministry of Industry (Department of Company Affairs), New Delhi, under G.S.R. 597, Assessee has been declared 'Nidhi' under Section 620A of Companies Act, 1956 (*hereinafter referred to as the "Act, 1956"*).

15. Section 620A of Act, 1956 reads as under:

"620A. Power to modify Act in its application to Nidhis, etc.--

*(1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a **Nidhi or Mutual Benefit Society**, as the case may be.*

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification-

(a) shall not apply to any Nidhi or Mutual Benefit Society, or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub- section (1) shall be laid as soon as may be after it is issued, before each House of Parliament."

16. The nature of "Mutual Benefit Company" was explained by observing that their objects inter alia are to enable members to save money or invest their savings and secure loans at favourable rates. They inculcate idea of thrift and compulsory savings in the minds of poor and middle class people. It was pointed out that A.O. wrongly held that "Mutual Benefit Company" cannot admit, as member, any body corporate or trust, since this amendment came into force by notification dated 04.12.1995 and not applicable in A.Y. 1993-94, in question in this appeal. With regard to advancement of loan to certain individuals, CIT(A) held that A.O. forgot that Assessee is a Company which is authorized to advance loans and accept deposits. CIT(A) held that Assessee is a "Nidhi Company" and transaction of raising funds and lending were confined amongst its members only. There were no borrowings as such from banks or any other Institutions, therefore, question of diversion of such borrowings did not arise. The huge sum of Rs. 29,20,123/- as has been added, neither accrued from income nor became legally due or payable. CIT(A) found that there is virtually no difference in interest charged and paid. In this regard a chart has been prepared as under:

Name of the party	Rate of Interest	Intt. amount charged	Intt. amount chargeable @18.81%
1. M/s Anglia Finance Co. Ltd.	19%	4,80,405	4,75,601
2. Mrs. Veermati Sahu	16%	64,091	75,346
3. Mr. Ajai Kumar Sahu	16%	7,28,393	8,56,317
4. Mr. Sanjai Kumar Sahu	16%	1,53,229	1,80,139

5. M/s Sahu Enterprises (P) Ltd.	21%	13,12,916	11,75,997
6. Mrs. Nirmala Sahu	16%	6,41,617	7,54,301
7. Sahu Instalments P. Ltd.	21%	4,08,471	3,65,874
8. Mr. Ram Narain Sahu	16%	5,21,647	6,13,261
9. Mrs. Manisha Sahu	16%	19,207	22,580
10. Mr. Neeraj Kumar Sahu	16%	1,66,678	1,96,186
11. Mr. Vijay Kumar Sahu	16%	71,338	83,866
12. Mr. Shubhash Kr. Sahu	16%	1,68,524	1,98,121
13. Mr. Laxmi Narain Sahu	16%	1,95,393	2,29,709
14. Gemini Continental P. Ltd.	21%	1,55,055	1,38,885
15. Mrs. Meera Sahu	16%	49,661	58,381
16. M/s Sahu Exhibitors (P) Ltd.	21%	5,83,397	5,22,557
17. Mrs. Vimla Sahu	16%	44,861	52,739
18. Mrs. Ratna Sahu	16%	13,247	15,573
19. Mr. Akash Sahu	16%	13,247	15,573
20. Mrs. Sapna Sahu	16%	10,195	15,208
21. Ms. Nisha Sahu	18%	10,195	11,985
22. M/s Sahu Const. (P) Ltd.	23%	7,42,610	6,07,326
23. M/s Sahu Leasing (P) Ltd.	20%	31,20,172	29,34,521
24. M/s Norton Electronics Systems (P) Ltd.	23%	8,64,436	7,06,958
25. Kiran Sahu	16%	12,230	14,378
26. Prakash Kumar Sahu (C/o Prakash Wine Agencies)	20%	24,554	23,092
27. Neeraj Kumar Sahu (C/o Sahu Agencies)	20%	38,493	36,202
28. Vijay Kumar Sahu (C/o Vijay Kumar Santosh Kumar & Co.)	20%	33,126	33,155
29. Shubhash Kumar Sahu (C/o Sahu Hotel & Restaurant)	20%	22,460	21,124
30. Ajai Kumar Sahu (C/o Sahu Investments)	20%	17,752	16,696
	Total	1,06,90,541	1,04,49,652

17. CIT(A) observed that there is a difference of only Rs. 2,40,000/- whereas cost of general administration and infrastructure, as is required

to maintain corporate status, would be much more. Hence on this fact also there is no under recovery of interest as alleged by Assessee.

18. Against this part of the order of CIT(A), dated 10.01.2000, Revenue preferred appeal before Tribunal which has been rejected. Tribunal has recorded findings, relevant for our purposes, in paras 10 and 11, as under:

*"10. We have carefully considered the submissions of the ld. Representatives of the parties and have perused the orders of the authorities below. There is **no dispute to the fact that the assessee is a company, which is recognized as a "Nidhi" or a Mutual Benefit Society** in terms of provisions of Section 620A of the Companies Act, 1956. A statutorily recognized Mutual Benefit Society or Nidhi **can enter into transaction of accepting the deposit and lending only amongst its members**. We observe that the assessee from time to time launched the various schemes to mobilize deposits. In the assessment year under appeal, we observe that **the assessee received under various schemes as on 31st March, 1993, the deposit of aggregate amount of Rs. 10,96,57,299=15 on different rate of interest**, the details of which are given by the Assessing Officer in para 3 at page 2 of the assessment order. The assessee contended that **the money so received from its shareholders/ members could not be put to immediate utilization and with a view to ensure proper and timely utilization of the funds, it invested a part of the fund to various persons, who happened to be closely related and/ or the promoters of the assessee**. We find substance in the submission of the ld. Authorized Representative of the assessee that **the accepting of deposit and lending of money is a contractual one and it depends on the business expediency**.*

*11. During the course of hearing, the ld. Authorized Representative of the assessee submitted that the assessee **while lending the money, had to keep in mind its recoverability** and also to recall of the money from its lenders on a shorter notice to meet the requirements of the other members of the assessee. **No facts have been brought on record by the Department that the assessee had lent the money so received to its promoters and related to the promoters / closely held sister concerns at a***

*lower rate of interest on the one hand and denied the lending to other members. In view of the above, we agree with the ld. Authorized Representative of the assessee that if the assessee is in surplus of the money received from its members and instead of keeping the same as idle it had lent to others even at a lower rate of interest on consideration of commercial expediency; the said decision of the assessee cannot be assailed merely on the fact that the assessee raised the deposits at the higher rate and whereas it lent at a lower rate of interest, unless some material is brought on record that it was an intentional colourable device adopted by the assessee to siphon off the fund of the assessee company. We observe that it is not the case of the Department that the assessee has not disclosed the correct rate of interest and/ or it was to receive higher rate of interest, but the assessee waived a part of the interest or it has accounted for lesser rate of interest in its books of account and thereby showing lesser profit. We observe that the A.O. has added the said sum of Rs. 29,20,123/- by calculating the notional income of the assessee on the basis that the cost of fund to the assessee was at the rate of 24.5% and, therefore, the assessee company should have charged the interest at the said rate from the persons to whom it hand lent money. Hon'ble Supreme Court of India had held that the **income tax is levied on the income earned by the assessee and not on the income that could have been earned by and assessee**. It was further held by their Lordships in the case of Calcutta Discount Co. Ltd., 91 ITR 8 and in the case of A. Raman & Co., 67 ITR 11, that **if the assessee had, in fact, not earned any income, there could not be any levy of income and further the law casts no obligation upon any assessee to earn income**. The Hon'ble Calcutta High Court has also held in the case of Kewalchand Bagdi vs. CIT, 183 ITR 207, that **no hypothetical income can be assessed, which cannot be realized**. The Hon'ble Guahati High Court has also held in the case of B & A Plantations and Industries Limited vs. CIT, 242 ITR 22, that if the assessee had not bargained for interest or had not collected interest it was not open to income tax authorities to fix a notional interest and assessed it. In view of the above, we agree with the ld. CIT(A) that there is no question of diversion of borrowings and/ or diversion of profits by the assessee. Hence, **neither there was an accrual of income, which could be added on a notional basis to the income of the assessee.***

Therefore, we uphold the order of CIT(A) in deleting the said addition of Rs. 29,20,123/- made by the Assessing Officer. Since we have agreed with the order of the CIT(A) in deleting the said addition of Rs. 29,20,123/- made by the Assessing Officer on account of under charge of interest, we do not consider it necessary to deal with the other contention of the assessee i.e. whether the charging of lower interest should be considered as a rebate to its members and to be considered as an allowable expenditure u/s 37 of the Act. Hence, ground no. 1 of the appeal taken by the Department for assessment year 1993-94 is rejected." (emphasis added)

19. Learned counsel for Revenue argued before us that loans were advanced mainly to Directors, promoters, family members of promoters at a much lower rate, causing persistent loss hence, there was no wise business dealing/ transaction, hence A.O. rightly lifted veil and found a less charged amount of interest and added lesser interest by calculating same at 24.50%. He placed reliance on judgments in **Commissioner of Income Tax, Gujarat II vs. B.M. Kharwar, 1969(72) ITR 603 (SC); McDowell and Co. Ltd. vs. Commercial Tax Officer, 1985(154) ITR 148 (SC); Juggi Lal Kamalapat vs. Commissioner of Income Tax, U.P., 1969(73) ITR 702 (SC); Union of India vs. Playworld Electronics (P) Ltd. 1990(184) ITR 308 (SC); The Union of India vs. Gosalia Shipping (Pvt.) Ltd., 1978(113) ITR 307 (SC); Sunil Siddharthbhai vs. CIT (1985) 156 ITR 509 (SC); and, The Commissioner of Income Tax, Madras vs. Sri Meenakshi Mills Ltd., Ors., 1967(63) ITR 609 (SC).**

20. The arguments advanced and authorities cited on the part of Revenue, with great respect, are totally misconceived and inapplicable for the reason that bereft of facts, regarding nature of business of Company and other relevant aspects, a decision rendered in respect of a different nature of Company involving different activities and business, having different factors, cannot be applied universally in all cases. A minor deviation in a fact may have a wider impact on the ultimate inference and conclusion. In the present case A.O., at least, has found

no fallacy or incorrectness in the statement or fictitious nature of transaction.

21. Assessee is a Mutual Benefit Company duly declared so by Government of India, Ministry of Finance, under Section 620A of Act, 1956. Objective of Assessee is to receive, deposit and advance loans to its members. A.O. did not find that advancement of loan was not to the members of Assessee Company, but what it has observed, that a corporate body could not have been member of Assessee Company ignoring the fact that this prohibition came into force in 1995, hence was not applicable in A.Y. 1993-94.

22. If this finding of A.O. is excluded, then what facts remained as recorded by A.O. are that loans were advanced to the members of Assessee Company. No evidence also has come on record before A.O. that the rate of interest claimed by Assessee in respect of advance of loans to members was incorrect or there existed any otherwise agreement which was not disclosed. Entire observations of A.O. are based on assumptions and presumptions.

23. Higher rates of commission paid to agents was not without any fruits inasmuch as in para 4, A.O. himself has observed that paid up share capital of Assessee Company during the year in question remained at Rs. 3,00,000/-, like last year, but deposits have gone up substantially. That was the objective of paying commission to agents so that larger deposits may be collected and it was achieved. It goes in favour of Assessee.

24. In regard to functioning of Assessee, yardstick has to be applied from businessman point of view and not according to A.O. In **Commissioner of Income Tax, Bombay vs. Walchand and Co. Private Ltd., 1967(65) ITR 381 (SC)** and **Voltamp Transformers (P.) Ltd. vs. Commissioner of Income Tax, 1981(129) ITR 105 (Guj)** Court observed, whether there is any actual loss or profit, is not to be

examined by A.O. from its own point of view but activities of businessman have to be examined from the point of view of businessman. It is only Assessee who knows commercial and business relations and situation thereof. Department is not supposed to interfere in such business dealings of Assessee. This is what was held by Calcutta High Court also in **Sri Kewal Chand Bagri Vs. Commissioner of Income Tax**, 1990(183) ITR 207.

25. This Court in **Commissioner of Income Tax (Central) vs. Sahara India Mutual Benefit Co. Ltd.**, 2014(1) ADJ 545 followed observations made in **Highways Construction Co. (P.) Ltd. v. CIT**, 1993 (199) ITR 702 (Gauhati) that additions made by A.O. on notional interest which was not in existent, is not legal. If Assessee had not bargained for interest, or had not collected interest, we fail to see how Income Tax authorities can fix a notional interest as due, or collected by Assessee. No such provision exist in Act, 1961 empowering Revenue to include in the income, interest which was not due or collected.

26. There cannot be any doubt, if there is a case of evasion of tax, Court can take appropriate view so as not to allow any person to evade tax but simultaneously, for fanciful notions of so called prudent business transactions, assumed by an Income Tax authority, something which is notional or non-est, cannot be converted into income for the purpose of attracting tax liability. Precedents cited on behalf of Revenue are not in respect of Assessee which was a Mutual Benefit Company but had a different status and are not applicable in this case.

27. Two judgments very heavily cited and relied by appellant, i.e., **Commissioner of Income Tax vs. Saraya sugar Mills (P.) Ltd.** (1992) 193 ITR 575 and **Commissioner of Income Tax vs. H.R. Sugar Factory Pvt. Ltd.** (1991) 187 ITR 363 have already been considered by this Court in **Income Tax Appeal No. 139 of 2005** (The

Commissioner of Income Tax Vs. M/s Raj Kumar Singh and Co.), decided on 09.01.2017 and in paras 5 and 6, both judgments have been distinguished by referring to relevant distinguishing features in the aforesaid judgments as under:

5. So far as Question-2 is concerned, we find that both the decisions are not applicable to the case in hand and do not help Revenue in respect to its claim with regard to the amount involved in Question-1. The judgment in **CIT Vs. Saraya Sugar Mill Pvt. Ltd. (supra)** was decided on its own peculiar facts as is evident from following:

*"The Income-tax Officer was of the opinion that the interest relatable to the amount lent to the directors and to the said firm cannot be granted deduction, because it cannot be said that money to that extent was borrowed for the purpose of the said company. We find from the statement of the facts and the order of the Tribunal that the **amounts advanced to the directors and their firm, free of interest, are quite substantial and that it was a continuing course of conduct and not an isolated transaction.** In such circumstances, the principle of the said decision clearly applies."*

6. Similarly, in **CIT Vs. H.R. Sugar Factory P. Ltd. (supra)** also the matter was decided on the facts of that case as is evident from a bare perusal of following extract of judgment:

*"The assessee, a private limited company closely held by three family groups, is made to lend huge amounts (up to 23-lakhs of rupees as per the compromise arrived at between the assessee and the directors/shareholders in the civil suits referred to above) at a very low rate of interest and the entire difference of interest is being charged to the assessee. **The assessee is not a finance company. It is engaged in the manufacture of sugar.** No business purpose of the assessee-company is served by such lendings to its directors/shareholders. It cannot be said that it is expedient in the interest of business or is laid out for the purpose of the business of the assessee. It is not even a case where employees of the company are being lent some small amounts at a lower rate of interest with a view to keep them happy and satisfied."*

*The amount of interest paid each year payable on account of the loans to directors is very substantial and this fact cannot be glossed over by saying that the amount is not substantial in each of the years. It must be remembered that, in pursuance of the compromise referred to above, the limit of amounts to be lent to the directors/shareholders was substantially raised while, at the same time, drastically reducing the rate of interest to be charged to them. It is clear that the directors/shareholders are taking unfair advantage of their control over the assessee and that they are exploiting it for their private ends. We are not saying that it is a device; we need not go that far. What has happened in this case is self-evident, viz., the assessee is made to pay huge amounts by way of interest on account of heavy amounts advanced to its directors, **bearing no relation whatsoever with the business purpose of the assessee.** A look at the figures mentioned in the questions referred clearly shows that huge amounts are being paid by the assessee on account of interest. May be that the company borrows large amounts for the purpose of its business every year, but that does not explain the huge advances to the directors/shareholders. Had this money been not advanced to the directors, it would have been available to the assessee for its business purposes and to that extent it may not have been necessary to borrow from the banks." (emphasis added)*

28. Deduction under Section 36(1)(iii) of Act, 1961 is applicable in respect of interest of loan raised for business purpose. Section 36 is a residual Section in respect of certain deductions which are to be made from income of Assessee while arriving at taxable income and that is why it is nomenclatured as "other deductions". Any amount on account of interest paid becomes an admissible deduction under Section 36, if interest was paid on capital borrowed by Assessee and this borrowing was for the purpose of business or profession. This is very clear from Section 36(1)(iii) of Act, 1961.

29. In the present case, deposits were received from members and loans and advances were given on interest to members which is the

business of Assessee Company. Thus all transactions were for the purpose of business. In such a scenario, when interest was actually paid by Assessee or accrued, who followed mercantile system of accounting, on application of this statutory provision, on incurring of such interest, Assessee would be entitled to deduction of full amount in assessment year in which it is paid.

30. We have found, genuineness of business borrowing and further the fact that borrowing was for the purpose of business, has not been found to be illusory, fictitious or colourable transaction. The factum that entire amount of interest has not been disallowed, shows that genuineness has been accepted even by A.O. That being so, no notion of so called prudent business transaction could have been imported by A.O. and it had to allow deduction. This is what has been held in **Taparia Tools Ltd. Vs. Joint Commissioner of Income Tax Special Range-I, 2015(7) SCC 540**. In para 9.2 of the judgment, Court said:

"Once the genuineness is proved and the interest is paid on the borrowing, it is not within the powers of the AO to disallow the deduction either on the ground that rate of interest is unreasonably high or that the Assessee had himself charged a lower rate of interest on the monies which he lent."

31. Whether amount of interest was actually realized or realizable both are treated as paid in view of Section 43(ii) of Act, 1961 which says that paid means actually paid or incurred according to method of accounting upon the basis of which profits or gains are computed under the head "profits and gains of business of profession". In **Taparia Tools Ltd. (supra)**, Court very categorically said that in order to attract deduction under Section 36(1)(iii) only the conditions required therein need be satisfied. It has said in para 16 of the judgment as under:

"We are, therefore, of the opinion that in order to be entitled to have deduction of this amount, the only aspect which needed

*examination was as to whether provisions of Section 36(1)(iii) read with Section 43(ii) of the Act were satisfied or not. **Once these are satisfied, there is no question of denying the benefit of entire deduction in the year in which such an amount was actually paid or incurred.**" (emphasis added)*

32. In the circumstances and in view of discussions made above, we are satisfied that once genuineness of transactions of deposits or advances are not doubted and not shown fictitious, colourable etc., mere fact that Assessee paid higher rates on amount received/ deposits or realized lesser rates on advances/ loans, would not entitle interference with the claim of deduction, on any notional basis as that is impermissible in law.

33. Learned counsel for appellant placed reliance on an earlier judgment in **Commissioner of Income Tax Vs. Sahu Enterprises Pvt. Ltd., 2013(352) ITR 8 (All)** wherein claim of deduction towards payment of interest on advances was disallowed and department's appeal was allowed. Assessee in the said case was a different personality and person for the purpose of Act, 1961. Sahu Theater was being run by Sri S.N. Sahu in his proprietorship. During his life time there was heavy losses as Sri S.N. Sahu made heavy withdrawals from his business. On his death, debit balance in his capital amount was distributed amongst his legal heirs. The business was taken over by partnership firm, namely, "M/s. Sahu Enterprises". Debit balances were reflected in the name of legal heirs and family members in balance-sheet. In 1991-92, business was taken over by M/s Sahu Enterprises Pvt. Ltd. with all assets and liabilities. Therein **interest-free advances** were given to Directors and relatives who used said amount for personal purposes. Some constructed houses, which were never used for the purpose of Company. Further, Company borrowed from market, funds at the rate of 20% interest. Moreover, Directors and relatives made no

attempt to repay loan to Assessee Company and still loan was never treated/shown as bad debt. This Court held that interest-free loan not advanced for the purpose of business will not justify a deduction of interest of loan under Section 36(1)(iii) inasmuch as Assessee had no capital of its own. It borrowed heavy funds from market on heavy interest and advanced loans to Directors and relatives, interest-free. Court held that the facts of that case makes it clear that deduction under Section 36(1)(iii) was not allowable. Relevant observations showing that decision was rendered in peculiar facts and circumstances of that case are as under:

*"In view of the above discussion and by **considering the totality of the peculiar facts and circumstances of the case**, it is established that the borrowed funds on interest will have to be utilized only for the purposes of business. But, in the case in hand, it was not done so. Had the directors or relatives have repaid the loan to the company, certainly proportionate borrowing liability might have been reduced. It makes no difference that the loan was borrowed in the earlier assessment years."*

"The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests. The business interest of the assessee has to be distinguished from the personal interest of its directors or partners, as the case may be. In other words, there has to be a nexus between the advancing of funds and business interest of the assessee. The appropriate test in such a case would be as to whether a reasonable person stepping into the shoes of the directors/partners of the assessee and working solely in the interest of the assessee, would have extended such interest-free advances. Some business objective should be sought to have been achieved by extending such

interest-free advance when the assessee itself is borrowing funds for running its business. It may not be relevant as to whether the advances have been extended but of the borrowed funds or out of the mixed funds, which included borrowed funds. The test to be applied in such cases is not the source of the funds but the purpose for which the advances were extended." (emphasis added)

34. The aforesaid judgment, therefore, has no application to the facts of this case.

35. Sri Manish Misra laid great stress upon the judgment in **Mcdowell and Co. Ltd. vs. Commercial Tax Officer (supra)** and contended that here is a case of tax avoidance device, hence it is duty of Court to expose and refrain Assessee from taking advantage of colourable device, it has planned. It is a Constitution Bench judgement. Majority judgment was delivered by Hon'ble Ranganath Misra, J. on behalf of Himself and Hon'ble Y.V. Chandrachud, C.J., Hon'ble D.A. Desai, J. and Hon'ble E.S. Venkataramiah, J, while a concurring but separate judgment was delivered by Hon'ble Chinnappa Reddy, J. Real dispute was, whether excise duty paid on liquor, sold by Company to wholesellers would be part of return for the purpose of assessment of sales tax. This question earlier came up before Court in **Mcdowell and Co. Ltd. Vs. CTO, 1977(1) SCR 914**. It was held that sales tax authorities were not competent to include any turn over of Assessee for excise duty which was not charged by it but paid directly to Excise authorities by buyers of liquor. Issue was decided in favour of Company. Thereafter rules were amended. Doubting correctness of earlier judgment, matter was referred to Larger Bench. In view of subsequent amendment in rules and considering the concept of excise duty, Court said:

"...payment of excise duty is a legal liability of the manufacturer; its payment is a condition precedent to the removal of the liquor from

the distillery and payment by the purchaser is on account of the manufacturer. According to normal commercial practice, excise duty should have been reflected in the bill either as merged in price or being shown separately. As a fact, in the hands of the buyer the cost of liquor is what is charged by the appellant under its bill together with excise duty which the buyer has directly paid on seller's account, the consideration for the sale is thus the total amount and not what is reflected in the bill. We are, therefore, clearly of the opinion that excise duty though paid by the purchaser to meet the liability of the appellant, is a part of the consideration for the sale and is includible in the turnover of the appellant." (emphasis added)

36. An argument was advanced that Company, if arranged its affairs so as not to include excise duty as a part of turn over of liquor, it should not be made taxable since it is a tax planning and it does not constitute tax evasion nor does it carry any ignominy. This question was answered in detail in the concurrent judgment of Justice Chinnappa Reddy, which was concurred by other Hon'ble Judges, by expressing, "*On this aspect one of us, Chinnappa Reddy, J., has proposed a separate and detailed opinion with which we agree.*" In the judgment of Justice Reddy there is a serious sarcastic attack on the proposition and Court observed that time has come when we should realize that we live in a welfare State whose financial needs, if backed by the law, have to be respected and met. There is, behind taxation laws, as much moral sanction as behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that it stands on no less moral plane than honest payment of taxation. The proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether transaction is not unreal and not prohibited by statute, but whether

transaction is a device to avoid tax, and whether transaction is such that judicial process may accord its approval to it. Court said that it is neither fair nor desirable to expect legislature to intervene and take care of every device and scheme to avoid taxation. It is up to the Court to take stock to determine nature of new and sophisticated legal devices to avoid tax and consider whether situation created by devices could be related to the existing legislation with aid of 'emerging' techniques of interpretation, to expose the devices for what they really are and to refuse to give judicial benediction.

37. Aforesaid authority, in our view, has no application in the case in hand considering the facts as already discussed above and findings of fact recorded concurrently by CIT(A) as well as Tribunal which nowhere shows a case of an attempt to evade tax or to discover a device for the said purpose.

38. Learned counsel for Revenue then heavily pressed on the point that here is a fit case where doctrine of "lifting of veil" must be applied and for that purpose, referred to the authorities noted above.

39. Though, as we have already discussed, neither aforesaid doctrine is applicable in the case nor there is any fraudulent activity or creation of artificial bodies for evasion of tax etc. so as to justify application of doctrine of "lifting of veil" but even otherwise, we find that aforesaid doctrine is not at all attracted in the case in hand particularly considering the fact that even A.O. neither has doubted nature and objective of Company, i.e., Mutual Benefit Company, nor the factum that loans were actually advanced to members and also rate of interest but on notional assumption of a prudent businessman it has applied a higher notional interest which actually did not exist at all.

40. Doctrine of "lifting of veil" is not to be applied on mere asking unless relevant facts, circumstances and conditions exist. Just to recapitulate the concept of Companies and when doctrine of "lifting of

veil" can be applied, we may go in historical backdrop of history of incorporation of companies.

41. The history of Modern Company Law can be traced back to 14th century (see Gower's Principles of Modern Company Law 4th Edition at page 24) when in England, under Royal Charters, Merchant Organisations were allowed to be engaged in Foreign Trade and Settlement. Formal incorporation was not essential and each member of Association traded with his own stock and on his own account subject to obeying Rules of the Company. Charters were normally obtained to acquire monopoly of trade for members of Company, and, Governmental power over the territory, the Company got right to trade. Loosely, this kind of trade used to be known as "Trading on joint stock in partnership". They were more in the nature of trade protection associations. In fact, East India Company which received its first Charter in 1600 was granted monopoly of trade with the Indies. These kinds of Charters became more prevalent in 16th century. With the passage of time, since number of foreign trading companies and Charters declined, there was a substantial growth in formation of such companies for domestic trade. With such increase, number of speculative enterprises increased. It was found that in a number of cases certain persons constituting an association, calling it to be Corporation or Company, and thereby had indulged in fraudulent and speculative activities defrauding the public at large. It resulted in enactment of Bubble Act, 1720 prohibiting generally the use of Corporation unless the Corporation was authorised to act as such by the Act of Parliament or Royal Charter. This enactment could not suppress formation of company. Moreover, unincorporated associations were formed, which, in law, were large partnerships but by ingenious legal devices, approximated to the form of company having transferable shares. The Bubble Act, 1720 thus was repealed in 1825. At that time, following

three types of companies were known: (1) Companies incorporated by Royal Charter, (2) Companies incorporated by Special Act of Parliament; and (3) Deed of Settlement Companies.

42. British Parliament passed “Joint Stock Companies Act, 1844” which prohibited large unincorporated companies and admitted creation of Joint Stock Companies by registration. This Act, however, did not provide immunity to the members of incorporated company from direct liability and on the contrary expressly imposed on the members, liability for the debts of company, akin to the partnerships.

43. For the first time by virtue of Limited Liability Act, 1855, the company was allowed to secure limited liability of its members to the nominal amount of shares held by them but it depended on certain conditions, and, some of those were (1) the company should have atleast 25 members holding at least 3/4 of the nominal capital, each member having paid upto atleast 20% (2) the word 'limited' should be the last component of the company's name; (3) the auditor of company should be approved by Board of Trade.

44. The aforesaid Act of 1855 was superseded by “Joint Stock Companies Act, 1856” and considered to be the beginning of a new era in Company Law by certain recognised authors like Sir Francis Palmer in his 'Company Law', 23rd Edition, page 10. This Act made formation of company simpler providing that seven signatories to a document called 'Memorandum of Association' can proceed for incorporation of company. The deed of settlement was done away but it was provided that in addition to Memorandum of Association, it should adopt the model articles attached to the Act and was to be registered in the Register of the Companies.

45. First Companies Act came to be enacted in 1862 which has been described by Sir Francis Palmer as the “Magnacarta of Cooperative

Enterprise”. Since then the aforesaid Act has been replaced by several Companies Act in England as well as in India.

46. Here, in India the first enactment was Indian Companies Act, 1866 which was replaced by Indian Companies Act, 1913, Companies Act, 1956 and now Companies Act, 2013.

47. The Act mainly contemplates two kinds of companies namely, Private Company and Public Company. Besides, it also applies to existing companies namely, as were formed and registered under various enactments prior to enforcement of the Act. A “Private Company” is a company which by its articles restricts the right to transfer its share, if any; limits the number of its member to 200 (not including the persons who are in the employment of company and persons who having been formerly in the employment of company were members of the company and have continued to be member after the employment cease); and prohibits any invitation to the public to subscribe for any shares, or debentures of, the company. A company which is not a “Private Company” is a “Public Company”.

48. Section 12 of the Act provides that any seven or more persons associated for any lawful purpose may, by subscribing their names to a Memorandum of Association and by complying with the requirement of Act in respect of registration, form an incorporated company with or without limited liability. For the companies incorporated with unlimited liability, the liability of the members like unincorporated company is unlimited but the difference is that an unlimited company registered under the Act is a legal person with perpetual succession and a common seal capable of borrowing, suing and being sued and holding property in its own name i.e. has its own legal personality; while in an unincorporated association, the individual members alone have right and duties; and the association has no legal entity.

49. For the purpose of the present case, however, we are concerned with a company incorporated under the Act with limited liability. In respect to such companies, the memorandum is required to be submitted at the time of incorporation. It shall specifically state that the liability of its members is limited by shares or guarantee, as the case may be. The persons who subscribe the memorandum of the company are “members” of the company and their names are required to be registered in the register of members.

50. The subscribers, therefore, are deemed to be the first “members” of company. The word 'shareholder' is synonymous to the term 'member' since there can be no membership except through the medium of shareholding. (see **Hawrah Trading Co. Ltd. Vs. C.I.T.**, AIR 1959 SC 775; **Balkrishan Gupta and others Vs. Swadeshi Polytex Ltd. and another**, AIR 1985 SC 520). The position of shareholder in a company with limited liability by shares is that when company earn profits and declare dividends, as per its Articles, he is entitled to participate in it and get his share in the dividend. In the event of winding up, he has a further right to participate in the distribution of company's assets in accordance with the rights given to him under the Articles. Beyond this he acquires no interest in the assets of company (See **Mrs. Bacha F. Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay**, AIR 1955 SC 74). Besides, he has all such rights as available to a member namely, voting right.

51. For management of affairs of company, Act requires for appointment of Directors who are collectively known as “Board of Directors” or “Board”.

52. Section 149 of Act, 2013 provides that every public company shall have atleast three Directors. Director must be only an individual and no body, corporate, association or firm shall be appointed as Director. The

purpose is evident. The entire business and management of company is in hands of the Directors. They hold office of trust and, therefore, legislature with a view to make them accountable thought it proper that some individual human should be appointed as Director and not one who is not an individual human being. At the time of incorporation of company, articles of company must provide for first Directors.

53. One of the Directors of the company may be appointed as “Managing Director” who is entrusted with substantial power of management by “Board of Directors” or the “company”.

54. The position of a Director vis a vis company has been equated with an Agent inasmuch as, company cannot act on its own but has to act only through Directors who, therefore, have the relationship of an Agent qua company. However, Managing Director has been held to have a dual capacity inasmuch as being a Director he is an agent of the company but he is also an employee. In **Shri Ram Pershad Vs. C.I.T., AIR 1973 SC 637**, Court held:

“It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its principal. A Managing Director may have a dual capacity. He may both be a Director as well as employee.....”

55. The work, performance and responsibility of Directors, Managing Directors and other Officers of the company is provided in the various provisions of the Act and it is not necessary for us to go in further details of those provisions for the purpose of present case.

56. From the above discussion the position as culled out is that the word “Company” imports an association of number of individuals formed for a common purpose. When such an association is incorporated, it becomes a body corporate, a legal entity, separate and

distinct from such individuals. Such incorporation must owe its existence to a statutory authority. The corporation/Company, in law, is equal to a natural person and has a separate legal entity of its own. Once incorporated, the entity of Corporation is entirely separate from that of the its share holders. It bears its own name; has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; liability of members or share holders is limited to the capital invested by them; creditors of Company cannot obtain satisfaction from the assets of share holders/members of company and similarly creditors of members/share holders have no right to the assets of Company. This position was recognised in **Salomon Vs. Salomon and Co., 1897 AC 22** and since then has always been well recognised as a principle of common law.

57. The difference among the members/shareholders of a company and incorporated company to the understanding of a layman can be demonstrated by a simple illustration, that if members of an incorporated company are collected in a room together, we do not see the person of company but the members. It has to be remembered that company is intangible; it exists only in contemplation of law; it has no physical body. Lord Chancellor Selborne said in one case "*it is a mere abstraction of law*". A Company being an "artificial juridical person" cannot act by its own. It acts through Directors. The executive authority of Company is vested ordinarily in the Board of Directors which is responsible for proper management of Company. There are several duties and obligations of Board of Directors and Directors of Company which are enshrined in detail in various provisions of Act. The Directors are paid remuneration for services they render but cannot claim remuneration as of right and, instead, if it is provided in the memorandum or Article of Association, they would be entitled for such remuneration as provided therein. Company is a separate entity qua

Directors also inasmuch as, Directors represent company and may enter into a contract of employment with himself in his individual capacity and simultaneously acting for company.

58. Similarly, where same set of shareholders have formed two companies, both the companies are distinct and separate entities and it cannot be said that mere identity of shareholders would mean that both the companies are one and the same. A company can contract with its shareholders. Death, bankruptcy or lunacy of any or some of the members would not affect the life of the company in any manner for the reason that company is a distinct person. Today if a company has ten members holding the entire shareholding and tomorrow if they transfer their shares to ten other members, company would retain the same person though the members would change. Similar is the position with respect to change of Directors. Perpetual succession means company never dies until it is wound up. Company is not equated with estate and undertakings owned by it though all are intangible. If the estate of a company is taken over by government, it would not constitute as taking over of management of the company.

59. The juristic personality of company is recognised for approaching Courts under the Constitution of India also for protection of fundamental rights which are guaranteed to 'persons'. However, they may not seek protection in respect to fundamental rights which are guaranteed to a 'citizen' for the reason that the company is a person but not a citizen (**State State Trading Corporation of India Ltd. Vs. The Commercial Tax Officer and others, AIR 1963 SC 1811**). Whenever, there is an infringement of fundamental right under Article 19 which are guaranteed to a 'citizen', causing a grievance to a shareholder of the company, it was held in **Bennett Coleman and Co. Ltd. and others Vs. Union of India and others, AIR 1973 SC 106** that a shareholder may

approach Court for protection of such right, though company itself cannot claim protection of such right.

60. It also leads to the conclusion that a company incorporated under the Act is not created by the Act but comes into existence in accordance with the provisions of the Act. Thus it is not a statutory body nor is created by the statute but is a body created in accordance with the provisions of the statute (**Sukhdev Singh and others Vs. Bhagatram Sardar Singh Raghuvanshi and another**, AIR 1975 SC 1331).

61. It would be useful to refer the observations of Lord Diplock in **Lennard's Carrying Co. Ltd. Vs. Asiatic Petroleum Co. Ltd.**, 1915 AC 705 noticing the position of Director as under:

"A Corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself, or it may be, and in some companies it is so, that that person has an authority co-ordinate with the board of directors given to him under the articles of association."

62. In brief, we can cull out the following:

- (1) Company is a distinct and separate juristic personality having its own rights of right to property etc;
- (2) The shareholders have no interest in any particular asset of the company or the property of the company except of participating in profits, if any, when the company decides to divide them or to claim his share when the company is wound down in accordance with the articles of the company;
- (3) A company is distinct from its Board of Directors who cannot enforce a right in their individual capacity which belongs to the company (**TELCO Vs. State of Bihar**, AIR 1965 SC 40).

- (4) The liability of company simultaneously is also not liability of shareholders. Shareholders cannot be made liable under a decree against a company, as held in **Nihal Chand Vs. Kharak Singh Sunder Singh, (1936) 2 Company Cases 418** and **Harihar Prasad Vs. Bansi Missir, (1932) 6 Company Cases 32**.

Doctrine of Piercing of Veil (Lifting the Corporate Veil): Exception to the Law of Separate Entity:

63. The aforesaid doctrine of separate juristic personality of Company, however, with the passage of time has been subjected to certain exceptions, sometimes on account of specific provisions of the statute, and, sometimes by judicial pronouncements.

64. The most important exception in this regard is that of “piercing the veil” or “lifting the corporate veil” to find out who is the real person, beneficiary or in controlling position of the Company. The doctrine of “lifting the veil” has marked a change in the attitude, the law had originally adopted, towards the concept of separate entity or personality of the corporation, but the same has not been applied in general or routine manner. It has been adopted exceptionally whenever and wherever situation has warranted. The circumstances in which said doctrine has been invoked, vary from case to case.

65. Lord Denning M.R. in **Littlewoods Stores Vs. I.R.C., (1969) 1 W.L.R. 1241** said:

“The doctrine laid down in Salomon's case has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. They look to see what really lies behind. The legislature has shown the way with group accounts and the rest. And the courts should follow suit....”

66. One of the most important circumstance in which veil has been lifted is the case of fraud or improper conduct of Promoters. Where

dummy companies were incorporated by a promoter and his family members to conceal profits and avoid tax liability, separate entity of company has been ignored by looking through the veil and identifying those individuals who have devised such method for their own benefits.

67. In **Juggilal Kamlapat Vs. Commissioner of Income Tax, (supra)** it was found that three brothers who were partners in the Assessee Firm were carrying on the managing agency in a dominant capacity in the guise of a limited company. Court held that the corporate entity has to be disregarded if it is used for tax evasion or to circumvent tax obligation or to perpetrate fraud.

68. In **C.I.T. Vs. Associates Clothiers Ltd., AIR 1963 Cal. 629** there was a sale by a company to another having some shareholders and the former company owning all shares in the latter. It was held that it would not escape liability of tax under Income Tax Act by taking recourse to the concept of separate legal entity.

69. In **Gilford Motor Co. Vs. Horne, (1933) Ch. 935, C.A.** one Horne covenanted not to solicit the customers of M/s Gilford Motor Company. In his attempt to evade this obligation he formed a company which undertook the soliciting. Court granted injunction against Horne as well as the company formed by him describing the company formed by him “a device, a stratagem,” and a “mere cloak or sham”.

70. In **Jones Vs. Lipman, (1962) 1 W.L.R. 832**, defendant, to avoid sale of his house to the plaintiff attempted to convey to a company formed by him for the said purpose. Granting specific performance in favour of the plaintiff, Russell, J. describe the said company as creator of the defendant, a device and sham, a mask which he holds before his face in an attempt to avoid recognition by the eye of equity.

71. In **The Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. The Associated Rubber Industry Ltd., Bhavnagar and another**, AIR 1986 SC 1 Court held where ingenuity is expended to avoid taxing and welfare legislation, it is the duty of Court to get behind the smoke-screen and discover true state of affairs. There, a new company was created, wholly owned by principal company, without having assets of its own, except of those transferred to it by principal company and with no business or income of its own except of receiving dividends from shares transferred to it by the principal company. The purpose evident from the entire action was to reduce amount to be paid by way of bonus to workmen. In the circumstances, Court lifted veil and held principal company responsible for payment of bonus on the entire amount without making any distinction between new company and principal company. It upheld application of lifting of veil to prevent device to avoid welfare legislation and said that it may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. Court said that the list cannot be given exhaustively but lifting of veil must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.

72. In **L.I.C. of India Vs. Escorts Ltd. and others**, AIR 1986 SC 1370, it was held:

“Generally and broadly speaking, it may be said that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in

reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”

73. In **TELCO Vs. State of Bihar (Supra)** Court said that it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to when the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions.

74. In **C.I.T., Madras Vs. Meenakshi Mills Ltd., Madurai (supra)** Court justified application of doctrine of lifting the veil of corporate entity for the reason that it found that there was an attempt for tax evasion or to circumvent tax obligation and to disregard the same, Court pierced the veil and looked to the face who was behind the said veil. It said that in certain exceptional cases, Court is entitled to lift the veil of a corporate entity and to pay regard to the economic realities behind the legal facade.

75. In **State of U.P. and others Vs. Renusagar Power Co. and others, 1988 (4) SCC 59**, principal company owned the entire share capital of subsidiary company which was incorporated for generation of electricity and the entire generation was consumed by the principal company. Court pierced the veil in view of the fact that Renusagar Power Company was wholly owned subsidiary of Hindalco and completely controlled by the same to the extent of even day to day affairs. The entire generation of electricity of Renusagar Power Company was consumed by M/s Hindalco and it was also found from the facts that the separate company was set up by Hindalco to avoid any complication in future if power station is taken over by State or

Electricity Board. In order to avoid liability of electricity duty it sought to rely on the principle that two companies are different entities. Court in the aforesaid facts and noticing that the device was sought to be relied to avoid liability of electricity duty, ignored distinct juristic personality of the companies, lift the veil of subsidiary and held that both companies are one and the same for the purpose of liability of electricity duty. Court further held that in modern company jurisprudence, the veil on corporate personality even though not lifted, sometimes is becoming more and more transparent. It was thus held that consumption of electricity by Hindalco was taxable under Section 3(1)(c) of U.P. Electricity Duty Act, 1952. The Court said:

*“It is high time to reiterate that in the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. **It must, however, depend primarily on the realities of the situation.** The aim of the legislation is to do justice to all the parties. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The concept of lifting the corporate veil is a changing concept and is of expanding horizons.”* (Para 66) (emphasis added)

76. In **New Horizons Ltd. and another Vs. Union of India and others, 1995 (1) SCC 478**, Court noticed that on the basis of the judicial pronouncements, the attitude towards corporate personality of Company and ways in which its veil must be treated can be placed in four categories namely; (1) peeping behind the veil, (2) penetrating the veil, (3) extending the veil and (4) ignoring the veil.

77. In **Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta, AIR 1998 SC 1631** Court held that there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it as not wearing that mask, or not being treated as related person, when, both, the manufacturer and the buyer, are in fact the

same persons. It held that tax planning may be legitimate provided it is within the framework of law but colourable devices cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can today no longer be applauded and legitimised as a splendid work by a wise man but has to be condemned and punished with severest of penalties and for that purpose if a person is found to indulge therein the lifting of veil would also be justified.

78. In **Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another**, AIR 1996 SC 2005=1996(4) SCC 622, Court found that one Tejwant Singh and members of his family created several corporate bodies for committing illegalities and to defraud people. Discussing circumstances in which separate entity of company must be discarded by lifting corporate veil, it observed, when conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or protect knavery or crime, Courts will draw aside the web of entity, will regard corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons. Consequently in the aforesaid case corporate character was ignored by Court observing that Tejwant Singh and his family has evolved the said method not to encourage and promote trade and commerce but to commit illegalities and defraud peoples.

79. In **Subhra Mukherjee and another Vs. Bharat Coking Coal Ltd. and others**, 2000 (3) SCC 312 it was observed that to look at the realities of the situation and to know the real state of affairs behind the facade of the principle of the corporate personality, the Court would pierce the veil of incorporation. In the said case some immovable property was alleged to be sold in favour of the wives of the Directors of the Company which is alleged to be collusive and, therefore, Court

applied doctrine of piercing the veil to ascertain true nature of the transaction, as to who were the real parties to the sale and whether it was a genuine or bona fide transaction or not.

80. In **Kapila Hingorani Vs. State of Bihar, JT 2003 (4) SC 1**, Court said that a corporate veil can be pierced when corporate personality is found to oppose justice, convenience and interest of revenue or workman or is against public interest. Therein Court considered liability of State Government for payment of dues of employees of Government Companies in which it has 100% share holding but due to financial scarcity salary, wages and other dues of the employees could not have been paid. It was held that State Government being sole share holder is responsible for protection of life and liberty of employees of those companies which include their unpaid wages. Observing that liability can be fastened, both, upon owner and also the operator of the company, under certain situations particularly when State Government, being a welfare State was liable to mitigate sufferings of the employees of public sector undertakings or Government Companies. Consequently it issued directions to State Government to provide necessary funds for payment of such dues.

81. In **Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (D) and others, JT 2005 (1) SC 581** while reiterating that corporate veil can be lifted in certain situation, Court further observed that a distinction should also be kept in mind between a Family Company, Private Company and Public Limited Company. However, it refused to apply the said doctrine therein observing that once more than one family or several friends and relatives together form a company and there is no right as such agreed upon for active participation of members were sought to be excluded from management, the principles of dissolution of partnership cannot be liberally invoked and the

request to treat the limited company as quasi partnership was not accepted.

82. In recovery of tax dues this Court has also applied doctrine of lifting of veil and permitted recovery of dues from Directors of Company in several cases, some of which are **Sri Ram Gupta Vs. The Assistant Collector, 2003 NTN (23) 995**, **M/s Nand Auto Hire Purchase Pvt. Ltd. Vs. Regional Transport Officer/Licensing Authority, Kanpur and others, AIR 2004 ALL. 404**, **Reflex Industries and another Vs. State of U.P. and others, 2004(4) AWC 3471**, **Sanjay Kumar Gupta Vs. District Magistrate, Fatehpur and others, 2002 (3) UPLBEC 2707** and **Naresh Chander Gupta Vs. The District Magistrate and others, 2003 NTN (22) 358**.

83. In **M/s Nand Auto Hire Purchase Pvt. Ltd. (Supra)** recovery of road tax was in dispute. Petitioner contended that the truck was handed over to the financier M/s Nav Instalments and, therefore, recovery should be made from the said financier which is a different legal entity. From the facts on record, Court found that petitioner, M/s Nand Auto Hire Purchase Pvt. Ltd. has its Managing Director, Sri Vishnu Bhagwan Agrawal who was also managing partner of the firm M/s Nav Instalments. In these circumstances not finding any substantial distinction between the person who was operating behind the said two bodies, and noticing that the entire attempt was to frustrate recovery of road tax, this court recorded a finding of fact that Sri Vishnu Bhagwan Agrawal is really controlling both namely, the petitioner as well as M/s Nav Instalments, invoked doctrine of piercing the veil.

84. In **Naresh Chander Gupta (Supra)** the dues of trade tax were sought to be recovered from M/s Shiv Sewa Samiti, a society registered under Societies Registration Act of which petitioner, Naresh Chander Gupta was the secretary. Though recovery certificate was issued against

society but it was alleged by petitioner that the Revenue Recovering Authorities were proceeding against assets of petitioner himself. On the pleadings, Court found that petitioner has neither shown whether there are other office bearers of society or not and as to who actually is running and controlling the society. Further Court recorded a finding that petitioner was really managing the entire society and had control over its operations and has created society for evading tax or for other extraneous reasons as is evident from the following:

“18. On the facts of the present case we are of the opinion that the petitioner was really managing the entire society and had control over its operations. He has only created the society for the evading tax or for other extraneous reasons.”

85. In **Adesh Kumar Jain and others Vs. U.P. S.E.B. and others, 1998 All.C.J. 266**, Court while rejecting a similar contention that Director of the company would be personally liable for dues of the company held that though it is true that Director of a company may be an agent of the company but that would not result in making the assets of the company to be the assets of the Director and *vice versa*. It further held that in the absence of any statutory provisions, recovery from the personal assets of the Director cannot be made. In para 7 of the judgement, the Court held:

“7. Director's liabilities in some of the enactments have already been dealt with in provisions contained in the relevant laws such as Employees State Insurance Scheme, Provisions of Food Prevention Act, Factories Act, Provident Fund Act, Industrial Disputes Act etc. etc. There is no provision in the U.P. Government Electricity Undertaking (Dues Recovery) Act, 1958 or Electric Supply (Consumers) Regulations, 1984 or even in the Indian Electricity Act, 1910 which may make it possible to read that a Director can be taken to be the successor of the Company which had entered into the agreement with the Board as a Consumer taking note of the definition of the word 'Consumer' in any of the three laws referred to above.”

86. Where under the agreement or the statutory provisions, only the company is liable to pay the dues, in such cases the Directors would not be personally responsible and the doctrine of lifting the veil cannot be invoked in such case as is evident from following in the judgement of **Adesh Kumar Jain (Supra)**:

“.....In the instant case, there is an agreement between the parties and also the statutory provisions under which the only consumer company is liable for payment of the arrears of electricity dues and the Director of the company cannot be made personally liable. Hence the doctrine of lifting the veil can not be invoked in the instant case.....” (Para 23)

87. In **Sri Ram Gupta (Supra)** also trade tax dues were sought to be recovered from the petitioner, a Director of a Private Limited Company. Court after recording its inference that the assets of the company have been diverted or syphoned off by petitioner for his own benefit and is left only a shell, refused to exercise its discretionary remedy. Thus the aforesaid judgment also does not lay down any legal proposition that whenever dues are to be recovered from a company, the Directors would be personally responsible.

88. In **Reflex Industries (Supra)** one Smt. Poonam Suri purchased an industrial plot from its owner M/s Wazid Sons Exports Ltd., New Delhi vide sale deed dated 23.06.1987. The said premises was in tenancy of M/s Krison Electronics System Pvt. Ltd. Sri R.K. Suri, Managing Director of M/s Krison Electronics System Pvt. Ltd. was the husband of Smt. Poonam Suri. On purchase of land by Smt. Poonam Suri, it is said that M/s Krison Electronics System Pvt. Ltd. company became tenant of Smt. Poonam Suri. A fresh lease deed was executed between M/s Krison Electronics System Pvt. Ltd. and Smt. Poonam Suri on 17.07.1987. However, the possession of the said property was handed over by M/s Krison Electronics System Pvt. Ltd. to Smt. Poonam Suri on 10th April/July 1997. Smt. Poonam Suri executed a

transfer cum sale deed of the plot in question in favour of M/s Reflex Industries, a proprietorship firm on 31.03.1998. For recovery of tax dues to the tune of Rs. 2,35,90,606/- the authorities sealed the premises on 19.01.1999 whereagainst M/s Reflex Industries filed the aforesaid writ petition claiming that neither the said petitioner nor Smt. Poonam Suri, the then owner of the plot in question, were defaulter and, therefore, the aforesaid premises could not be sealed for recovery of dues of M/s Krison Electronics System Pvt. Ltd. In the counter affidavit, the facts as disclosed before this Court were that M/s Krison Electronics System Pvt. Ltd. was a private company owned by one family namely, Sri R.K. Suri who was also the Managing Director and was the husband of Smt. Poonam Suri. No outsider was involved in the said company. The land in question was purchased by Smt. Poonam Suri on behalf of her husband for business purpose as disclosed in the transfer deed dated 23.07.1987. M/s Krison Electronics System Pvt. Ltd. was already operating in the said plot before its purchase by Smt. Poonam Suri. The entire transaction was a novel tactics devised by Smt. Poonam Suri and her husband to dupe the huge Government revenue and the petitioner played an important role in the said game. It was pleaded that handing over possession was nothing but a transaction between husband and wife and a fraudulent one. Further it was also pointed out that the petitioner M/s Reflex Industries purchased plot after recovery proceedings were already initiated against M/s Krison Electronics System Pvt. Ltd. for Rs. 1,65,18,777/-. Considering the pleadings and facts as brought, this Court accepted the contention of the authorities that there was a case of fraud on the part of petitioner as well as other persons for duping huge Government revenue and, therefore, the Court was inclined to pierce the veil of the corporate personality of M/s Krison Electronics System Pvt. Ltd. to find out the beneficiaries behind it and recorded a finding that fraud vitiates all proceedings. In the said case the whole transaction was to avoid tax

recovery by playing fraud between the petitioner, Smt. Poonam Suri and M/s Krison Electronics System Pvt. Ltd. Therefore, in the facts of that case, as we have already noticed, the doctrine of piercing the veil could effectively been invoked. The said judgement is thus not an authority to lay down as a general proposition that whenever tax dues are recoverable from a company, its Directors would also be severally and jointly liable to pay the same and proceedings can be initiated against their personal assets.

89. In **Sanjay Kumar Gupta (Supra)** also this Court in para 8 of the judgement proceeded by observing:

“In our view, even if that is so it is not fit case for interference under Article 226 of the Constitution.”

90. Therefore, in the facts of that case the Court declined to interfere under Article 226 of the Constitution as is also evident from para 19 of the judgment. In para 16 and 17 of judgment Court observed that the doctrine of piercing the veil of corporate personality must be adopted by our Courts in the matter of electricity dues as this has assumed mammoth dimensions of hundreds or thousands of crores of rupees which unscrupulous businessmen are not paying under cover of the doctrine of corporate personality and the Court should not give shelter to the businessmen under the doctrine of corporate personality. We have no doubt, at all, in application of doctrine of piercing the veil even in respect of electricity dues whenever the circumstances and the facts so warrant. However, the said observations cannot be treated to be an exposition of law that whenever electricity dues are to be recovered from a company, the same can be proceeded against the personal assets of Directors also without looking to the basic ingredients which would be necessary to invoke the doctrine of piercing the veil. No such proposition has been laid down by Court.

91. So far as application of doctrine is concerned, irrespective of the nature of dues, we are of the view that whenever there is an attempt on the part of an individual or group of individuals to defraud public revenue by taking recourse to corporate personality, Court would always stand against such attempt by piercing the veil and finding out the real beneficiary behind the said design so as to make him responsible for payment of such dues.

92. The next category is, where entire shareholders belong to enemy country and permitting company to trade would amount to trade with enemy country. It was held that the device of incorporation cannot be allowed to use for illegal and improper purpose i.e. benefit to enemy country.

93. Wherever legislature has intended, has provided statutory provision empowering Tax authorities to recover dues of a corporate body from its Directors, shareholders or others. For illustration, we may refer to Section 179 of Act, 1961 which reads as under:

179. (1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), where by tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company

assessable for any assessment year commencing before the 1st day of April, 1962.”

94. A perusal of Section 179 shows that it has been given an overriding effect over the various provisions of the Act and makes Director of a Private Company responsible for payment of tax dues outstanding, of the period, he was Director, provided he proves that non recovery is not attributed to any gross neglect, misfeasance or breach of duty on his part. The said provision, therefore, while making Director of the private company responsible for payment of tax dues jointly and severally, makes an exception that in case he proves that the assets of the company are not sufficient to meet tax dues and have reduced for reasons not attributable to him on account of any gross neglect, misfeasance or breach of duty, then such person would not be responsible. The legislature thus has also recognised even in the said statute the principle that the doctrine of lifting of veil in the matter of tax dues is to be applied to prevent fraud etc. and not where the company has suffered despite its normal bona fide function. The persons responsible for its management are not to be made responsible for normal depreciation of capital or assets merely because the dues are of Tax. Further even the said provision is applicable only to private companies and not to public companies other than those which are converted from private to public.

95. In fact some of the provisions have been made in the Act where the corporate veil has to be ignored. Section 45 provides where the number of members of a company reduce below seven, in the case of a public company, and the company continues to carry on business for more than six months with such reduced member, every person who knows this fact and is a member of the company is severally liable for the debts of the company contracted during that time. Section 147(4) of the Act provides that if an officer of a company signing bill of exchange,

hundi, promissory note, cheque, if not mention the name of the company in the prescribe manner, such officer can be held personally liable to the holder of the bill of exchange, hundi etc. unless it is duly paid by the company. Section 542 of the Act provides that if during the course of winding up of a company it appears that any business of the company has been carried on with intent to defraud the creditors of the company or any other person or for any fraudulent purpose, the persons who were knowingly party to such carrying on business, shall be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company, as the court may direct.

96. The legal position as discerned from the above is that in a case where the corporate personality has been obtained by certain individuals as a cloak or a mask to prevent tax liability or to divert public funds or to defraud public at large or for some illegal purposes etc., to find out as to who are those beneficiaries who have proceeded to prevent such liability or to achieve an impermissible objective by taking recourse to corporate personality, the veil of the corporate personality shall be lifted so that those persons who are so identified are made responsible. However, this doctrine is not to be applied as a matter of course, in a routine manner and as a day to day affair. If such a course is permitted, it would lead to not only disastrous results but would also destroy completely the concept of juristic personality conferred by various statutes and would make several enactments and their effect, redundant and illusory.

97. In **P.C. Agarwala vs. Payment of Wages Inspector, M.P. and Ors., AIR 2006 SC 3576** Court has said that at present judicial approach in cracking upon the corporate shell is somewhat cautious and circumspect. It is only when the statute justifies adoption of such a course or in exceptional cases, where Courts have felt themselves satisfied to ignore the corporate entity and to treat the individual

shareholder(s) liable for its acts, such a course has been adopted. Broadly, where fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decision and the shareholders are held to be "persons who actually work for corporation".

98. In brief, we can categorize cases in which corporate personality of the incorporate body can be ignored and it would be better to refer the renowned author Palmer's Company Law 23rd Edition where he has categorised the cases, in which the principle of separate entity of the Company has been discarded by adopting the doctrine of lifting the veil, in 15 categories and some of which are as under:

“(1) where companies are in relationship of holding and subsidiary (or sub-subsidiary) companies; (2) where a shareholder has lost the privilege of limited liability and has become directly liable to certain creditors of the company on the ground that, with his knowledge, the company continued to carry on business six months after the number of its members was reduced below the legal minimum; (3) in certain matters pertaining to the law of taxes; death duty and stamps, particularly where the question of the "controlling interest" is in issue; (4) in the law relating to exchange control; (5) in the law relating to trading with the enemy where the test of control is adopted; (6) where a holding company or a subsidiary company were not working in an autonomous manner and thus were treated as forming an economic unit; (7) where the new company was formed by the members of an existing company holding 9/10 shares in the existing company and only with an object of expropriating the shares of minority share holders of the existing company; (8) where the device of incorporation is used for some illegal or improper purpose; (9) where several companies promoted by the same controlling share holders for defeating or misusing the loss pertaining to labour welfare; (10) where the facts or equitable considerations justify an exemption from the strict rule in Salomon Vs. Salomon and Co. Ltd.”

99. Another learned author L.C.B. Gower in his “Principles of Modern Company Law” 4th Edition, has also given such illustration where the veil of a corporate body has been pierced and has enumerated the same as fraudulent trading, misdescription of company, and taxation matters where the statute require etc.

100. In nutshell, the doctrine of lifting of veil or piercing the veil is now a well established principle which has been applied from time to time by the Courts in India also. There is no doubt about the proposition that whenever the circumstances so warrant, the corporate veil of the company can be lifted to look into the fact as to whose face is behind the corporate veil who is trying to play fraud or taking advantage of the corporate personality for immoral, illegal or other purpose which are against public policy. Such lifting of veil is also has to implemented whenever a statute so provided. However, it is not a matter of routine affair. It needs a detailed investigation into the facts and affairs of the company to find out as to whether the veil of the corporate personality needs to be lifted in a particular case.

Initial burden for application of the doctrine of “Piercing of Veil”:

101. Whether in respect to tax dues or other public revenue or in other cases, if one has to discard the corporate personality, then the initial burden would lie upon it to place on record relevant material and facts to justify invocation of doctrine of lifting of veil and to plead that the corporate shell be not made a ground of defence. A personality conferred by the statute cannot be overlooked or ignored lightly and in a routine manner or on a mere asking. In fact whenever the veil is to be pierced, it would mean that somebody, individual or group of individuals, have obtained the shell of corporate personality as a pretext or mask to cover up a transaction or intention of those individual/individuals is neither legal nor otherwise in public interest. In effect the attempt of those individuals have to be shown akin to fraud

or misrepresentation. The legal personality of the corporate body thus can be ignored in such cases since it is well settled that fraud vitiates everything and, therefore, the benefit of legal personality obtained by someone for purposes other than those which are lawful or even if lawful but not otherwise permissible, the corporate personality being the result of such fraudulent activity would have to be discarded but not otherwise. These are the things based on positive factual material and cannot be presumed in the absence of proper pleadings and material to be placed by the person who is pleading to invoke the doctrine of piercing the veil and to ignore the juristic personality of the corporate body. Once relevant material is made available by the authority or person concerned, thereafter it would be the responsibility of the other side to place material to meet the aforesaid attack.

102. Thus whenever doctrine of "lifting of veil" has been applied as, as we have already discussed, there have been compelling reasons therefor and many a times even statutory provision permits. In the present case it is not disputed that basic objective of Company was to take deposit and lend loans to its members and further that loans were actually advanced to members. The mere fact that some members were also holding certain position or status in Company, would make no difference. So long as there is no material evidence or otherwise findings recorded by A.O. that advancement of loan to members of particular category was for reasons other than bona fide, we do not find anything therein to justify application of doctrine of "piercing of veil".

103. Some Authorities cited by learned counsel for Revenue basically deals with cases of Companies of different nature and not Mutual Benefit Companies which is a different category, recognized in that category by Government of India under Section 620A of Act, 1956. Thus none of authorities cited on behalf of appellant is applicable in the case in hand.

104. **Commissioner of Income Tax, Gujarat II vs. B.M. Kharwar (supra)** relied by Sri Manish Misra, is a case where issue raised was "whether Nasik Math can be said to be in State of Bombay and liable to be registered under Bombay Public Trusts Act, 1950". It was held that principal Math is situate in State of Mysore and as His Holiness is a Sanyasi, who generally names the house properties with temples as 'Maths'. The properties at Nasik, Panchavati, are known as properties of Shringeri Math. The Samadhis have been constructed to look like temple. There is Sabha Mandap in which an image of Adi Shankaracharya is installed. All the expenses have been incurred by His Holiness from the income of Shringeri Math. Court held that purpose of Bombay Public Trusts Act, 1950 was not to regulate or make better provision for administration of trusts outside the State of Bombay. In order to determine situs of trust, which consists of a Math and subordinate so-called Math or maths, it is the situs of principal Math which will determine applicability of Act. The aforesaid judgment, by no stretch of imagination has any application to the issues raised in this appeal and does not help Revenue in any manner.

105. In **Union of India vs. Playworld Electronics (P) Ltd. (supra)**, Assessee Company was manufacturing wireless receiving sets, tape recorders etc. Revenue claimed that Assessee was marketing its goods in brand name of "Bush" and showing sale to another Company, "Bush India Ltd." which was nothing but a device to undercharge. Court referred to **Mcdowell and Co. Ltd. vs. Commercial Tax Officer (supra)** and observed that there was no sufficient material to apply doctrine of lifting of veil inasmuch as value of goods manufactured by Assessee was price charged from M/s Bush India Ltd. and there was no mis-declaration of value. Doctrine of piercing of veil may be adopted in a given case is a legal proposition which no one can doubt but question is about its applicability to the facts of a particular case. In this particular case we find that same has no application.

106. Similarly other two decisions, i.e., **The Union of India vs. Gosalia Shipping (Pvt.) Ltd. (supra)** and **Sunil Siddharthbhai vs. CIT (supra)** also have no application to the issue in question.

107. Therefore, submission that here is a case where this Court must pierce veil and find out sophisticated device of tax evasion on the part of Assessee, in our view, is a misconceived proposition inasmuch as without appreciating nature of Assessee Company, and its business etc., actual transactions cannot be doubted. Only a part of rate of interest was questioned, hence this broad proposition of invoking doctrine of lifting of veil is not justified to be raised in this case and we have no hesitation in rejecting the same.

108. In view of above, both substantial questions of law raised in this appeal, are answered in favour of Assessee and against Revenue.

109. The appeal lacks merit. Dismissed.

110. Interim order, if any, stands vacated.

Order Date :- 03.03.2017

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