# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## TAX APPEAL NO. 117 of 2009
## With
## TAX APPEAL NO. 119 of 2009
## With
## TAX APPEAL NO. 121 of 2009

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

**and**

**HONOURABLE MR.JUSTICE G.R.UDHWANI**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

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COMMISSIONER OF INCOME TAX - GANDHINAGAR....Appellant(s)

Versus

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MR BS SOPARKAR, ADVOCATE FOR MRS SWATI SOPARKAR, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
**HONOURABLE MR.JUSTICE G.R.UDHWANI**

**Date : 27/06/2016**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. These appeals involve identical questions on law and were also ordered to be heard together vide order dated 17.09.2009 passed in Tax Appeal No.117/2009. Therefore, they are decided by this common judgment.

2. These appeals under Section 260A of the Income-tax Act, 1961 have been admitted in terms of the following substantial question of law:

> "Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) deleting the interest of inter-corporate deposits from the chargeable interest under the Interest Tax Act, 1994?"

3. For the purpose of this judgment, Tax Appeal No.117/2009 is taken as the lead matter. In this case, the assessment was completed u/s.8(2) of the Interest Tax Act, 1974 on 31.01.2000 at Rs.85,94,43,576/-. Thereafter, the chargeable interest was revised by CIT(A), vide order dated

14.02.2001. Subsequently, the assessment was re-opened u/s.10 of the Act and total chargeable interest was determined at Rs.64,84,39,803/-, vide assessment order dated 18.03.2004. Thereafter, the chargeable interest was revised to Rs.45,63,54,520/- by CIT(A), vide order dated 13.11.2003, against which the assessee as well as the Revenue preferred appeal before the Tribunal. Vide order dated 30.03.2005, the Tribunal set aside the order of CIT(A).

4. In compliance of the order, the assessment was completed on chargeable interest at Rs.46,98,76,608/-, against which the assessee had preferred appeal before the CIT(A). Vide order dated 02.08.2007, the CIT(A) confirmed the addition of Rs.1,35,21,788/- and directed the Assessing Officer to exclude the interest received on inter-corporate deposits amounting to Rs.10,64,384/- as per the directions of the Tribunal vide order dated 30.03.2005, which was not excluded while framing the assessment after it was set aside by the Tribunal. In appeal preferred by the Revenue, the Tribunal confirmed the order of CIT(A), vide order dated 31.03.2008. Hence, this appeal.

5. We have heard learned counsel for the respective parties and perused the documents on

record. The question raised in these appeals is already settled by a judgment of the Delhi High Court rendered in the case of **Commissioner of Income-tax v. Visisth Chay Vyapar Ltd., [2011] 339 ITR 157 (Delhi) ([2012] 20 taxmann.com 377 (Delhi)]** wherein, it has been held that the expression 'advance' occurring in section 2(7) along with the expression 'loan' should take its colour from 'loan' and cannot be given wider interpretation to include deposit as well, otherwise, money deposits given for investments, etc., would also qualify as 'advances' and interest thereon would become exigible to the Interest-tax Act. Such a situation was never contemplated by the legislature. Hence, inter-corporate deposit is not in the nature of loan or advance within the meaning of section 2(7) and therefore, not chargeable to the interest-tax under section 5. We concur with the view taken by the Delhi High Court in the aforesaid decision and consequently, answer the question in favour of the assessee and against the Revenue.

6. Consequently, all the appeals stand dismissed. No order as to costs.

**(K.S.JHAVERI, J.)**

**(G.R.UDHWANI, J.)**

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