

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 281 of 2016**

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PRINCIPAL COMMISSIONER OF INCOME TAX-I....Appellant(s)

Versus

CAMA HOTELS LTD.,....Opponent(s)

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Appearance:

MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE  
for the Appellant

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**  
and  
**HONOURABLE MR.JUSTICE G.R.UDHWANI**

Date : 15/03/2016

**ORAL ORDER**

**(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Heard Mr. M. R. Bhatt, Senior Advocate, learned counsel for the appellant.

2. The appellant has challenged the order dated 29.09.2015 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" in ITA No.1834/Ahd/2012, by proposing the following two questions:

*"[1] Whether the Appellate Tribunal has erred in law and on fact in holding that payment of interest @ 15% and 16% to the persons covered u/s 40A(2)(b) is commensurate with the prevailing market rate?"*

*[2] Whether the Appellate Tribunal has erred in law and on fact in deleting the amount of Rs.2,63,12,188/- treated by the Assessing Officer as deemed dividend u/s 2(22)(e) of the Act in this case?"*

3. As regards proposed question No.1, the assessee Company paid interest of Rs.32,43,885/- to persons covered under section 40A(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Interest had been paid @ 15% in the case of Cama Motors Pvt. Ltd. and @ 16% in the case of R. J. Cama & Co. Pvt. Ltd. The Assessing Officer allowed the interest payment @ 12% and disallowed the balance.

4. In assessee's appeal, the Commissioner (Appeal) deleted the disallowance. The Revenue carried the matter in appeal before the Tribunal, but did not succeed.

5. As can be seen from the impugned order, the Tribunal has noted that section 40A(2)(b) contemplates that if some undue benefit is being extended by the assessee to the persons mentioned in sub-clause (2)(b) of section 40A of the Act on account of their association with the assessee, then the deduction claimed for that benefit ought to be disallowed to the assessee. In other words, if the assessee can avail the facility from the open market at a lower price than similar facility availed from the persons covered under section 40A(2)(b), then that excess payment would not be allowed to the assessee as deduction. The question that arose before the Tribunal was that what was the fair market value of interest paid by the assessee on the loans obtained from the persons covered under section 40A(2)(b). The Assessing Officer was of

the view that the loans ought to have been taken at the interest rate of 12% and not the interest rate of 15 or 16%. On behalf of the assessee, it was contended that the bank interest was in between 15 to 16.08% and in respect thereof, the assessee was required to produce security against such loans, whereas the loans secured by the assessee were unsecured loans. That by availing of loans from associate concerns, it had avoided a lot of formalities. The Tribunal was of the opinion that the payment of interest at a little higher rate to the persons even if covered under section 40A(2)(b) cannot be termed as exorbitant when the fair market value of such interest cost is being considered. The Tribunal found, as a matter of fact, that the assessee had paid interest commensurate with the interest rate prevailing in the open market. In the light of the above findings of fact recorded by it, the Tribunal found that the assessee had not extended any undue benefit to the persons covered under section 40A(2)(b) of the Act and rejected the said ground of appeal.

6. Thus, the Tribunal has recorded a finding of fact to the effect that the interest paid by the assessee to the persons mentioned under section 40A(2)(b) is commensurate with the interest rate prevailing in the open market. In the light of such finding of fact, it is not possible to state that the conclusion arrived at by the Tribunal that the assessee has not extended any undue benefit to the persons covered under section 40A(2)(b) of the Act, suffers from any legal infirmity warranting interference. The said ground of appeal is, therefore, rejected.

7. As regards proposed question No.2, the court is of the

view that the matter requires consideration. Hence, **ADMIT**. The following substantial question of law arises for consideration :

*“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in deleting the amount of Rs.2,62,12,188/- treated by the Assessing Officer as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961?”*

(HARSHA DEVANI, J.)

(G.R.UDHWANI, J.)

parmar\*

