

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1028 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH****Sd/-****and****HONOURABLE MR.JUSTICE S.H.VORA****Sd/-**

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2.	To be referred to the Reporter or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the judgment ?	No
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No

COMMISSIONER OF INCOME TAX....Appellant(s)**Versus****AXIS BANK LTD....Opponent(s)****Appearance:****MR.VARUN K.PATEL, ADVOCATE for the Appellant(s) No. 1****MR RK PATEL, ADVOCATE for the Opponent(s) No. 1****CORAM: HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA****Date : 01/04/2015****CAV JUDGMENT****(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.09.2014 passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench 'C' (hereinafter referred to as "Tribunal") in ITA No.5/AHD/2001 for Assessment Year 1996-97 by which the learned

Tribunal has allowed the Appeal preferred by the respondent assessee – UTI Bank Ltd. and has held that the lease rental on the lease of certain assets' interest under the Interest Tax Act (hereinafter referred to as "Act") is not chargeable to the Revenue has preferred the present Tax Appeal raising the following substantial question of law.

"Whether the ITAT is right in law and on facts in deleting the addition made to the chargeable interest, under Section 2(7) of the Interest Tax Act by the Assessing Officer?"

[2.0] Facts leading to the present Tax Appeal in nut-shell are as under:

[2.1] That the assessee UTI Bank Ltd. was a Banking Company to which the Banking Regulation Act, 1949 applies and was admittedly a Banking Company. That the assessee was having banking business and during the course of the banking business, it used to finance the loan/advances and was entering into the higher purchase transactions.

[2.2] That the assessee Bank filed its return of chargeable interest on 31.12.1996 disclosing the chargeable interest of Rs.668,698,930/-. That the assessee computed the interest tax at 3% on the same and paid the tax along with the interest on the same. That the notice under Section 2(7) of the Act was issued on 24.11.1997 and served on the assessee on 26.11.1997 to appear on 01.12.1997. The said notice was followed by another notice dated 24.08.1998. The Chartered Accountant of the assessee appeared before the Assessing Officer and filed the relevant details. That the assessee was asked to furnish the details of interest portion on the higher purchase transaction and whether such interest was offered to tax. That the assessee by letter dated 06.10.1998 communicated the details of finance interest component included in the lease rental income in accordance with the CBDT Circular No.760 dated

13.01.1998, without prejudice, which are as under:

Name of the lessees	Amount of interest component
Western Paques (India) Ltd.	78,74,993
Prakash Industries Ltd.	24,72,172
Total interest component	1,03,47,165

That the assessee denied the chargeability of interest tax on the aforesaid interest component of Rs.1,03,47,165/- contending *inter alia* that the interpretation of Section 2(7) of the Act made by the CBDT in Circular No.738 dated 25.03.1996 and Circular No.760 dated 13.01.1998 to include deemed interest component in higher purchase/lease rental in the definition of 'chargeable interest' is contrary to the provisions of the Act. It was submitted that the CBDT had substantially expanded the scope of interest as defined in Section 2(7) of the Act beyond its delegated authority. In the alternative it was submitted that the assessee bank is not covered by the definition of Hire Purchase Finance Company as given in Section 2(5B)(i) of the Act and therefore, the provisions of the Act would not be applicable to the assessee Bank. It was submitted that the assessee Bank is a Banking Company to which the Banking Regulation Act, 1949 is applicable and is, therefore, a credit institution covered under Section 2(5A)(i) of the Act and therefore, the extended definition contained in Section 2(5B) of the Act cannot be applied in the case of the assessee bank as the assessee bank is not covered by residuary clause mentioned in Section 2(5A)(iv) of the Act. It was further submitted that section 2(5B) of the Act was an extension of Section 2(5A)(iv) only. That the Assessing Officer did not accept the contentions of the assessee for the reasons elaborated in paras 3.1 to 3.4 of the assessment order and finalized the assessment under Section 8(3) of the Act on 26.03.1999 on chargeable interest income of

Rs.71,86,33,250/- after making addition of Rs.4,99,34,315/- on account of disallowance of hire purchase transactions in accordance with CBDT Circular No.738 dated 25.03.1996 and Circular No.760 dated 13.01.1998.

[2.3] That feeling aggrieved and dissatisfied with the order of Assessing Officer, the assessee preferred the appeal before the learned CIT(A) and the learned CIT(A) partly allowed the said appeal and directed the Assessing Officer to assess only finance component of gross lease rental income and not on gross lease rental income. On further appeal by the assessee before the learned Tribunal, by impugned judgment and order, the learned Tribunal has allowed the appeal preferred by the assessee and has deleted the addition of Rs.1,03,47,165/- holding that the hire charges *per se* would not be in the nature of interest but only when the transaction in substance is in the nature of finance transaction, the hire charges would be treated as interest chargeable to the Act. That while deleting the additions of Rs.1,03,47,165/-, the learned Tribunal observed that the transactions / hire purchase transactions cannot be said to be financial transactions but they are purely lease transactions and therefore, the receipt by the assessee from the lease rental cannot be said to be in the nature of interest chargeable to the Act.

[2.4] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal, the Revenue has preferred the present Tax Appeal raising the following substantial question of law.

“Whether the ITAT is right in law and on facts in deleting the addition made to the chargeable interest, under Section 2(7) of the Interest Tax Act by the Assessing Officer?”

[3.0] Shri Varun Patel, learned Advocate appearing on behalf of the appellant – Revenue has vehemently submitted that the learned Tribunal

has materially erred in deleting the addition of Rs.1,03,47,165/- on the amount of interest received by the assessee Bank while entering into the hire purchase agreement.

[3.1] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that as such the learned Tribunal has materially erred in not properly appreciating and/or interpreting the CBDT Circular No.738 dated 25.03.1996 and Circular No.760 dated 13.01.1998 while deleting the additions.

[3.2] It is further submitted that the learned Tribunal has even not properly appreciated the Lease Agreement in substance. It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that the learned Tribunal has materially erred in not properly appreciating the fact and the Agreement that as such the Lease Agreement is a Finance Agreement which has been given a color of Lease Agreement / Hire Purchase Agreement with certain clauses which are nothing but a camouflage. It is further submitted that as such the assessee bank itself furnished the details of finance interest component included in the lease rental income i.e. Rs.1,03,47,165/-. It is submitted that therefore when a finance interest component was capable of being separated and in substance the assessee Bank recovered the interest on the finance, the learned Tribunal ought to have held that the assessee Bank was liable to pay the Interest Tax under the Act on the finance interest component included in the lease rental income as per Section 2(7) of the Act.

[3.3] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that as such the finance charges accruing on carrying out of the purchase transactions were in the nature of interest

as defined in section 2(7) of the Act and consequently the learned Tribunal ought to have confirmed the addition of Rs.1,03,47,165/-. It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that while appreciating the Hire-purchase Agreement / Lease Agreement, the learned Tribunal has not properly appreciated the distinction between the financial lease and the operating lease.

[3.4] It is further submitted that while making the deletion of addition of Rs.1,03,47,165/-, on considering certain clauses of the Lease Agreement / Hire Purchase Agreement, the learned Tribunal has misguided itself more particularly clause/para by which it is mentioned that the property in the equipment leased out shall remain wholly and exclusively that of the lessor; that the lessee will not claim any benefit under the clause Act associated with the ownership of equipments such as depreciation, investment allowance etc.; that upon expiration of earlier termination of Lease Agreement, the lessee shall deliver to the lessee the equipment at such places as the lessor may specify. It is submitted that as such the aforesaid clauses were required to be considered along with other clauses of the lease / Hire Purchase Agreement and the learned Tribunal was required to find out the real intention of the parties and/or the real nature of the transactions i.e. whether it was a financial lease or operating lease.

[3.5] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that the learned Tribunal has not properly appreciated the fact that as such the assessee Bank – lessor purchased the property/equipment leased at the request and as per the requirement of the lessee from the manufacturer/supplier and the lessor purchased the equipment leased for consideration of Rs.4,71,75,000/- against which under the Agreement, the lessee was required to pay a

total sum of Rs.5,97,23,580/- i.e. in 60 monthly installments of Rs.9,95,383/- i.e. much more amount than the purchase value of the equipment and the aforesaid total amount of Rs.5,97,23,580/- would include the finance interest component, the learned Tribunal ought to have held and/or considered the Lease Agreement as Finance Agreement and ought to have held that on the finance interest component the assessee Bank is liable to pay the interest leviable under Section 2(7) of the Act.

[3.6] Relying upon clauses / paras 1(b), 2, 8, 10, 13, 14, 17, 18, 20 and 30, it is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that the Hire Purchase Agreement / Lease Agreement in substance is a Finance Agreement and therefore, on the finance interest component the assessee Bank is liable to pay the interest leviable under Section 2(7) of the Act.

It is submitted that therefore as such considering the aforesaid clauses in the Hire Purchase / Lease Agreement, it is the lessee who, for all the practical purposes, is the owner of the asset and not the lessor and therefore, in substance the Hire Purchase Agreement / Lease Agreement is a financial lease. In support of his above submissions, Shri Patel, learned Advocate appearing on behalf of the Revenue has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Asea Brown Boveri Ltd. vs. Industrial Finance Corporation of India** reported in **(2005)126 Company Cases 332**.

[3.7] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the Revenue that as such and as per the Memorandum of Association of the assessee Bank, the main object of the assessee Bank / company / principal business is to carry on the business of banking that is to say except for the purpose of lending or investment deposits of

money from the public, repayable or demand otherwise, and to carry on the business of, a) borrowing, raising or taking up of money; b) lending or advancing of money either upon or without security etc. and even otherwise the assessee bank is a banking company to which the Banking Regulation Act applies, it would be a “credit institution” as defined under Section 2(5A)(i) of the Act and therefore, on the finance interest component the assessee Bank is liable to pay the interest leviable under Section 2(7) of the Act.

Making above submissions, it is submitted that the learned Tribunal has materially erred in deleting the additions of Rs.1,03,47,165/- being the interest on the finance interest component levied under Section 2(7) of the Act. Therefore, it is requested to allow the present Tax Appeal and quash and set aside the impugned judgment and order passed by the learned Tribunal and restore the order passed by the learned CIT(A) and answer the substantial question raised in the present Tax Appeal in favour of the Revenue and against the assessee.

[4.0] Present Tax Appeal is opposed by Shri R.K. Patel, learned advocate appearing on behalf of the assessee.

[4.1] It is vehemently submitted that in the facts and circumstances of the case and on true interpretation of the agreement/lease agreement, no error has been committed by the learned Tribunal in treating the agreement as Lease Agreement and consequently the learned Tribunal has rightly deleted the levy of interest under Section 2(7) of the Act.

It is submitted that while holding the agreement between the assessee and lessee – M/s. Prakash Industries Ltd. and another as agreement of lease / Lease Agreement, as such the learned Tribunal has considered circulars issued by the CBDT vide Circular No.760 dated 13.01.1998. It is submitted that as such the Assessing Officer considered

the CBDT Circular No.738 dated 26.03.1996 and levied the interest under Section 2(7) of the Act by observing that finance charges accruing or arising to Hire Purchase Finance Companies are in the nature of interest as defined under Section 2(7) of the Act. It is submitted that however the aforesaid circular came to be further clarified vide Circular No.762 dated 13.01.1998 and as per the said circular the hire charges *per se* would not be in the nature of interest but only when the transaction in substance is in the nature of finance transaction, the hire charges would be treated as interest chargeable to Act. It is submitted that thereafter considering the agreement of lease entered into by the assessee and considering various clauses in the Agreement of Lease, the learned Tribunal has rightly held that the transactions cannot be said to be financial transactions but they are purely lease transactions and therefore, income received by the assessee from lease rental cannot be said to be in the nature of interest chargeable to Act. It is submitted that therefore, the learned Tribunal has rightly deleted the addition of Rs.1,03,47,165/- and Rs.53,02,200/- for Assessment Year 1996-97 and 1997-98 respectively.

[4.2] Shri Patel, learned advocate appearing on behalf of the assessee has heavily relied upon various clauses of the agreement more particularly paras 4, 11, 12, 15 and 24 of the agreement which *inter alia* provides (1) that the property and the equipment shall at all times remain solely and exclusively that of the lessor; (2) that the lessee will not claim any benefit under tax clause associated with the ownership of the equipment such as depreciation, investment, allowance etc.; (3) upon expiration or early termination of the Lease Agreement, the lessee shall deliver to the lessor the equipment at such places as the lessor may specify. It is submitted that therefore the ownership of the equipment/property shall always remain with the assessee during the

continuation of the lease and the possession is to be received back by the assessee after termination of the lease, as such the agreement is a Operating Agreement / Lease Agreement and therefore, what is received by the assessee is the lease rental and therefore, not chargeable to interest as defined under Section 2(7) of the Act. It is submitted that therefore as such the finding recorded by the learned Tribunal is on interpretation of the Lease Agreement, no error has been committed by the learned Tribunal.

Making above submissions and relying upon the decision of the Hon'ble Supreme Court in the case of **Sundaram Finance Ltd. vs. The State of Kerala and Another** reported in AIR 1966 SC 1178 and the decision of the Karnataka High Court in the case of **Commissioner of Income Tax vs. Karnataka Bank Ltd.** reported in (2012)8 Taxmann.Com 6 (Karnataka), it is requested to dismiss the present Tax Appeal and answer the substantial question of law framed in favour of the assessee and against the Revenue.

[5.0] Heard learned advocates appearing on behalf of respective parties at length.

A short question posed for consideration of this Court in the present Tax Appeal is whether the agreement entered into by the assessee can be said to be a Finance Agreement or Lease/Operating Agreement and whether on the interest component the assessee is liable to pay the Interest Tax as defined under Section 2(7) of the Act or not?

At the outset it is required to be noted and it is not in dispute that the assessee bank – UTI Bank Limited was a banking company to which the Banking Regulation Act, 1949 applies and therefore, was admittedly a banking company. Therefore, as per Section 2(5A)(i) of the Act, the assessee can be said to be “credit institution” and therefore, subjected to the provisions of Section 2(7) of the Act, and therefore, assessee is liable

to pay the tax on the interest component / portion.

[5.1] It is the case on behalf of the assessee that the agreement entered into by the assessee is a Lease Agreement / Hire Purchase Agreement and therefore, whatever is recovered by the assessee is a lease rental and therefore, not liable to pay the Tax on the interest as defined under Section 2(7) of the Act.

On the other hand it is the case on behalf of the Revenue that the agreement entered into by the assessee is, in substance, in the nature of finance transaction and/or Finance Agreement and therefore, the assessee is liable to pay the Tax as defined under Section 2(7) of the Act, on the interest component.

Therefore, whether the agreement entered into by the assessee is a Finance Agreement or the Lease / Operating Agreement is required to be considered on considering the agreement as a whole. As observed by the Hon'ble Supreme Court in the case of Sundaram Finance Ltd. (Supra), the true effect of a transaction may be determined from the terms of the agreement considered in light of the surrounding circumstances. It is further observed in the said decision that in each case, the Court has, unless prohibited by statute, appear to go behind the documents and to determine the nature of transaction, whatever may be the form of the documents. In paras 23 and 24 as such the Hon'ble Supreme Court in the said decision has observed and held as under:

“23. A hire-purchase agreement is normally one under which an owner hires goods to another party called the hirer and further agrees that the hirer shall have an option to purchase the chattel when he has paid a certain sum, or when the hire-rental payments have reached the hire-purchase price stipulated in the agreement. But there are variations when a financier is interposed between the owner of the goods and the customer. The agreement, ignoring variations of detail, broadly takes one or the other of two forms: (1) when the owner is unwilling to look to the purchaser of goods to recover the balance of

the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier from the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price. The decision of this Court in *K. L. Johar & Company v. Deputy Commercial Tax Officer* (1) dealt with a transaction of this character. (2) In the other form of transactions, goods are purchased by the customer, who in consideration of executing a hire purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a licence to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement.

24. The true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances. In each case, the Court has, unless prohibited by statute, power to go behind the documents and to determine the nature of the transaction, whatever may be the form of the documents. An owner of goods who purports absolutely to convey or acknowledges to have conveyed goods and subsequently purports to hire them under a hire-purchase agreement is not estopped from proving that the real bargain was a loan on the security of the goods. If there is a bona fide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction, even though the reason for which it was entered into was to raise money. If the real transaction is a loan of money secured by a right of seizure of the goods, the property ostensibly passes under the documents embodying, the transaction, but subject to the terms of the hiring agreement, which become part of the buyer's title, and confer a licence to seize. When a person desiring to purchase goods and not having sufficient money on hand borrows the amount needed from a third person and pays it over to the vendor, the transaction between the customer and the lender will unquestionably be a loan transaction. The real character of the transaction would not be altered if the lender himself is the owner of the goods and the owner accepts the promise of the purchaser to pay the price or the balance remaining due against delivery of goods. But a hire-purchase agreement is a more, complex transaction. The owner under the hire-purchase agreement enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase exercisable by the customer on payment of all the instalments of hire arises when the instalments are paid and not before. In 'such a hire-purchase agreement there is no agreement to buy goods; the

hirer being under no legal obligation to buy, has an option either to return the goods or to become its owner by payment in full of the stipulated hire and the price for exercising the option. This class of hire-purchase agreements must be distinguished from transactions in which the customer is the owner of the goods and with a view to finance his purchase he enters into an arrangement which is in the form of a hire purchase agreement with the financier, but in substance evidences a loan transaction, subject to a hiring agreement under which the lender is given the licence to seize the goods.”

Considering the aforesaid decision of the Hon'ble Supreme Court, agreement as a whole and the relevant paras / clauses in the agreement are required to be considered to find out the real transaction i.e. whether the transaction is a finance transaction / Finance Agreement or a Lease / Operating Agreement.

At this stage it is required to be noted that as per the Memorandum of Association of the assessee, the main object of the company was mainly to carry on the business of banking that is to say accept for the purpose of lending or investment deposits of money from the public, repayable or demand otherwise.

[5.2] From the documents / material on record and as per the transaction/agreement entered into by the assessee, the lessee was required to pay monthly installment of Rs.9,95,383/- which is termed as monthly lease rent. However, it also provides for discounting factor at 15% and the net discounted value of the monthly lease rental is reduced every month. It also appears from the transaction and the documents on record that the purchase value of the equipment was Rs.4,71,75,000/- against which under the agreement, the lessee was required to pay a total sum of Rs.5,97,23,580/- i.e. in 60 monthly installments of Rs.9,95,383/-. Therefore, the lessor was to get much more amount than the purchase value of the equipment. Therefore, the difference between

the purchase price and the amount to be recovered from the lessee would be and/or can be said to be finance interest component.

At this stage it is required to be noted that in the present case admittedly the assessee had purchased the equipment as per the requirement of the lessee and from the manufacturer suggested by the lessee and even the equipment can be used only by the lessee as per its requirement. It is also required to be noted that in the agreement itself it is specifically mentioned that “in consideration of the lessor acceding to the request of the lessee, to purchase and let on lease to the lessee said equipment / machinery / apparatus / vehicles purchased”. It is submitted that therefore the assessee had purchased the equipment acceding the request made by the lessee. It is also further stated that “the equipment described in the schedule to this lease, purchased by the lessor at the request of the lessee from the manufacturer/supplier named in the schedule”. The agreement also further provides that “the equipment will be delivered by the manufacturer / supplied to the lessee and it is agreed that the risk in respect of the equipment shall be to the account of the lessee at the time of taking delivery of the equipment from the premises of the lessor and/or any supplier to the lessor from whose premises it is taken delivery”. Therefore, even the delivery of the equipment was directly to be given by the manufacturer / supplier to the lessee. The agreement also further provides that even the equipment was required to be insured by the lessee. The agreement also further provides that even the expenses for repairing and maintenance of the equipment shall be borne by the lessee. Para 17 of the agreement reads as under:

“17. Lessee’s Covenants

The Lessee acknowledge and agrees with the Lessor:

- (a) *that the Equipment is of a size, design, capacity and manufacture approved and selected by the Lessee;*
- (b) *that the Lessee is satisfied that the equipments are suitable for its purposes;*

- (c) that the Lessor is not the manufacturer of the Equipment and will not be responsible for any warranty in relation to the same;
- (d) that having inspected the equipment, the Lessee has signed this agreement relying entirely on its own judgment and not on any statements or representations made by the Lessor or the agents or servants of Lessor;
- (e) that the warranty of fitness or that the equipment is mercantable shall apply, to this contract, that the Lessor has not made and does not hereby make any representation or warrant with respect to the merchantability, conditions, quality, durability or suitability of the equipment in any respect, that all premises warranties and conditions, expressed or implied by contract statute or otherwise, whether given hereunder or collateral hereto or otherwise, and hereby stand expressly negated and extinguished;
- (f) that the equipment is accepted by the Lessee on the basis of that the equipment is in good condition and substantial working order conditions.
- (g) that the Lessor shall not be liable to the Lessee for any liability claim, loss, damage or expenses of any kind or nature:
- (i) caused directly or indirectly by the equipment, or any inadequacy thereof for any purpose or any defect therein or by the use thereof; or
 - (ii) in relation to any repairs, servicing, maintenance or adjustments thereto, or to any delay in providing or failure to provide the same, or in relation to any interruption or loss of use thereof or any loss of business or any damage whatsoever and howsoever caused;
- (h) that the Lessor shall be under no liability with respect to any statements regarding the Lessee's rights or position in respect to any law relating to taxation or any other matter; and
- (i) that the Lessee is obliged to pay rental every month/quarter during the contracted period regardless of whether the Equipment is in repairs or otherwise not working."

It is true that in the agreement the installment of Rs.9,95,383/- is termed as lease rental and in the agreement it is also mentioned that the ownership of the equipment shall be of the lessor and on completion of 60 months' period the lessee has to return the equipment to the lessee. However, at this stage it is required to be noted and even in one of the correspondence by the lessor it is stated that the equipment installed will not be of any use to any other person. Therefore, merely because in the agreement it is mentioned that the ownership of the equipment would

be that of the lessor and the amount paid monthly is termed as lease rental and one of the clause in the agreement provides that on completion of 60 months' period the lessor shall have a right to get back the possession of the equipment, by that itself the agreement which otherwise and in substance would be a Finance Agreement would not become the Lease / Operating Agreement.

[5.3] In the case of Asea Brown Boveri Ltd. (Supra), in para 17, the Hon'ble Supreme Court while considering what can be said to be a financial lease transaction has observed as under:

“17. In our opinion, financial lease is a transaction current in the commercial world, the primary purpose whereof is the financing of the purchase by the financier. The purchase of assets or equipments or machinery is by the borrower. For all practical purposes, the borrower becomes the owner of the property inasmuch as it is the borrower who chooses the property to be purchased, takes delivery, enjoys the use and occupation of the property, bears the wear and tear, maintains and operates the machinery/equipment, undertakes indemnity and agrees to bear the risk of loss or damage, if any. He is the one who gets the property insured. He remains liable for payment of taxes and other charges and indemnity. He cannot recover from the lessor, any of the above mentioned expenses. The period of lease extends over and covers the entire life of the property for which it may remain useful divided either into one term or divided into two terms with clause for renewal. In either case, the lease is non-cancellable.”

Thus, considering the various clauses in the agreement entered into between the assessee and the lessee reproduced hereinabove and the intention of the parties and the observations made by the Hon'ble Supreme Court in the case of Asea Brown Boveri Ltd. (Supra) reproduced hereinabove, we are of the opinion that the transaction by the assessee – lessor and lessee is in substance a financial lease/transaction and therefore, the assessee is liable to pay the interest tax on the interest component. The learned Tribunal has materially erred in not treating/considering the transaction between the lessor and lessee as a financial lease/finance transaction and consequently, materially

erred in holding that the assessee is not liable to pay the interest tax on the interest component.

[6.0] In view of the above and for the reasons stated above, we are of the opinion that the learned Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has materially erred in treating the transaction entered into by the assessee in the form of agreement as a Lease Agreement. As observed hereinabove, in substance, the transaction is a financial transaction and the agreement is a Finance Agreement and therefore, the assessee is liable to pay the Tax on interest as defined under Section 2(7) of the Act on the finance interest component which even according to the assessee would be Rs.1,03,47,165/-.

Under the circumstances, the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench 'C' is set aside and the order passed by the Assessing Officer levying the interest on the interest component is hereby upheld and restored. The substantial question of law is answered accordingly in favour of the Revenue and against the assessee.

THE HIGH COURT
OF GUJARAT

Sd/-
(M.R. SHAH, J.)

WEB COPY

Sd/-
(S.H. VORA, J.)

Ajay