

ORDER SHEET

ITA 21 OF 2003  
IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction (Income Tax)  
ORIGINAL SIDE

RANI LEASING & FINANCE LTD.

Versus  
C.I.T. W.B. – I

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 30th March, 2015.

For appellant/assessee : Mr.J.P.Khaitan,Sr.Adv.  
For Respondent/revenue : Mr.S.B.Saraf,Adv.  
Mr. R. K. Chowdhury, Adv., Mr. Nizamuddin, Adv.

The Court: The subject matter of challenge in this appeal is a judgement and order dated 19<sup>th</sup> August, 2002 by which an appeal preferred by the revenue was allowed by the learned Tribunal. The assessee has come up in appeal.

The following question of law was formulated at the time of admission of the appeal.

*"Whether on a proper interpretation of the Hire Purchase Agreement in the case it is a financing transaction and the hire charges received thereunder is interest which is liable to tax under the provisions of Interest Tax Act, 1974?"*

Mr. Khaitan, learned Senior Advocate appearing for the appellant/assessee drew our attention to the circular dated 23<sup>rd</sup> March, 1943 bearing Circular No.9 of 1943 issued by the CBDT by which instruction was issued that the hire purchasers should be allowed depreciation, the relevant portion whereof reads as follows :

" (i) *In every case of payment purporting to be for hire purchase, production of the agreement under which the payment is made should be insisted on.*

(ii) *Where the effect of an agreement is that the ownership of the subject is at once transferred to the lessee (e.g. where the lessor obtains a right to sue for arrear installments but no right to recovery of the asset), the transaction should be regarded as one of purchase by installments and no deduction in respect of 'hire' should be made. Depreciation should be allowed to the lessee on the entire purchase price as per the agreement.*

(iii) *Where the terms of the agreement provide that the equipment shall eventually become the property of the hirer or confer on the hirer an option to purchase the equipment, the transaction should be regarded as one of hire-purchase. In*

*such cases the periodical payments made by the hirer should for tax purposes be regarded as made up of :-*

*(i) consideration for hire, to be allowed as a deduction in the assessment, and*

*(ii) payment on account of purchase, to be treated as capital outlay, depreciation being allowed to the lessee on the initial value (i.e. the amount for which the hired subject would have been sold for cash at the date of agreement). "*

He then drew our attention to an instruction bearing No.1097 dated 19<sup>th</sup> September, 1977 by which it was clarified that the circular dated 23<sup>rd</sup> March, 1943 was in existence and operative.

He also drew our attention to the circular issued by the CBDT bearing No.1425 dated 16<sup>th</sup> November, 1981 by which the Income Tax Officers were instructed that the hire charges cannot be treated as interest within the meaning of section 2(28A). To be precise, the circular reads as follows:-

*"In a hire-purchase contract the owner delivers goods to another person upon terms on which the hirer is to hire them on a fixed periodical rental. The hirer has also the option of purchasing the goods by paying the total amount of agreed hire at any time or of returning the same before the total amount is paid. It may be pointed out that part of the amount of the hire-purchase price is towards the hire and part towards the payment of price. The agreed amount payable by the hirer in periodical installments cannot, therefore, be characterised as interest payable in any manner with the meaning of section 2(28A) of the Income-tax Act, as it is not in respect of any money borrowed or*

*debt incurred. In this view of the matter, it is clarified that the provisions of section 194A of the Income-tax Act are not attracted in these transactions."*

He also drew our attention to a CBDT Circular dated 13<sup>th</sup> January, 1998 bearing Circular No.760 wherein it is provided as follows:

*"2. The Board have since considered the issue and are advised that in the case of transactions which are, in substance, in the nature of hire-purchase, the receipts of hire charges would not be in the nature of interest. On the other hand, if the transactions are in substance in the nature of financing transactions, the hire charges should be treated as interest subject to interest-tax.*

*3. As to what constitutes a transaction in the nature of hire-purchase, the Assessing Officer should consider the issue on merits taking into account, inter alia, the following facts and circumstances:*

*(i) The terms of the agreement;*

*(ii) The nature of the arrangement between the supplier of the asset, the hire purchase company and the end-user of the asset*

*(iii) The intention of the parties which manifests itself in the fixation of the initial payment, the method of determination of the hire-purchase price, etc., when a hirer is the real purchaser of the asset but does not pay the full purchase price and the hire-purchase company pays the price or a substantial*

*part thereof on behalf of such hirer, and a hire purchase agreement is entered into merely as an arrangement is a security for repayment of the loan and is essentially a loan transaction.*

4. *In this connection, the Assessing Officer should keep in mind the tests laid down by the Supreme Court in the case of Sundaram Finance Ltd. V. State of Kerala, AIR 1966 SC 1178 wherein it has been held as under :-*

*"If there is a bonafide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, of the transaction, may not be regarded as a loan transaction even though the reason for which it was entered into was to raise money*

*"... .. the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loan advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financing transactions..."*

5. *Accordingly, instead of routinely treating all hire-purchase transactions as mere financing transactions, the Assessing Officers may be advised to examine each transaction in the above light and charge interest-tax in such of those transactions which are not in the nature of hire purchase."*

The question for consideration is whether hire charges received under a hire purchase agreement amounts to interest liable to tax under the provisions of the Interest Tax Act. Dealing with the question, CIT(A) held as follows:-

*"On going through a sample "contract of hire" or the agreement which is entered into for all the purchase transactions in this case it is seen that the hire purchase company continues to be the owner of the vehicles and what it received by way of installment is the hire charges for the vehicle and the hirer has the option to purchase the vehicle after payment of all the installments by paying a notional amount rupee 1/-. The installments received from hirer are partly towards the return of the cost of the vehicle and partly towards the hire charges which are shown in the accounts as finance charges. In such transaction the common intention behind the agreement is that it should take the form of the hire purchase agreement which would become a sale on the completion of the terms of that agreement. It cannot be said that the hirer is a real purchaser of the vehicle and the appellant is only a financier to help in the agreement. After all, as provided in the agreement, the appellant remains the owner till the completion of the term. Therefore, I would hold that the finance charges received under such hire purchase transaction in this case cannot be treated as interest in terms of section 2(7) of the Interest Tax Act. On analysis of a similar agreement in the case of Harita Finance Limited vs. ACIT (Interest-tax Appeal No.29/Mds/1997) the ITAT "A" Bench, Madras held the same view which is respectfully followed by me."*

The View taken by the CIT is evidently in consonance with the circulars dated 23<sup>rd</sup> March, 1943 and 16<sup>th</sup> November, 1981 quoted above.

The reasons why the learned Tribunal held otherwise are as follows:-

*"We had also carefully gone through the audited Balance-sheet filed by the assessee as placed at page Nos.23 to 28 of the paper book filed by the assessee. Under the head "fixed assets", which has been detailed in Schedule-"A", the assessee has shown the ownership of only those items in respect of assets which had been leased out and which had been owned by the assessee himself for his business use totaling Rs.2,05,00,223/- as on 31<sup>st</sup> March, 1995. Thus the assessee by his conduct and entry in the books of accounts as well as the audited Balance Sheet himself has conceded that after hiring of the assets, it did not remain the owner of the assets and, therefore, the same has not been shown under the head "fixed assets". Moreover, the assessee has shown the amount recoverable from the hirer under the head "installment receivable (secured against vehicles financed as per agreement)" of Rs.1,46,70,993/-. This itself indicates that the assessee has shown the amount under the head "current assets" for the hire charges recoverable from the persons to whom he has financed the assets. Thus not claiming of the depreciation as business expenditure and not showing the assets financed, as owned assets in the Balance sheet establishes the fact that immediately at the time of entering into hire purchase agreement, the assessee did not remain the owner of the assets.*

*We are, therefore, of the considered view that in terms of the hire purchase agreement entered into by the assessee as placed at Page-5 to 12 of the paper book, the transactions were in substance in the nature of financing transaction, the hire*

*charges received by the assessee are in the nature of interest chargeable to the interest tax under Section 2(7) of the Interest Tax Act. The amount recoverable from the hirer shown as installment receivable and which is secured against vehicles financed as per agreement as shown under the head "current assets, loans and advances" in the Balance-sheet of the assessee itself indicates that the hire purchase agreement was a security for re-payment of the loan and is essentially a loan transaction. We had carefully gone through the judgments cited by the ld. A. R. which are not applicable to the facts and circumstances of the case. "*

The learned Tribunal has referred to the circular dated 13<sup>th</sup> January, 1998 issued by the CBDT but omitted to examine the matter in the light of the terms and conditions contained in the hire purchase agreement as required by the said circular. The tribunal has not taken into account the circulars dated 23<sup>rd</sup> March, 1943 and 16<sup>th</sup> November, 1981 at all. The view taken by the Tribunal is on the basis that the assessee did not claim depreciation; and (ii) that the subject matter of the hire purchase agreements were shown as current assets which the learned Tribunal thought "that the hire purchase agreement was a security for repayment of the loan.

Both the reasons, according to us, are without any substance. We already have referred to the Circular dated 23<sup>rd</sup> March, 1943 issued by the CBDT which still is in force which entitles the hirer to claim depreciation. Therefore, the

assessee could not have claimed depreciation. The fact that the subject matter of hire purchase agreement has been shown as the current assets of the assessee is evidence of the fact that the assessee is the owner thereof. The learned Tribunal has missed the ratio of the judgment in the case of Sundaram Finance Limited v. State of Kerala reported in AIR 1966 SC 1178 wherein their Lordships distinguished a loan transaction from a hire purchase agreement as follows:-

*"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 installments of hire arises when the installments 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 license to seize the goods."*

In the case before us there is nothing to show that assessee lent money to the hirer for purchasing the vehicle. Nor is there anything to show that the vehicle originally belonged to the assessee and the assessee in consideration of the hirer promising to pay the price in installments delivered possession thereof to the hirer. In a hire purchase agreement the hirer is under no obligation to buy the vehicle. He has an option either to buy the vehicle or to return the same. The transaction entered into by the assessee does not also disclose that the hirer was the owner of the vehicle and he entered into the hire purchase agreement only for the purpose of raising a loan.

In the case of Sundaram Finance (supra) their Lordships referred to the judgement in the case of K. L. Johar Vs. Deputy Commercial Tax Officer reported in AIR 1965 SC 1082, Their Lordships distinguished a sale from a transaction of hire purchase as follows:-

*"This brings us to a consideration of the validity of Explanation 1, which we have already set out. It is necessary in this connection to understand the nature of a typical hire-purchase agreement as distinct from a sale in which the price is to be paid later by instalments. In the case of a sale in which*

the price is to be paid by instalments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in instalments. This follows from the definition of sale in S.4 of the Indian sale of Goods Act (as distinguished from an agreement to sell) which requires that the seller transfers the property in the goods to the buyer for a price. The essence of a sale is that the property is transferred from the seller to the buyer for a price, whether paid at once or paid later in instalments. On the other hand, a hire-purchase agreement, as its very name implies, has two aspects. There is first an aspect of bailment of the goods subjected to the hire purchase agreement, and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire-purchase agreements, is exercised by the intending purchaser. Thus the intending purchaser is known as the hirer so long as the option to purchase is not exercised, and the essence of a hire-purchase agreement properly so called is that the property in the goods does not pass at the time of the agreement but remains in the intending seller, and only passes later when the option is exercised by the intending purchaser. The distinguishing feature of a typical hire-purchase agreement therefore is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement.

The next question that arises is whether a hire purchase agreement ever ripens into a sale and if so when. We have already pointed out that a hire purchase agreement has two elements: (1) element of bailment, and (2) element of sale, in

the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired. When this sale takes place it will be liable to sales tax under the Act for the taxable event under the Act is the taking place of the sale, the Act providing for a multi-point sales tax at the relevant time. Where however option is not exercised or cannot be exercised because of the inability of the intending purchaser to fulfil the terms of the agreement, there is no sale at all. As the taxable event is the sale of goods, the tax can only be levied when the option is exercised after fulfilling all the terms of the hire-purchase agreement. We cannot agree with the view of the high Court that because in most of such cases the option is exercised, tax is leviable immediately on the making of the hire-purchase agreement and that in a few cases where there is failure to carry out the terms of the agreement or to exercise the option, there can be adjustment by elimination of such portion of the turnover. As we have pointed out the taxable event under the Act is the sale of goods and until that taxable event takes place there can be no liability to pay tax. Therefore, even though eventually most cases of hire-purchase may result in sales by the exercise of the option and the fulfilment of the terms of the agreement, tax is not exigible at the time when the hire-purchase agreement is made, for at that time the taxable event has not taken place; it can only be exigible when the option has been exercised and all

*the terms of agreement fulfilled and the sale actually takes place. When sale takes place in a particular case will depend upon the terms of the hire-purchase agreement but till the sale takes place there can be no liability to sales tax under the Act. The High Court therefore was in error in holding that transactions of hire-purchase of the kind with which we are dealing having regard to their main intent and purpose might be treated as sales at the time the agreement is entered into; in all hire purchase agreements of the type with which we are dealing sale only takes place when the option is exercised after all the terms of the agreements are fulfilled and it is at that time that the tax is exigible."*

Mr. Saraf, learned Advocate appearing for the revenue, has drawn our attention to a sample invoice dated 8<sup>th</sup> July, 1996 issued by Agro Service Centre which goes to show that the invoice has been raised upon the assessee but there is an indication "A/C. – Shri Gopal Chandra Singh". He submitted that the mention of the hirer in the invoice itself is a clear pointer to show that it was really a loan transaction. The vehicle was purchased by the hirer and all that the assessee did was to finance purchase. Therefore, it was nothing more or nothing less than a transaction of loans and advances. We have not been impressed by this submission. The invoice goes to show that the assessee is the purchaser. The assessee may have purchased for the purpose of hiring it out to the named hirer on terms and conditions contained in the hire purchase agreement. In the present case there shall be two transactions of sale if the terms of hire purchase agreement are fully performed. The first sale is by Agro

Service Centre to the assessee and the second sale is by the assessee to Gopal Chandra Singh.

Mr. Chowdhury and Mr. Nizamuddin appearing in other two matters involving the same question of law drew our attention to a judgment in the case of CIT Vs. Muthoot Leasing & Finance Ltd. reported in (2008) 3 KLT 340. We have perused the judgment but are unable to agree with the views contained therein.

The judgement in the case of CIT Vs. Muthoot Leasing & Finance Ltd., with respect, is over simplification of the mater. The view that “option given to the borrower to purchase vehicle for rupee one in the hire purchase agreement is an empty formality” is contrary to the views expressed by Their Lordships of the Apex Court in both the judgments cited above. Unless the option is exercised in accordance with the hire purchase agreement and the sale is effected the property in the goods shall continue to remain with the assessee.

Moreover in the case of Muthoot Leasing & Finance only the provisions of Section 51 of the Motor Vehicles Act were considered without any attempt to distinguish a hire purchase transaction from a loan transaction simplicitor. Section 51 of the Motor Vehicles Act provides as follows:-

*"Special provisions regarding motor vehicle subject to hire-purchase agreement, etc. - (1) Where an application for registration of a motor vehicle which is held under a hire-*

*purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.*

*(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the [last registering authority] shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration [and an intimation in this regard shall be sent to the original registering authority if the last registering authority is not the original registering authority].*

*(3) Any entry made under sub-section (1) or sub-section (2), may be cancelled by the [last registering authority] on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe [and an intimation in this behalf shall be sent to the original registering authority if the last registering is not the original registering authority].*

*(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement.*

(5) Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfies the registering authority that he has taken possession of the vehicle [from the registered owner] owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at his address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the remaining period for which the certificate cancelled under this sub-section would have been in force.

(6) The registered owner shall, before applying to the appropriate authority, for the renewal of a permit under section 81 or for the issue of duplicate certificate of registration under sub-section (14) of section 41, or for the assignment of a

*new registration mark [under section 47, or removal of the vehicle to another State, or at the time of conversion of the vehicle from one class to another, or for issue of no objection certificate under section 48, or for change of residence or place of business under section 49, or for the alteration of the vehicle under section 52, make an application] to the person with whom the registered owner has entered into the said agreement, (such person being hereafter in this section referred to as the financier) for the issue of a no objection certificate (hereafter in this section referred to as the certificate).*

*Explanation.- For the purposes of this sub-section and sub-sections (8) and (9), "appropriate authority" in relation to any permit, means the authority which is authorised by this Act to renew such permit and, in relation to registration means the authority which is authorised by this Act to issue duplicate certificate of registration or to assign a new registration mark.*

*(7) Within seven days of the receipt of an application under sub-section (6) the financier may issue, or refuse, for reasons which shall be recorded in writing communicated to the applicant, to issue, the certificate applied for, and where the financier fails to issue the certificate and also fails to communicate the reasons for refusal to issue the certificate to the applicant within the said period of seven days, the certificate applied for shall be deemed to have been issued by the financier.*

*(8) The registered owner shall, while applying to the appropriate authority for the renewal of any permit under section 81, or for the issue of a duplicate certificate of registration under sub-section (14) of section 41, or while applying for*

*assignment of a new registration mark under section 47, submit with such application the certificate, if any, obtained under sub-section (7) or, where no such certificate has been obtained, the communication received from the financier under that sub-section, or, as the case may be, a declaration that he has not received any communication from the financier within the period of seven days specified in that sub-section.*

*(9) On receipt of an application for the renewal of any permit or for the issue of duplicate certificate of registration or for assignment of a new registration mark in respect of a vehicle which is held under the said agreement, the appropriate authority may, subject to the other provisions of this Act, -*

*(a) in a case where the financier has refused to issue the certificate applied for, after giving the applicant an opportunity of being heard, either-*

*(i) renew or refuse to renew the permit, or*

*(ii) issue or refuse to issue the duplicate certificate of registration, or*

*(iii) assign or refuse to assign a new registration mark;*

*(b) in any other case, -*

*(i) renew the permit, or*

*(ii) issue duplicate certificate of registration, or*

*(iii) assign a new registration mark.*

*(10) A registering authority making an entry in the certificate of registration regarding-*

- (a) *hire-purchase, lease or hypothecation agreement of a motor vehicle, or*
- (b) *the cancellation under sub-section (3) of an entry, or*
- (c) *recording transfer of ownership of motor vehicle, or*
- (d) *any alteration in a motor vehicle, or*
- (e) *suspension of cancellation of registration of a motor vehicle, or*
- (f) *change of address,*

*shall communicate [by registered post acknowledgement due] to the financier that such entry has been made.*

*[(11) A registering authority registering the new vehicle, or issuing the duplicate certificate of registration or a no objection certificate or a temporary certificate of registration, or issuing or renewing, a fitness certificate or substituting entries relating to another motor vehicle in the permit, shall intimate the financier of such transaction.*

*(11) The registering authority where it is not the original registering authority, when making entry under sub-section (1) or sub-section (2), or cancelling the said entry under sub-section (3) or issuing the fresh certificate of registration under sub-section (5) shall communicate the same to the original registering authority.] "*

The elaborate mechanism contained in the provisions of Section 51 make it clear that the hirer does not have property in the goods and his registered ownership is limited for the purpose of the provisions of the Motor Vehicles Act.

He in law is nothing more than a bailee which will become further evident from Section 2(30) of the Motor Vehicles Act, 1988 which is as follows:-

*" 'Owner' means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. "*

It would appear that the hirer has been treated as the owner because he is in possession thereof. Possession without title makes the possessor a mere bailee. In the case of Hiralal Vs. Nirbhe Singh reported in AIR 1943 Nag. 22 considering Section 2(15) of the Motor Vehicles Act, 1939 which was same as Section 2(30) of the 1988 Act, it was observed that "ownership as opposed to possession implied title with the incidental right of transfer. A person may be in possession and control of vehicle nevertheless he might not have any title or right to transfer it". Section 51 makes it clear that the right of the hirer is subject to superior right of the person with whom he has entered into a hire purchase agreement.

The hirer is a bailee as already indicated. In a bailment the bailor does not divest himself of ownership. He merely curtails his right of enjoyment of the thing bailed in favour of the bailee. Further, the rights which the bailee being a hirer acquires may be enjoyed by him in terms of the hire purchase agreement and not otherwise.

The nomenclature given by the assessee is not decisive. It is the substance of the matter which has to be looked into. Mere fact that the assessee has treated the vehicle for the purpose of accounting as its current assets does not derogate from the concept of hire purchase.

The provisions of Interest Tax Act were considered by the Bombay High Court in the case of ***Discount and Finance House of India Ltd.***, reported in [2003] 259 ITR 295. In a very instructive judgment delivered by His Lordship Kapadia, J. [ as His Lordship then was], the object of the Interest Tax Act was examined and His Lordship held as follows:-

*" This has been discussed in the judgment of the Division Bench of this court to which one of us (S.H.KAPADIA,J.) is a party in the case of Unit Trust of India v. P.K. Unny [2001] 249 ITR 612 (Bom). Therefore, the Act is enacted for two-fold purposes, namely, as an anti-inflationary measure and, secondly, to augment the revenue. In the said judgment of the Division Bench of this court in the case of Unit Trust of India [2001] 249 ITR 612, it has been held that interest-tax is a special tax. It operates as an indirect levy on the borrower. This is indicated by section 26C of the Act which lays down that a lender can modify the existing agreement so as to pass on the burden of interest-tax to the borrower. "*

If the object of the Interest Tax Act is kept at the back of the mind, it would be clear that unlike loans and advances the hire purchase transactions resulting in sale of various household goods including cars and automobiles was not intended to be curbed by the Interest Tax Act. As a matter of fact, the sale of household goods including cars and automobiles through the hire purchase transactions provides a boost to the industry and is, therefore, to be encouraged rather than discouraged.

The question came up for consideration before us with respect to bonds and debentures and the view taken by us in the case of **CIT, Kol-II vs. Pilani Investment & Industries [ITA 313/2005]** is as follows:-

*"The question is whether interest earned from debentures and bonds is open to taxation under the Interest Tax Act? The definition of "interest" appearing from section 2(7) of the Interest Tax Act, 1974, is as follows:*

*" (7) "**interest**" means interest on loans and advances made in India and includes-*

*(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and*

*(b) discount on promissory notes and bills of exchange drawn or made in India, but does not include-*

*(i) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);*

*(ii) discount on treasury bills;"*

*From a plain reading of definition, it is clear that an investment made by an assessee either in bonds or in debentures was not contemplated. What has been contemplated is loans and advances. The investment made in bonds and debentures can by no stretch of imagination be considered to be either a loan or an advance. In pith and substance, it may have some affinity with the concept of loan and advance, but it is not possible to presume that the legislature was unaware of the distinction between an investment in bonds and debentures and loans and advances. The legislature has not provided for inclusion of interest earned from bonds and debentures within the purview of the Interest Tax Act.*

*If we look at the object sought to be achieved by the Act as discussed by the Bombay High Court in the case of Discount and Finance House of India Ltd. (supra), the object cannot be achieved by roping in interest earned from debentures and bonds."*

We may reiterate that it is not possible to presume that the legislature was not aware of the distinction between hire purchase transaction and transaction in the nature of loans and advances. Therefore, if the legislature wanted to apply the provisions of the Interest Tax Act to the hire purchase transaction, a specific reference to that effect would have been made.

We reiterate our view taken in the case of Pileri Investment & Industries [supra] that in pith and substance, a completed hire purchase transaction may have some similarity with a purchase effected by obtaining a loan, but that similarity cannot obliterate the identity of a real hire purchase transaction which is a more complex transaction in contradistinction of a loan simplicitor as discussed in the case of Sundaram Finance (supra). The question is, for the aforesaid reasons, answered in the negative and in favour of the assessee. The appeal is allowed.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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