

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 5384 OF 2006

COMMISSIONER OF INCOME TAX ... Appellant

VERSUS

M/S. HENKEL SPIC INDIA LTD. ... Respondent

O R D E R

The respondent-assessee opened a public issue of shares on 29.01.1992. The date of closure of this issue was 03.02.1992. Proceeds which were received from the applicants to the share capital were deposited in the Bank in 46 days as per the requirement under law. The shares were ultimately allotted in June, 1992. Those who were not allotted the shares, their application money was refunded along with interest. As mentioned above, the proceeds which were collected from the intending subscribers were kept in Bank for 46 days and on this the assessee earned an interest of Rs.1,83,31,363/-.

The Assessing Officer wanted to tax the aforesaid interest income in the Assessment Year 1992-1993 as the money was received between 29.01.1992 and 03.02.1992 and the interest earned thereupon in the said Financial Year. On the

other hand, the assessee maintained that since the shares were allotted only in June, 1992, i.e., during the Financial Year 1993-1994, and as per Section 73 of the Companies Act,

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Reason: 

the assessee was required to keep the money in Bank account, interest has accrued to the assessee only on the allotment of the shares as before that the amount was kept in trust by the assessee which belonged to the applicants who wanted to subscribe for the shares. It was further submitted that after certain amount was refunded, which included interest to those whose application money was returned, the actual amount which was left became the income and, therefore, this income accrued only in the year 1993-1994.

The aforesaid contention of the assessee has been accepted by the High Court in the following manner: -

"17. The company is not, under section 73, required to keep the money in a bank account which yields interest. There is, however, no prohibition in sub-section (3) or (3A) of section 73 against the money being kept in a bank account which yields interest. The interest so earned, however, cannot be regarded as an amount which is fully available to the company for its own use from the time the interest accrued, as that interest is an amount which accrues on a fund which itself is held in trust until the allotment is completed and moneys are returned to those to whom shares are not allotted. No part of this fund, either principal or interest accrued thereon, can be utilized by the company until the allotment process is completed and money repayable to those entitled to repayment has been repaid in full together with such interest as may be prescribed having regard to the length of period of delay in the return of money to them.

18. It is only after the allotment process is completed and all moneys payable to those to whom moneys are refundable are refunded together with interest wherever interest becomes payable, the balance remaining from and out of the interest earned on the application money can be regarded as belonging to the company. The application money as also interest earned thereon will remain within a trust in favour of the general body of applicants until the process outlined above is completed in all respects.

The prohibition contained in sub-section (3A) of Section 73 against the moneys standing to credit in a separate bank account being utilized for purposes other than those mentioned in that sub-section, is absolute and the interest earned on the amounts in such separate bank account will remain a part of that separate bank account and cannot be transferred to any other account.

19. As the amount of interest earned on the application money to the extent to which it is not required for being paid to the applicants to whom moneys have become refundable by reason of delay in making the refund will belong to the company, only when the trust terminates and it is only at that point of time, it can be stated that amount has accrued to the company as its income."

It is not in dispute that in the year 1993-1994, the assessee had shown the income on account of interest received in the income tax returns and paid the tax thereupon.

We, thus, do not find any error in the order passed by the High Court holding that the interest income has accrued only in the Assessment Year 1993-1994 and was taxable in that year only and not in the Assessment Year 1992-1993.

The appeal is, accordingly, dismissed.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ROHINTON FALI NARIMAN ]

New Delhi;  
September 04, 2015.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5384/2006

COMMNR. OF INCOME TAX

Appellant(s)

VERSUS

M/S. HENKEL SPIC INDIA LTD.

Respondent(s)

Date : 04/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. Jaideep Gupta, Sr. Adv.

Mr. T. M. Singh, Adv.

Ms. Sadhana Sandhu, Adv.

Ms. Anil Katiyar, Adv.

Mr. B. V. Balaram Das, Adv.

For Respondent(s)

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Mr. Gaurav Nair, Adv.

Ms. Niharika, Adv.

M/s. K. J. John &amp; Co.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

(Nidhi Ahuja)  
COURT MASTER(Renu Diwan)  
COURT MASTER

[Signed order is placed on the file.]