IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1549 of 2006

Commissioner of Income Tax ..Appellant

versus

CitiBank N.A. ..Respondent

ORDER

The assessment year in question is 1978-79.

Aggrieved against the judgment and order of the High Court of Bombay dated 16th April, 2003 passed in ITR No.278 of 1997, revenue has filed this appeal. The following question of law has been posed before us for consideration:

> "Whether on the facts and in the circumstances of the case, the High Court was right in law in holding, that, the interest paid for broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the Year of purchase of securities."

The High Court in the impugned judgment in this appeal has answered the same in favour of the assessee and against the revenue following its earlier decision in the case of American Express vs. CIT, reported in 258 ITR 601 (Bom.). Against the said judgment, revenue preferred special leave petitions being SLP(C) Nos.....(CC 301-303/2004) in this Court which were dismissed on 27th January, 2004 on the ground of delay. On the same date, another special leave petition seeking to raise the same issue being SLP(C)No.3710/2004 arising from CC 345/2004 came up for consideration before another Bench, which was dismissed by this Court by passing the following order:

> "Delay condoned. We see no reason to interfere. The special leave petition is dismissed."

The same is now reported in 266 ITR 106 (St.). Thereafter a three Judge Bench of this Court, on the same issue, again dismissed a special leave petition filed by the revenue being SLP(C) No.3717 of 2004 after condoning the delay by its order dated 27th September, 2004.

According to the counsel appearing for the assessee, in view of the orders passed by this Court in SLP(C) Nos.3710 of 2004 and 3717 of 2004, referred to above, the point in issue is concluded against the revenue and in favour of the assessee.

Learned ASG appearing for the revenue, relying upon a judgment of this Court in the case of Vijaya Bank Ltd. vs. Additional Commissioner of Income Tax, Bangalore reported in 1991 Supp. (2) SCC 147, wherein this Court in paras 4 & 5 observed as under:

> "4. In IRC v. Pilcher (1949) 2 All ER 1097, Lord Justice Jenkins stated : (All ER p.1103)
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> "It is a well settled principle that outlay on the purchase of an income-bearing asset is in the nature of capital outlay, and no part of the capital so laid out can, for income tax purposes, be set off as expenditure against income accruing from the asset in question."
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> 5. In the instant case, the assessee purchased securities. It is contended that the price paid for the securities was determined with reference to their actual value as well as the interest which had accrued on them till the date of purchase. But the fact is, whatever was the consideration which prompted the assessee to purchase the securities, the price paid for them was in the nature of a capital outlay, and no part of it can be set off as expenditure against income accruing on those securities. Subsequently when these securities yielded income by way of interest, such income was attracted by Section 18."

contends that the point in issue is concluded in favour of the revenue and against the assessee.

We may point out that in American Express (supra), the Bombay High Court distinguished the decision in Vijaya Bank Ltd.(supra) by observing thus:

> "Before going further we may mention at the very outset that the security in this case was of the face value of Rs.5 lakhs. It was bought for a lesser amount of Rs.4,92,000. The difference was of Rs.8,000. The assessee has revalued the security. The assessee offered the notional profit for taxation, as explained hereinabove, on accrual basis in the appropriate assessment year during which the assessee held the security. This difference could have been treated by the Department as interest on securities under section 18. However, in the instant case, the Department has assessed the said difference under section 28 under the head "Business" and not under the head "Interest on securities".
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> Having treated the difference under the head "Business", the Assessing Officer disallowed the broken period interest payment, which gave rise to the dispute. It was open to the Department to assess the above difference under the head "Interest on securities" under section 18. However, they chose to assess the interest under the head "Business" and, while doing so, the Department taxed broken period interest received, but disallowed broken period interest payment. It is in this light that one has to read the judgment of the Karnataka High Court and the Supreme Court in Vijaya Bank Ltd's case [1991] 187 ITR 541. In that case, the facts were as follows. During the assessment year under consideration, Vijaya Bank entered into an agreement with Jayalakshmi Bank Limited, whereby Vijaya Bank took over the liabilities of Jayalakshmi Bank. They also took over assets belonging to Jayalakshmi Bank. These assets consisted of two items, viz., Rs.58,568 and Rs.11,630.00. The said amount of Rs.58,568 represented interest, which accrued on securities taken over by Vijaya Bank from Jayalakshmi Bank and Rs.11,630 was the interest which accrued up to the

date of purchase of securities by the assessee-bank from the open market. These two amounts were brought to tax by the Assessing Officer under section 18 of the Income-tax Act. The assessee-Bank claimed that these amounts were deductible under sections 19 and 20. This was on the footing that the Department had brought to tax, the aforestated two amounts as interest on securities under section 18. It is in the light of these facts that one has to read the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC). In the light of the above facts, it was held that the outlay on purchase of income- bearing asset was in the nature of capital outlay and no part of the capital outlay can be set off as expenditure against income accruing from the asset in question. In our case, the amount which the assessee received has been brought to tax under the head "Business" under section 28. The amount is not brought to tax under section 18 of the Income-tax Act. After bringing the amount to tax under the head "Business", the Department taxed the broken period interest received on sale, but at the same time, disallowed broken period interest payment at the time of purchase and this led to the dispute. Having assessed the amount received by the assessee under section 28, the only limited dispute was-whether the impugned adjustments in the method of accounting adopted by the assessee- bank should be discarded. Therefore, the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) has no application to the facts of the present case. If the Department had brought to tax, the amounts received by the assessee-bank under section 18, then Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) was applicable. But, in the present case, the Department brought to tax such amounts under section 28 right from the inception. Therefore, the Tribunal was right in coming to the conclusion that the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) did not apply to the facts of the present case. However, before us, it was argued on behalf of the Revenue, that in view of the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC), even if the securities were treated as part of the trading assets, the income therefrom had to be assessed under section 18 of the Act and not under section 28 of the Act as income from securities can only come within section 18 and not under section 28. We do not find any merit in this argument. Firstly, as stated above, Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) has no application to the facts of this case. Secondly, in the present case, the Tribunal has found that the securities were held as trading assets. Thirdly, it has been held by the Supreme Court in the subsequent decision reported in the case of CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306, that income from securities can also come under section 28 as income from business. This judgment is very important. It analyses the judgment of the Supreme Court in United Commercial Bank Ltd.'s case [1957] 32 ITR 688, which has been followed by the Supreme Court in Vijaya Bank Ltd.'s case [1991] 187 ITR 541. It is true that once an income falls under section 18, it cannot come under section 28. However, as laid down by the Supreme Court in Cocanada Radhaswami Bank Ltd.'s case [1965] 57 ITR 306, income from securities treated as trading assets can come under section 28. In the present case, the Department has treated income from securities under section 28. Lastly, the facts in the case of United Commercial Bank Ltd. [1957] 32 ITR 688 (SC), also support our view in the present case. In United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the assessee-bank claimed a set-off under section 24(2) of the Indian Income-tax Act, 1922 (section 71(1) of the present Act), against its income from interest on securities under section 8 of the 1922 Act (similar to section 18 of the present Act). It was held that United Commercial Bank was not entitled to such a set-off as the income from interest on securities came under section 8 of the 1922 Act. Therefore, even in United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the Department

had assessed income from interest on securities right from the inception under section 8 of the 1922 Act and, therefore, the set-off was not allowed under section 24(2) of the Act. Therefore, United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), has also no application to the facts of the present case in which the assessee's income from interest on securities is assessed under section 28 right from inception. In fact, in United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the matter was remitted back as it was contended on behalf of United Commercial Bank that the securities in question were a part of the trading assets held by the assessee in the course of its business and the income by way of interest on such securities was assessable under section 10 of the Indian Income-tax Act, 1922 (similar to section 28 of the present Act). It is for this reason that in the subsequent judgment of the Supreme Court in the case of Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306, the Supreme Court has observed, after reading United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), that where securities were part of trading assets, income by way of interest on such securities could come under section 10 of the Indian Income-tax Act, 1922.

In the light of what we have discussed hereinabove, we find that the assessee's method of accounting does not result in loss of tax/revenue for the Department. That, there was no need to interfere with the method of accounting adopted by the assessee- bank. That, the judgment in the case of Vijaya Bank Ltd. [1991] 187 ITR 541 (SC), had no application to the facts of the case. That, having assessed income under section 28, the Department ought to have taxed interest for the broken period interest received and the Department ought to have allowed deduction for the broken period interest paid."

The facts in the present case are similar to the facts in American Express (supra). Agreeing with this view and accepting the distinction pointed out by the Bombay High Court, this Court dismissed the two special leave petitions filed by the revenue, one of which was dismissed by a three Judge Bench.

After going through the facts which are similar to the facts in American Express (supra), since the tax effect is neutral, the method of computation adopted by the assessee and accepted by the revenue cannot be interfered with. We agree with the view expressed by the Bombay High Court in American Express (supra) that on the facts of the present case, the judgment in Vijaya Bank Ltd. (supra) would have no application.

For the reasons given above, the question posed before us is answered in the affirmative i.e. in favour of the assessee and against the revenue.

The Appeal is dismissed accordingly. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

.....J.
[V.S.SIRPURKAR]

NEW DELHI;
AUGUST 12, 2008