

M/S.Chandok Services Pvt. Ltd vs The Assistant Commissioner Of Income

ID: F2J-C-2374 **Court:** Madras High Court

Case: T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 **Date:** 2025-04-16

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Madras High Court M/S.Chandok Services Pvt. Ltd vs The Assistant Commissioner Of Income ... on 16 April, 2025 Author: C.Saravanan Bench: S.S.Sundar, C.Saravanan T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 11.03.2025 Pronounced On 16.04.2025

Coram:

THE HON'BLE MR.JUSTICE S.S.SUNDAR and THE HON'BLE MR.JUSTICE C.SARAVANAN

T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

M/s.Chandok Services Pvt. Ltd., Chandok Centre, No.(713) 244, Anna Salai, Chennai – 600 006. ...Appellant in all T.C.As Versus The Assistant Commissioner of Income Tax, Company Circle I (3), Chennai. ...Respondent in all T.C.As Common Prayer: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai in Int.T.A.Nos.009/Mds/2008, 0010/Mds/2008, 0011/Mds/2008 & 0012/Mds/2008 respectively dated 15.05.2009. For Appellant in all T.C.As : Mr.R.Kumar For Respondent in all T.C.As : Mr.T.Ravikumar, Senior Standing Counsel

1/28

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T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

COMMON JUDGMENT

(Judgment of the Court was delivered by C.SARAVANAN, J.) These Tax Case Appeals have been preferred by the Appellant/Assessee against the Order dated 15.05.2009 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai (for brevity, hereinafter referred to as "ITAT") in I.T.A.Nos.009/Mds/2008, 0010/Mds/2008, 0011/Mds/2008 & 0012/Mds/2008 respectively, relating to the Assessment Years 1994-1995, 1995-1996, 1996-1997 & 1997- 1998.

2. On 11.11.2009, all these Tax Case Appeals were admitted by this Court and the following substantial questions of law were framed:

“1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the appellant is a 'credit institution' as defined in Section 2(5A) r.w. Clause (va) of Section 2(5B) of the Interest Tax Act, 1974?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in concurring with the views of the Commissioner (Appeals) and holding that mere acceptance of monies as deposits without any 'scheme or arrangement' as contemplated in the Reserve Bank directions/notification will attract the provisions of the Interest Tax Act?” 2/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

3. In the present case, originally, Assessment Order under Section 8 read with Section 10 of the Interest Tax Act, 1974 (for brevity, hereinafter referred to as the “1974 Act”) was passed on 08.11.1999 determining the interest tax payable by the Appellant/Assessee for the Assessment Years 1994-1995, 1995-1996, 1996-1997 & 1997-1998.

Challenging the said Assessment Order dated 08.11.1999, the Appellant/Assessee preferred an Appeal before the Commissioner of Income Tax (Appeals). By an Order dated 28.02.2000, the Commissioner of Income Tax (Appeals) held that the Appellant/Assessee was not liable to pay interest tax since the Appellant/Assessee could not be treated as a “credit institution” under Section 2(5A) and “financial company” under Section 2(5B) of the 1974 Act.

4. As against the said order, the Department preferred a Second Appeal before the ITAT. By Common Order dated 24.06.2005, the ITAT set aside the Assessment Order dated 08.11.1999 and remitted the case back to the Assessing Officer with a direction to verify whether the Appellant/Assessee accepted deposits or not and accordingly, to decide the issue with reference to the provisions of Section 2(5B)(va) of the 1974 Act. 3/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

5. Pursuant to the aforesaid order of the ITAT, the Respondent/Assessing Officer had passed the Assessment Orders dated 26.12.2006 under Section 8 read with Section 10 of the 1974 Act for the Assessment Years 1994-1995, 1995-1996, 1996-1997 & 1997-1998 respectively. In the said Assessment Orders, the Respondent/Assessing Officer held that since the Appellant/Assessee accepted deposits from its Directors, Shareholders and Group Companies, the Appellant/Assessee was to be treated as a “credit institution” within the meaning of Section 2(5B)(va) of the 1974 Act and therefore, the Appellant/Assessee was liable to pay interest tax under the provisions of the 1974 Act for the deposits accepted from its Directors, Shareholders and Group Companies by the Appellant/Assessee.

6. The details of the interest tax payable by the Appellant/Assessee as per the Assessment Order dated 26.12.2006 are as follows:-

For the Assessment Year 1994-95:

Tax Chargeable Interest Rs.4,26,716/-

Interest Tax thereon Rs.12,801/- Add: Int. u/s. 12 Rs.12,801/- Int. u/s. 12B Rs.17,025/- Rs.29,826/- Total Interest Tax Payable Rs.42,627/-

For the Assessment Year 1995-96:

4/28

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T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

Tax Chargeable Interest Rs.14,12,850/-

Interest Tax thereon Rs.42,385/- Add: Int. u/s. 12 Rs.32,212/- Int. u/s. 12B Rs.46,199/- Rs.78,411/- Total Interest Tax Payable Rs.1,20,796/-

For the Assessment Year 1996-97: Tax Chargeable Interest Rs.36,40,659/-

Interest Tax thereon Rs.1,09,219/- Add: Int. u/s. 12 Rs.58,978/- Int. u/s. 12B Rs.92,835/- Rs.1,15,813/- Total Interest Tax Payable Rs.2,61,032/-

For the Assessment Year 1997-98: Tax Chargeable Interest Rs.27,65,877/-

Interest Tax thereon Rs.82,976/- Add: Int. u/s. 12 Rs.24,892/- Int. u/s. 12B Rs.50,614/- Rs.75,506/- Total Interest Tax Payable Rs.1,58,482/-

7. Aggrieved over the aforesaid Assessment Orders dated 26.12.2006, the Appellant/Assessee filed appeals in I.T.A.Nos.13 to 16/2006-07/A-III before the Commissioner of Income Tax (Appeals) III, Chennai. However, the Commissioner of Income Tax (Appeals) III, Chennai dismissed the tax appeals on 29.02.2008. Challenging the order dated 29.02.2008 of the Commissioner of Income Tax (Appeals) III, Chennai, the Appellant/Assessee preferred Appeals in I.T.A.Nos.009/Mds/2008, 0010/Mds/2008, 0011/Mds/2008 & 5/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 0012/Mds/2008 before the ITAT.

8. By the Impugned Common Order dated 15.05.2009, the ITAT affirmed the Order dated 29.02.2008 passed by the Commissioner of Income Tax (Appeals) III, Chennai and thus, dismissed the Appeals filed by the Appellant/Assessee in I.T.A.Nos.009/Mds/2008, 0010/Mds/2008, 0011/Mds/2008 & 0012/Mds/2008. Hence, the Appellant/Assessee is before this Court.

9. Assailing the Impugned Common Order 15.05.2009 of the ITAT, the learned counsel for the Appellant/Assessee submitted that the ITAT has erred in holding that the Appellant/Assessee is a “credit institution” liable to pay interest tax concurring with the view of the Commissioner of Income Tax (Appeals).

9.1. It is submitted that the Appellant/Assessee was not a Company which receives any deposit under any scheme or arrangement as envisaged in Section 2(5B)(va) of the 1974 Act. Hence, the Appellant/Assessee denied liability to pay interest tax under the 1974 Act stating that it is not “credit institution” within the meaning of Section 6/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 2(5A) read with Section 2(5B)(va) of the 1974 Act. However, the Assessing Officer had observed that the Appellant/Assessee has accepted deposits from various persons and is, as such a “credit institution” liable to pay interest tax under the provisions of the 1974 Act.

9.2. It is further submitted by the learned counsel for the Appellant/Assessee that the authorities below have failed to see that the term “deposit” is not to be understood in a general sense as mere acceptance of monies but in the manner envisaged under the Reserve Bank of India (RBI) notification read with the provisions of the 1974 Act.

Therefore, the learned counsel for the Appellant/Assessee prayed that the Impugned Common Order dated 15.05.2009 passed by the ITAT is liable to be set aside.

10. The learned Senior Standing Counsel for the Respondent/Assessing Officer submitted that no perverse findings had been rendered by any of the lower authorities and that the orders passed by all three fact finding authorities below are well-reasoned orders. It is submitted that in absence of any illegality committed by the authorities in the orders, the scope of interference by this Court under Section 260A of 7/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 the Income Tax Act, 1961 is very limited especially in a case where there are concurrent finding of facts. Therefore, it is stated that these Tax Case Appeals are liable to be dismissed.

10.1. The learned Senior Standing Counsel drew our attention to the decision rendered by this Court in Commissioner of Income Tax, Chennai Vs. Tamil Nadu Industrial Development Corporation Ltd., (2014) 368 ITR 545 (Mds), wherein, it has been held that the primary object of the Appellant/Assessee was to grant loans and advances to Companies promoted by it and earned huge amount of interest from transaction of finance. Therefore, the Appellant/Assessee was to be regarded as “credit institution” falling under the definition of “financial company” under Section 2(5B) of the 1974 Act.

10.2. The learned Senior Standing Counsel for the Respondent/Assessing Officer further submitted that in the present case, based on an oral arrangement entered between the parties, periodical interest was also paid by the Appellant/Assessee to the depositors and therefore, the 1974 Act would apply and that the Appellant/Assessee was liable to pay interest tax on the interest paid on the aforesaid amount 8/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 received as deposits.

10.3. It is further submitted that all the depositors had given identical confirmation letters that they were receiving interest from the Appellant/Assessee and the word used was “periodical interest” and therefore, a fixed pattern existed on the amounts paid by the Appellant/Assessee.

10.4. The learned Senior Standing Counsel for the Respondent/Assessing Officer further submitted that since all the fact finding authorities have decided the issue against the Appellant/Assessee and since there is no question of law arising in these Appeals, it is stated that these Tax Case Appeals are liable to be dismissed. 10.5. In support of his submissions, the learned Senior Standing Counsel for the Respondent/Assessing Officer has placed reliance on the following decisions: (i) Commissioner of Income Tax, Chennai Vs. Tamil Nadu Industrial Development Corporation Ltd. (2014) 368 ITR 545 (Mds)

(ii) Tamil Nadu Industrial Development Corporation Ltd. Vs. 9/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 Commissioner of Income Tax, Chennai (2015) 231 Taxman 224 (SC)

(iii) Syndicate Bank Employees Co-operative Thrift & Credit Society Ltd. Vs. Income Tax Officer (2006) 287 ITR 40 (Mds)

(iv) T.N.Power Finance Infrastructure Development Corporation Ltd. Vs. Joint Commissioner of Income Tax (2006) 280 ITR 491 (Mds)

(v) Commissioner of Income Tax Vs. P.Mohanakala (2007) 291 ITR 278 (SC)

(vi) C.Ramakrishna Vs. Deputy Commissioner of Income Tax (2023) 456 ITR 253 (SC)

(vii) Principal Commissioner of Income Tax Vs. Santhosh Kumar Agarwal (2023) 294 Taxman 515 (SC)

11. We have heard the learned counsel for the Appellant/Assessee and the learned Senior Standing Counsel for the Respondent/Assessing Officer.

12. Having considered the provisions of the 1974 Act, we are of the view that the Impugned Common Order of the ITAT, also the Appellate Commissioner and the Assessing Officer suffer from serious non-application of mind. 10/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

13. Tax on the interest paid by the Appellant/Assessee to its Shareholders, Directors and Group Companies, are not chargeable to Tax under the 1974 Act. We shall explain the position.

14. Section 4 of the 1974 Act is the charging Section. The object of the 1974 Act was to impose a special tax on the total amount of interest received by scheduled banks on loans and advances made in India. In other words, the intention of the Parliament was only to levy tax on the amount of interest charged by a scheduled banks on loans and advances made in India and not on the interest paid by the scheduled banks.

15. Interest on Government securities as also debentures and other securities issued by local authorities, companies and statutory corporations were not intended to be taxed. Interest charged on loans and advances made to other “scheduled banks” likewise were also exempted from the levy.

16. In this context, it will be useful to refer to the history behind the enactment of the 1974 Act. The then Finance Minister made a speech 11/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 on 31.07.1974 in the well of the Parliament. The speech bring out the object of the 1974 Act. Relevant portion of the Finance Minister’s speech is reproduced hereunder:-

“I shall now explain my tax proposals, dealing first with proposals in the field of direct taxes. As a part of the anti-inflationary package, I propose to levy a tax on the gross amount of interest received by scheduled banks on loans and advances made in India. The banks would be expected to adjust their functioning to this tax and reimburse themselves to the extent necessary by making appropriate adjustments in interest rate charges from borrowers. The proposed tax will have both a monetary and a fiscal impact in that it will serve the purpose both of raising the cost of borrowed funds and of supplementing Government revenues. The proposed tax will be levied at the rate of 7 per cent of the gross amount of interest earned by the banks. This would imply on an average an increase of about 1 percent in the cost of borrowing from the banks. Interest on Government securities, as also debentures and other securities and statutory corporations will not be included in the tax base. Interest received on transactions between scheduled banks will likewise be exempted from the proposed levy.”

17. What was in contemplation was only a tax on the “chargeable interest” of a ‘scheduled bank’.

18. The legislative intent for passing the Bill which was later passed the 1974 Act was confined to imposition of a special tax on the 12/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 total amount of “chargeable interest” by “scheduled banks” on loans and advances made in India.

19. The expression “chargeable interest” has been defined in Section 2(5) of the 1974 Act while the expression “interest” has been defined in Section 2(7) of the 1974 Act.

20. The definition of the expression “chargeable interest” in Section 2(5) of the 1974 Act has seen few changes in 1991 in harmony with the amendment to the charging provision, namely Section 4 of the 1974 Act when interest charged by “credit institutions” were also brought within the provisions of the 1974 Act. We shall shortly refer to the same.

21. It has to be however borne in mind that “interest tax” under the 1974 Act was never intended to be imposed on the interest paid by the “scheduled banks” on deposits received from depositors.

22. When 1974 Act was enacted, interest tax was to be levied at the rate of seven percent (7%) of interest charged and received by the “scheduled banks”. Interest which had already accrued or paid before 13/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 01.08.1974 was also not intended to be taxed.

23. The interest tax that was payable under the 1974 Act was also allowed as a permissible deductions under the provisions of the Income Tax Act, 1961 for computing the taxable income under the Income Tax Act, 1961.

24. As mentioned above, Section 4 has seen few changes as “credit institutions” were also taxed. In 1991, “credit institutions” were brought within its purview of the 1974 Act. Thus, interest charged by “credit institutions” were also liable to tax. As a sequitur, a corresponding amendment was made to the definition of the expression “chargeable interest” in Section 2(5) of the 1974 Act. In Section 2(5A) of the 1974 Act, a definition of “credit institution” was introduced. Since the definition of “credit institution” was included, a new definition of “financial company” was also introduced in Section 2(5B) of the 1974 Act in 1991.

25. The amendments to Section 4 of the 1974 Act are captured below, for the sake of clarity:- 14/28

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 Section 4 of the Interest Tax Act, 1974 (45 of 1974) Section 4 of the Section 4 renumbered Section 4 of the Interest Tax Act, as sub-section (1) and Interest Tax Act, 1974 with effect sub-section (2) by 1974 with effect from 23.09.1974 Section 93 of the from 01.04.2001 Finance (No.2) Act, 1991 (49 of 1991) with effect from 01.10.1991 15/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 Section 4 of the Interest Tax Act, 1974 (45 of 1974)

4. Charge of tax.- 4. Charge of Tax. - 4. Charge of Tax. -

Subject to the (1) Subject to the (1) Subject to the provisions of this provisions of this Act, provisions of this Act, there shall be there shall be charged
Act, there shall be charged on every on every scheduled bank charged on every scheduled bank for for every assessment scheduled bank for every
assessment year commencing on or every assessment year commencing on after the 1st day of April, year commencing on or after the 1st day 1975, a

tax (in this Act or after the 1st day of April, 1975, a tax referred to as interest- of April, 1975, a tax (in this Act referred tax) in respect of its (in this Act referred to as interest-tax) in chargeable interest of to as interest-tax) in respect of its the previous year at the respect of its chargeable interest rate of seven per cent of chargeable interest of the previous year such chargeable interest. of the previous year at the rate of seven Provided that the rate at at the rate of seven per cent of such which interest-tax shall per cent. of such chargeable interest. be charged in respect of chargeable interest. any chargeable interest Provided that the accruing or arising after rate at which the 31 day of March, interest-tax shall be st 1983 shall be three and charged in respect a half per cent. of such of any chargeable chargeable interest. interest accruing or st (2) Notwithstanding arising after the 31 anything contained in day of March, 1983 sub-section (1) but shall be three and a subject to the other half per cent. of such provisions of this Act, chargeable interest. there shall be charged (2) Notwithstanding on every credit anything contained institution for every in sub-section (1) assessment year but subject to the commencing on and other provisions of from the 1st day of April, this Act, there shall 1992, interest-tax in be charged on every respect of its chargeable credit institution for interest of the previous every assessment year at the rate of three year commencing on per cent. of such and from the 1st day 16/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 Section 4 of the Interest Tax Act, 1974 (45 of 1974) chargeable interest. of April, 1992, interest-tax in respect of its chargeable interest of the previous year at the rate of three per cent. of such chargeable interest. Provided that the rate at which interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 1997 shall be two per cent. of such chargeable interest. (3) Notwithstanding anything contained in sub-sections (1) and (2), no interest- tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000.

26. Thus, the charge under the 1974 Act was extended to “credit institutions” in 1991 by amending Section 4(2) of the 1974 Act (which is the charging Section) and by inserting in definition for the expression “credit institution” in Clause (5A) to Section 2 of the 1974 Act. 17/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

27. The expression “interest” has been defined in Section 2(7) of the 1974 Act. The expression “chargeable interest” defined in Section 2(5) of the 1974 Act was also amended with effect from 01.10.1991.

28. It will be useful to refer to the definition of “chargeable interest” and “interest” as defined in Section 2(5) and Section 2(7) of the 1974 Act. These definitions read as under:- Section 2(5) of the 1974 Act Section 2(7) of the 1974 Act “chargeable interest” means the “interest” means interest on total amount of interest referred loans and advances made in to in Section 5, computed in the India and includes— manner laid down in Section 6. 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.

29. “Interest” as defined under Section 2(7) of the 1974 Act is 18/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 chargeable to tax under Section 4 of the 1974 Act only if it arises directly from a loan(s) or advance(s) given by a “scheduled bank” or a “credit institution” to borrowers.

30. The Hon’ble Supreme Court, in M/s.State Bank of Patiala Vs. Commissioner of Income Tax, Patiala, (2015) 15 SCC 483 : (2016) 383 ITR 244, though in a different context, held that the definition of “Interest” as defined in Section 2(7) of the 1974 Act was exhaustive as it uses the expression ‘means and includes’ but would not only on a very narrow taxable event which does not include within its keen interest payable on default in payment of amounts due under a discounted bill of exchange.

31. The Hon'ble Supreme Court, in Commissioner of Income Tax Vs. Sahara India Savings & Investment Corporation Ltd., (2009) 17 SCC 43 while dealing with the definition of “interest” in Section 2(7) of the 1974 Act held as follows:-

6. In accounting sense, there is a conceptual difference between loans and advances on the one hand and investments on the other hand. Section 2(7) defines the word “interest” to mean interest on “loans and advances including commitment charges, discount on promissory notes and bills of exchange but not to include interest referred to 19/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 under Section 42(1-B) of the Reserve Bank of India Act, 1934 as well as discount on treasury bills”. Section 2(7), therefore, defines what is interest in the first part and that first part confines interest only to loans and advances, including commitment charges, discount on promissory notes and bills of exchange.

7. Pausing here, it is clear that the interest tax is meant to be levied only on interest accruing on loans and advances but the legislature, in its wisdom, has extended the meaning of the word “interest” to two other items, namely, commitment charges and discount on promissory notes and bills of exchange. In normal accounting sense, “loans and advances”, as a concept, is different from commitment charges and discounts and keeping in mind the difference between the three, the legislature, in its wisdom, has specifically included in the definition under Section 2(7) commitment charges as well as discounts. The fact remains that interest on loans and advances will not cover under Section 2(7) interest on bonds and debentures bought by an assessee as and by way of “investment”. Even the exclusionary part of Section 2(7) excludes only discount on treasury bills as well as interest under Section 42(1-B) of the Reserve Bank of India Act, 1934.”

32. A reading of the expression “chargeable interest” in Section 2(5) of the 1974 Act indicates that the total amount of interest referred to in Section 5 of the 1974 Act is to be computed in the manner laid down in Section 6 of the 1974 Act.

33. A plain reading of the provisions of the 1974 Act, indicates that 20/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 interest charged by “credit institutions” as defined in Section 2(5A) of the 1974 Act and “scheduled banks” alone were leviable to interest tax on the “chargeable interest” as defined in Section 2(5) of the 1974 Act of the previous year at 7% on the “scheduled banks” and at 3% on the “credit institutions” with retrospective effect from 01.10.1991.

34. Section 5 of the 1974 Act as amended by the Finance Act, 1991 as in force from 01.10.1991, prescribes the ‘Scope of Chargeable Interest’ whereby interest on loans and advances made to other credit institutions or to any co-operative society engaged in carrying on the business of banking.

35. As per Section 5 of the 1974 Act, “chargeable interest” of any previous year of a “credit institution” shall be the total amount of “chargeable interest” accruing or arising to the “credit institution” in that previous year.

36. In fact, Proviso to Section 5 of the 1974 Act also makes it clear that any interest in relation to categories of bad or doubtful debts referred to in Section 43D of the Income Tax Act, 1961, shall be deemed to accrue 21/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 or arise to the “credit institution” in the previous year in which it is credited by the “credit institution” to its profit and loss account for that year or, as the case may be, in which it is actually received by the “credit institution”, whichever is earlier.

37. Section 6 of the 1974 Act which provides machinery for “chargeable interest” also makes it clear that computation of chargeable interest of a previous year of an assessee shall be allowed from the total amount of interest accruing or arising to an assessee. Thus, tax is payable only on the interest charged which arises or accrues on the amount lent by the “scheduled banks” or “credit institutions”.

38. Proviso to Section 6 of the 1974 Act also makes it clear that only such interest has been taken into account while computing the “chargeable interest” of an assessee of an earlier previous year and the amount which has been written off as irrecoverable in the accounts of the assessee for the previous year during which it is established to have become a “bad debt”.

39. For the sake of clarity, Section 5 and Section 6 of the 1974 Act 22/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 are reproduced below:-

Section 5 of the 1974 Act Section 6 of the 1974 Act Scope of chargeable interest:- Computation of chargeable Subject to the provisions of this interest:-

Act, the chargeable interest of any (1) Subject to the provisions of sub- previous year of a credit section (2), in computing the institution shall be the total chargeable interest of a previous amount of interest (other than year, there shall be allowed from the interest on loans and advances total amount of interest (other than interest on loans and advances made made to other credit institutions to credit institutions accruing or or to any co-operative society arising to the assessee in the engaged in carrying on the previous year, a deduction in respect business of banking) accruing or of the amount of interest which is arising to the credit institution in established to have become a bad that previous year: Provided that debt during the previous year: any interest in relation to Provided that such interest has been categories of bad or doubtful taken into account in computing the debts referred to in section 43D of chargeable interest of the assessee of the Income-tax Act shall be an earlier previous year and the deemed to accrue or arise to the amount has been written off as credit institution in the previous irrecoverable in the accounts of the year in which it is credited by the assessee for the previous year during credit institution to its profit and which it is established to have loss account for that year or, as become a bad debt. the case may be, in which it is Explanation.—For the removal of actually received by the credit doubts, it is hereby declared that in institution, whichever is earlier. computing the chargeable interest of a previous year, no deduction, other than the deduction specified in this sub-section, shall be allowed from the total amount of interest accruing or arising to the assessee.

(2) In computing the chargeable interest of a previous year, the amount of interest which accrues or arises to the assessee before the 1st day of August, 1974 or during the period commencing on the 1st day of April, 1985 and ending with the 30th day of September, 1991 shall not be taken into account. 23/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

40. Amendments to the 1974 Act in 1991 have not authorized a levy of interest tax on the interest paid or the liability incurred by a “scheduled bank” or “credit institution” under Section 4 of the 1974 Act.

41. Even if the Appellant/Assessee is covered under the ambit of the definition of “credit institution” in Section 2(5A) of the 1974 Act read with Section 2(5B) of the 1974 Act as it includes any other “financial company” as defined in Section 2(5B) of the 1974 Act, would not mean that the Appellant/Assessee was liable to pay interest tax on the interest paid on deposits collected from its Directors, Shareholders or its Group Companies.

42. Only if the amounts were lent by the Appellant/Assessee and interest were charged on the amount lent by the Appellant/Assessee, interest tax would be payable at the rate prescribed under Section 4(2) of the 1974 Act up to 31.03.2000 by the Appellant/Assessee.

43. In our view, no interest tax referred to in Section 4 of the 1974 Act is chargeable on the interest paid either by the “scheduled bank” or 24/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 by a “credit institution” to its creditors/lenders.

44. In our view, there was no question of the Appellant/Assessee being held liable to pay interest tax under the 1974 Act on the interest paid on the deposits collected from its Shareholders, Directors and Group Companies.

45. Consequently, invocation of Section 8, Section 9 and Section 10 of the 1974 Act were without jurisdiction. The interest charged under Section 12A of the 1974 Act was also without jurisdiction.

46. In our view, the Assessing Officer, the Commissioner of Income Tax (Appeals) III, Chennai and the ITAT have failed to consider the provisions of the 1974 Act and have wrongly held that the interest paid by the Appellant/Assessee as “credit institution”, its Directors, Shareholders and Group Companies was liable to tax under the 1974 Act.

47. Unfortunately, the Assessment Order dated 08.11.1999 has seen two rounds of litigation, from the stage of assessment up to ITAT. Neither the Assessing Officer nor the Tribunal have examined the 25/28 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 provisions before concluding that the interest tax was payable on the interest paid on the amounts received from deposits/loans by the Appellant/Assessee from its Directors, Shareholders and Group Companies.

48. In the light of the above discussion, we answer the second substantial question of law raised in these Appeals in favour of the Appellant/Assessee and against the Income Tax Department.

49. Therefore, these Tax Case Appeals deserve to be allowed. They are accordingly allowed. No costs.

(S.S.S.R., J.) (C.S.N., J.) 16.04.2025

mrr / arb

Index : Yes / No Neutral Citation : Yes / No

To

26/28

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am)

T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009

1.Income Tax Appellate Tribunal 'A' Bench, Chennai. 2.The Assistant Commissioner of Income Tax, Company Circle I (3), Chennai.

S.S.SUNDAR, J. and C.SARAVANAN, J. mrr / arb Pre-Delivery Common Judgment in T.C.A.Nos.1123, 1367,1368 & 1369 of 2009 27/28

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am) T.C.A.Nos.1123, 1367, 1368 & 1369 of 2009 16.04.2025 28/28

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 17/04/2025 11:48:59 am)