

## **Commissioner Of Income-Tax vs V.P. Gopinathan on 27 February, 2001**

**Equivalent citations: AIR2001SC1390, [2001]248ITR449(SC), AIR 2001 SUPREME COURT 1390, 2001 (10) SCC 67, 2001 AIR SCW 1212, 2001 TAX. L. R. 549, (2001) 116 TAXMAN 489, 2001 (1) JT (SUPP) 142, (2001) 166 CURTAXREP 504, (2001) 248 ITR 449, (2001) 4 SUPREME 476, (2001) 162 TAXATION 10**

**Bench: S.P. Bharucha, N. Santosh Hegde**

ORDER

1. The High Court of Kerala (see [1998] 229 ITR 801) was called upon to consider at the behest of the Revenue the following two questions (page 802) :

"1. Whether, on the facts and in the circumstances of the case, the assessee is to be assessed on the gross amount of interest received by him on his fixed deposit or on the interest received as reduced by the amount of interest paid on the loan taken on the security of such deposit ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding,

(i) the act of making deposit and the act of borrowing on such deposit cannot be viewed as representing two different transactions ?

(ii) there is thus a nexus between the deposit and the borrowing ?

(iii) the principle of mutual dealings could be inferred ?"

2. It answered the questions in favour of the assessee. The Revenue is in appeal by special leave.

3. To take the facts of one of the two appeals before us as illustrative, the assessee had put moneys into fixed deposit with a bank and had earned in the assessment year in question interest in the sum of Rs. 1,17,444 thereon. On the security of the amount so deposited, the assessee took a loan from the bank and paid in respect of the loan interest to the bank in the sum of Rs. 90,410. The assessee claimed that he could be taxed only on the differential amount of Rs. 27,034. His contention was rejected by the Income-tax Officer and in first appeal. The Tribunal took the contrary view and out of its judgment the questions quoted above were referred to the High Court. The High Court answered the questions as indicated above on the basis that the situation was one of mutuality.

4. Learned counsel appearing for the assessee before the Tribunal had made it clear that the assessee's case did not rest upon the provisions of Section 57(iii) of the Act. In other words, it was not the contention of the assessee, very rightly, that he was paying interest to the bank to facilitate the earning of interest from the bank.

5. The argument before us on behalf of the assessee was that the real income of the assessee is only Rs. 27,034.

6. It was not disputed, as it could not be, that if the assessee had taken a loan from another bank and paid interest thereon his real income would not diminish to the extent thereof. The only question then is : does it make any difference that he took the loan from the same bank in which he had placed the fixed deposit. There is no difference in the eye of the law. The interest that the assessee received from the bank was income in his hands. It could stand diminished only if there was a provision in law which permits such diminution. There is none, and, therefore, the amount paid by the assessee as interest on the loan that he took from the bank did not reduce his income by way of interest on the fixed deposit placed by him in the bank.

7. Learned counsel for the assessee drew our attention to the judgment of the Gujarat High Court in *Jashvidyaben C. Mehta v. CIT* [1988] 172 ITR 680. This was in respect of moneys deposited in three different accounts of a firm and it was found, as a fact, that the real income that the assessee drew from the firm was reduced by her dues to the firm. The facts of the case are totally different from those before us.

8. In the result, the appeals are allowed. The orders under appeal are set aside. The questions are answered in favour of the Revenue. No order as to costs.