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*Privy Council Appeal No. 69 of 1945*

**The Commissioner of Income Tax, Bengal - - - Appellant**

*v.*

**Messrs. Chowringhee Properties, Limited - - - Respondent**

FROM

**THE HIGH COURT OF JUDICATURE AT  
FORT WILLIAM IN BENGAL**

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 22ND APRIL, 1947**

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*Present at the Hearing:*

LORD THANKERTON  
LORD UTHWATT  
SIR MADHAVAN NAIR  
SIR JOHN BEAUMONT

*[Delivered by LORD UTHWATT]*

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This is an appeal by the Commissioner of Income Tax, Bengal, from a judgment and decree of the High Court of Judicature at Bengal, the matter coming before the High Court on a reference under Sect. 66(1) of The Indian Income Tax Act, 1922 (as amended), made by the Income Tax Appellate Tribunal Calcutta Bench.

The question at issue is whether it was rightly decided by the High Court that the respondent Company on an assessment under that Act to tax on its income from buildings was entitled to an allowance in respect of interest payable under certain debentures issued by it to the Allahabad Bank. The facts are simple, the relevant statutory provision is free from ambiguity, and the point is short. Exceptionally the nut is not scattered on emerging from its shell.

Prior to the tax year 1937/1938 the Company deposited with the Bank certain of its bearer debentures (forming part of a large series) as security for the moneys for the time being owing by it to the Bank on overdraft. The debentures contained the common form of agreement to pay to the bearer the principal and, on stated dates, the interest. The debentures were entitled to the benefit of a Trust Deed under which properties of the Company, including the buildings mentioned, stood as security for the payment of the principal and interest of the debentures.

The Indian Income Tax Act (Sect. 9(1)) provides that tax shall be payable in respect of the annual value of property consisting of buildings subject to certain allowances. The allowance to be considered is contained in head (iv) of Sect. 9(1) and is as follows:—

“Where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge.”

In the relevant year 1938/1939 the Company, while paying interest on its overdraft, paid no interest on the debentures held by the Bank. The Company's claim is that the interest on the debentures is deductible. Its contention was as follows. The buildings were under the debentures mortgaged to secure a capital charge (i.e., the debenture debt): the sum sought to be deducted was therefore interest on a mortgage; and in light of *Behari Lal Mullick* (1927), 54 Cal. 630: 2 I.T.C. 325, interest payable, though not paid, was interest within the meaning of the quoted provision.

The result was obvious. This contention failed before the Income Tax Officer but found favour with the Appellate Assistant Commissioner, the Income Tax Appellate Tribunal, Calcutta Bench, and the High Court. The contention of the appellant the Commissioner of Income Tax is just as simple. The debentures were and remained, subject to the charge, an asset of the Company. That asset consisted of a bundle of rights against the Company in the hands of the Bank. The right to receive interest is one of those rights. One does not owe or pay interest to one's self.

In their Lordships' view the solution to the question at issue depends on a proper appreciation of the nature and effect of the transaction between the Company and the Bank. That transaction is completely stated by saying that the debentures in the hands of the Bank are charged with the monies owing on overdraft. The debts for principal and interest which are created as secured debts by the issue of the debentures to the Bank, are in this transaction treated as property of the Company vested in the Bank which the Company is at liberty to charge and in fact does charge. It is elementary that while the Company can charge its own property, it cannot charge the Bank's property. The debt for interest payable thus forms part of the Company's property. It is a segregated asset of the Company in the hands of the Bank. It follows that the interest when paid becomes part of the property charged. When received it is applicable by the Bank only for the purpose of being applied in reduction of the overdraft. Until so applied, the only course open to the Bank is to carry it to the credit of the Company in some other account. It is not the Bank's free property. The right to demand payment of the debenture interest indeed can be exercised by the Bank to the extent necessary for reduction or extinction of the overdraft but otherwise that right is not available to the Bank, and if nothing is owing on overdraft, no payment of interest can be required.

The result is that although the interest payable under the debentures is undoubtedly interest secured by the mortgage contained in the debentures, that interest is accurately described as interest receivable by the Bank as being part of charged property belonging to the Company and, by virtue of the charge, so receivable as the Company's mandatory to apply it in a particular way. Interest payable to such a mandatory is clearly not deductible. Interest received or receivable from the Company under its debentures charged to the Bank in truth stands from the Bank's point of view in no different position from interest received or receivable by it from debentures of an outside concern lodged by the Company as security. The interest belongs to the Company subject to the charge and to the mandate inherent in the transaction.

Their Lordships would add that the views which they have stated for their conclusion throw no doubt upon the position of Banks holding debentures as cover. That position is well settled. By virtue of the charge upon the debentures to secure the overdraft, the Bank may, subject to any express or implied terms regulating that charge, realise the debentures by sale. The debentures in this respect stand in no different position from any other chose in action lodged as security with the Bank. The nature of the property held as security gives the Bank other rights against the Company. Subject again to the terms of the bargain regulating the charge to secure the overdraft, the Bank may sue for and recover principal and interest and otherwise enforce the debentures. But whatever is thereby received becomes part of the property charged to secure the overdraft and is not receivable or held by the Bank otherwise than for that purpose (cf. *Regents Canal Ironworks Co.*, 3 Ch.D. 43).

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed and that the second question referred to the High Court should be answered in the negative, the order of the High Court being varied accordingly.

The respondents will pay the costs of this appeal and of the proceedings in the High Court.



In the Privy Council

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THE COMMISSIONER OF INCOME TAX  
BENGAL

v.

MESSRS. CHOWRINGHEE PROPERTIES,  
LIMITED

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DELIVERED BY LORD UTHWATT

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