

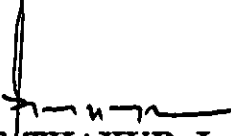



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 690/2005</p> <p>COMMISSIONER OF INCOME TAX Petitioner Through: Ms.P.L. Bansal & Ms.Sonia Mathur, Advs.</p> <p>versus</p> <p>M/S HUDCO LTD. Respondent Through: None.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N.CHATURVEDI</p> <p style="text-align: center;"><u>ORDER</u> 17.11.2005</p> <p>%</p> <p>The respondent-assessee was admitted as a member of what is known as India Habitat Centre, a Society registered under the Societies Registration Act. A certain piece of land was allotted to the IHC for construction of a super structure in which super structure, the assessee was entitled to secure a proportionate covered area. The cost of construction of the super structure was to be contributed by all the Members Institution of the IHC on a no profit no loss basis.</p> <p>It is common ground that the assessee had originally applied for allotment of 15,000 sq. mts. of covered area in the building to be constructed by the IHC and deposited the amount demanded by IHC accordingly. The assessee subsequently reduced its claim for the constructed area from 15,000 sq. mts. to 8,000 sq. mts. and claimed interest on the excess amount deposited</p>



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		<p>by it with IHC. The Governing counsel of IHC, however, declined to pay a interest on the excess amount deposited by the assessee. That decision was communicated to the assessee by IHC's letter dated 26th June 1992. The Assessing Officer notwithstanding these facts brought to tax a sum Rs.1,93,36,315 on the assumption that the said amount had accrued to the assessee by way of interest. In appeal before the CIT (Appeals), the assessee succeeded. The Commissioner held that the amount indicated above had been unilaterally credited as interest by the assessee without the IHC accepting a such claim. The Commissioner was of the view, since the claim made by the assessee had been rejected and the entry had since been reversed in the assessee's account for the financial year 1995-96, no interest had actually accrued which could be brought to tax under the provisions of the Interest Act. The above view has been affirmed by the Tribunal in the order under appeal before us. The Tribunal's reasoning is summed up in the following words;-</p> <p>“We have considered the rival submissions. We do not find any ground to interfere with the order of Ld. CIT(A). It cannot be said that any interest accrued to the assessee. The fact that it treated interest as receivable on the surplus payments made to IHC in its books of accounts is not conclusive that chargeable interest had accrued to the assessee. The reliance placed by Ld. Counsel for the assessee on the decision of the Hon'ble Mumbai Bench of the ITAT in the case of Bambino Investments and Trading Co. Ltd. vs. Dy. CIT, 140 Taxman p.191 (Mag.) (Mum) lays down that no assessment can be made on the basis of a mere concession by the assessee. The entry made in the books of accounts by the assessee in the present case is an unilateral act. It cannot give rise to any accrual of interest income. It is clear that later on both the parties have agreed that no interest is payable. The CIT(A) has rightly come to the conclusion that no interest has accrued to</p>



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		<p data-bbox="582 241 1465 324">the assessee, by taking note of the subsequent events. We, therefore, dismiss this appeal by the Revenue.”</p> <p data-bbox="501 371 1596 831">There is, in our view, no error of law or jurisdiction in the view taken by the Commissioner of Income Tax (Appeals) or the Tribunal. The finding of fact recorded by both the authorities below is that no interest had either been paid by IHC to the assessee or otherwise accrued so as to render the same taxable. In that view, therefore, no substantial question of law arises for consideration.</p> <p data-bbox="596 880 1177 920">This appeal fails and is hereby dismissed.</p> <p data-bbox="1077 929 1356 1142"> T.S. TILAKUR, J</p> <p data-bbox="1077 1153 1476 1232"> B.N. CHATURVEDI, J</p> <p data-bbox="501 1238 826 1317">NOVEMBER 17, 2005 ga</p>