Interest and Inter-corporate Loans

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Part - I
Interest

Topic Covered

- Interest Income received by Corporate.
- Interest Expenditure paid by Corporate.
- Interest Income Vs. Interest Expenditure.

Interest Income received by Corporate

- Interest Income is **the revenue earned by lending money to other entities**.

- A very simple and basic way of computing it is by multiplying the principal amount by the interest rate applied, considering the number of months or years the money is lent.

- **Interest income** is usually **taxable income** and is **presented in the income statement.**

Interest Income received by Corporate

- Usually, the two categories in the income statement, namely **"Income from Operations"** and **"Other Income"** are listed separately. In such an instance, the presentation of interest income will largely depend on the nature of the business' primary operations.

  Example: The income from interest is a major source of funds for the company, then it falls under "Income from Operations." If it is not a primary revenue source, then it is classified as "Income from Investments" or "Other Income."

Interest Expenditure paid by Corporate

- An interest expenditure is **the cost incurred by an entity for borrowed funds**. Interest expense is a non-operating expense shown on the income statement. It represents interest payable on any borrowings- bonds, loans, convertible debt or lines of credit.
- Interest is often found as a separate line item below EBIT (Earnings Before Interest and Taxes).
- Interest is deducted from Earnings Before Interest and Taxes (EBIT) to arrive at Earnings Before Tax (EBT).
- EBIT is also known as Operating Profit, while EBT is also known as **Pre-Tax Income** or **Pre-Tax Profit.**

Interest Expenditure paid by Corporates

Particulars	Amount
EBIT	*****
Less: Interest	****
EBT **(Operating profit / Pre-Tax Profit)**	****
Less: Taxes	****
EAT **(Net Profit)**	****

Interest Expenditure paid by Corporates

Income tax deductibility (tax shield):

Interest is a reduction to net income on the income statement, and is tax-deductible for income tax purposes. Therefore, there is a tax savings, referred to as the tax shield.

Example: *If a company has zero debt and EBIT of INR 1,00,000 (with a tax rate of 25%), their taxes payable will be INR 25,000.*

(EBIT = EBT because zero debt i.e. zero interest).

If the same company takes debt with EBIT of INR 1,00,000 has an interest cost of INR 40,000; their new EBT will be INR 60,000 (with a tax rate of 25%), and their taxes payable will now be only INR15,000.

(EBIT- Interest = EBT) (1,00,000 - 40,000 = 60,000)

Interest Income Vs.
Interest Expenditure

- **Interest income** is money earned by an individual or company for lending their funds, either by putting them into a deposit account in a bank or by purchasing certificates of deposits.
- **Interest expenditure** is the opposite of interest income.

  It is the cost of borrowing money from financial institutions, banks, or other lenders.

  Interest expense is incurred in order to help a company fund its operations, such as the purchase of additional machinery, plant, and property, or the acquisition of competitors or other companies.

Summary- Part I

- Interest Income received by Corporate.
- Interest Expenditure paid by Corporate.
- Interest Income Vs. Interest Expenditure.

Part - II
Inter-corporate Loans

Topics Covered

- Meaning of Inter- Corporate Loans and Investment.
- Objectives behind Inter-corporate Loans
- An Introduction - Section 186 of Companies Act, 2013: Loan and investment by company
- Important Terms used under Section 186 of Companies Act, 2013
- Relevant provisions under Companies Act, 2013- Section 186 of the Companies Act, 2013 read with Rule 11, Rule 12 and Rule 13 of Companies (Meetings of Board and Its Powers) Rules, 2014.
- Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961.

Meaning of Inter- Corporate Loans and Investment

A company can give:

- loans and guarantees,
- acquire securities or make investments in another company or body corporate

with the consent of the board or shareholders.

Such loans given by a company to other companies or body corporate are **known as inter-corporate loans.**

Such investment by a company in another company are **known as inter-corporate investment.**

Meaning of Inter- Corporate Loans and Investment

In other words, we can say:

- **Inter-corporate loans** means when one firm gives a loan, security, or guarantee to another company or corporation.

  Inter-corporate loans plays a critical role in the development of Indian enterprises. There is a constant flow of finances for the group as well as other enterprises that are in need of capital.

- **Inter-corporate investment** occurs when one firm invests in another company in any way.

Objectives behind Inter-corporate Loans

The loans provided from one business unit of a firm to another are the following reasons and goals:

- **Avoidance to Cash Shortage:** To transfer cash to a company unit and to avoid a cash shortage.
- **Pooling of Investment:** To move money into a business unit (typically corporate) where it will be pooled for investment.
- **Favourable Payback Terms:** The payback terms are substantially more favourable.
- **Easy to get as compared to bank loans:** There is no need to go through the elaborate and tedious process like a bank loan which requires a lot of documentation and external approvals.

Objectives behind Inter-corporate Loans

Easy Memory Trick: 2 PEA

- **2P:**
  - **P**ooling of Investment
  - Favourable **P**ayback Terms.
- **E: E**asy to get as compared to bank loans.
- **A: A**voidance to Cash Shortage.

An Introduction - Section 186 of Companies Act, 2013: Loan and investment by company

- Section 186 of the Companies Act, 2013 describes the regulations by which a corporation can give a loan and to whom it can provide as well as the governing provisions relating to corporate loans and investments.

- As India seeing ongoing industrialization, the corporation may require additional capital. As a result, they may require the assistance of an inter-corporate loan.

- Section 186 of the Companies Act, 2013 has made a few changes to the inter-corporate loans and investments made by a company to simplify the company's operation and processes.

- Section 186 of the Companies Act, 2013 read with relevant rules talks about the rules under which a firm may or may not grant a loan, provide a guarantee or make an investment.

Important Terms used under Section 186 of Companies Act, 2013

“Investment Company" means:

- a company whose principal business is the acquisition of shares, debentures or other securities

and (+)

- a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities:
  - if its assets in the form of investment in shares, debentures or other securities **constitute not less than fifty per cent of its total assets,**

or

  - if its income derived from investment business **constitutes not less than fifty per cent as a proportion of its gross income.**

Important Terms used under Section 186 of Companies Act, 2013

Examples of Investment Company

Example 1: XYZ Ltd. is in business of the acquisition of shares. The total assets of the XYZ Ltd. amounting to INR 10,00,000 and total gross receipts of the XYZ Ltd. amounting to INR 50,00,000 .

The Assets of XYZ Ltd. in the form of investment in shares amounting to INR 6,00,000 and income derived from investment business of XYZ Ltd. amounting INR 20,00,000.

Decide whether XYZ Ltd. is an Investment Company ?

Answer 1: Yes, XYZ Ltd. is an Investment Company because XYZ Ltd. is in business of the acquisition of shares and its assets in the form of investment in shares constitute not less than fifty per cent of its total assets. (i.e. not less than 50% of INR 10,00,000 = INR 5,00,000) irrespective its income derived from investment business constitutes less than fifty percent of its gross income. (i.e. less than 50% of INR 50,00,000 = INR 25,00,000) .

Important Terms used under Section 186 of Companies Act, 2013

Examples of Investment Company

Example 2: ABC Ltd. is in business of sale and purchase of immovable property. The total assets of the ABC Ltd. amounting to INR 20,00,000 and total gross receipts of the ABC Ltd. amounting to INR 60,00,000 .

The assets of ABC Ltd. in the form of investment in shares amounting to INR 11,00,000 and income derived from investment in shares of ABC Ltd. amounting INR 10,00,000.

Decide whether ABC Ltd. is an Investment Company ?

Answer 2: No, ABC Ltd. is not an Investment Company because ABC Ltd. is in business of sale and purchase of immovable property; not in business of the acquisition of shares .

Important Terms used under Section 186 of Companies Act, 2013

Examples of Investment Company

Example 3: PQR Ltd. is in business of the acquisition of shares. The total assets of PQR Ltd. amounting to INR 10,00,000 and total gross receipts of PQR Ltd. amounting to INR 50,00,000 .

The Assets of PQR Ltd. is in the form of investment in shares amounting to INR 3,50,000 and income derived from investment business of PQR Ltd. amounting INR 15,50,000.

Decide whether PQR Ltd. is an Investment Company ?

Answer 3: No, PQR Ltd. is not considered as an Investment Company because irrespective of the fact that PQR Ltd. is in business of the acquisition of shares but its assets in the form of investment in shares constitute less than fifty per cent of its total assets. (i.e. less than 50% of INR 10,00,000 = INR 5,00,000) and its income derived from investment business constitutes less than fifty percent of its gross income. (i.e. less than 50% of INR 50,00,000 = INR 25,00,000) .

Important Terms used under Section 186 of Companies Act, 2013

“Infrastructure Facilities”:

The expression "infrastructure facilities" means the facilities specified in Schedule VI to the Companies Act, 2013.

Note: Schedule VI to the Companies Act, 2013 provides inclusive list of facilities considered as “infrastructure facilities”.

Relevant provisions under Companies Act, 2013

The relevant provisions as per Companies Act, 2013 includes:

- **Section 186 of the Companies Act, 2013:** Loan and investment by company.

- **Rule 11 of Companies (Meetings of Board and Its Powers) Rules, 2014:** Loan and investment by a company under section 186 of the Act.

- **Rule 12 of Companies (Meetings of Board and Its Powers) Rules, 2014:** Register.

- **Rule 13 of Companies (Meetings of Board and Its Powers) Rules, 2014:** Special Resolution.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per provisions of Section 186(1) of the Companies Act, 2013: Restriction on Investment up to two layers of IC: A company shall unless otherwise prescribed make investment through not more than two layers of Investment Companies (IC).

Exception: However, the aforesaid provisions shall not affect:

- **Acquisition of a company incorporated outside India:** If a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- **Subsidiary from having an investment subsidiary:** A subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

Note(s):

- **As per explanation (d) of Section 2(87) of the Companies Act, 2013; 'Layer' according to in relation to a Holding Company means its subsidiary or subsidiaries.**
- **Provisions of Section 186(1) of Companies Act, 2013 shall not apply to specified IFSC Public and Private Companies.**

Example On Section 186(1) of Companies Act, 2013

Example: A Ltd. holds 55% shares in B Ltd; B Ltd. holds 51% shares in C Ltd; C Ltd. holds 60% in D Ltd. Since all companies are Investment Company. Whether A Ltd. allowed to make investment in all other three companies B Ltd., C Ltd and D Ltd as per Section 186(1) of the Companies Act, 2013?

Answer: As per Section 186(1) of the Companies Act, 2013; a company shall unless otherwise prescribed make investment through not more than two layers of investment companies.

As, A Ltd. is an ultimate Holding Company of C Ltd. In such case; A Ltd. is not allowed to make investment through C Ltd. in any other Company.

Thus, A Ltd was allowed to make investment in B Ltd. and C Ltd. (up to two layers) but not allowed to make investment in D Ltd.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per provisions of Section 186(2) of the Companies Act, 2013: Specified Limits for investment and guarantee: No Company shall directly or indirectly-

- give any loan to any person or other body corporate;
- give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- acquire by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding-

- sixty per cent of its paid-up share capital, free reserves and securities premium account; **or**
- one hundred per cent of its free reserves and securities premium account

whichever is more.

Note: "Person" does not include any individual who is in employment of the company.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(3): Requirement of prior approval by passing SR: Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by **a special resolution** passed in a general meeting.

Exceptions:

- where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply.
- the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as per Section 186(4) of Companies Act, 2013.

Note: Section 186(2), 186(3), 186(5) of the Companies Act, 2013 shall not apply to Specified IFSC Public and Private Companies; if the company passes a resolution either at a meeting of the Board of Directors or by circulation.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Rule 13 of Companies (Meetings of Board and Its Powers) Rules, 2014: Special Resolution:

A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition.

However, the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(4) of Companies Act, 2013: Disclosures in Financial Statements:

The Company shall disclose to members in financial statement the full particulars of:

- the loans given,
- investment made or guarantee given or security provided and
- the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(5) of Companies Act, 2013: Unanimous Resolution:

No investment shall be made or loan or guarantee or security given by the company unless:

- the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting **and (+)**
- the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

However, prior approval of a public financial institution shall not be required:

- where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), **and (+)**
- there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(6) of Companies Act, 2013: Restrictions On Inter Corporate Loans:

No company which is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit;

and(+)

Such company shall furnish in its financial statement the details of the loan or deposits.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(7) of Companies Act, 2013: Rate of Interest:

No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

Section 186(8) of Companies Act, 2013: Prohibitions in Case of Certain Defaults: No company which is in default:

- in the repayment of any deposits accepted before or after the commencement of this Act or
- in payment of interest thereon,

shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(9) of Companies Act, 2013: Maintenance of Register: Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

Section 186(10) of Companies Act, 2013: Place of Keeping registers and provision related to its inspection, extracts and copies thereof:

- **Place of Keeping Registers:** The register shall be kept at registered office of company and
- **Inspection:** Such registers shall be open to inspection at such office; and
- **Extracts:** Extracts may be taken there from by any member and
- **Copies:** Copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per Rule 12 of Companies (Meetings of Board and Its Powers) Rules, 2014: Register

- **Maintenance of Register:** Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation:
  - maintain a register in Form MBP 2 and
  - enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per Rule 12 of Companies (Meetings of Board and Its Powers) Rules, 2014: Register

- **Entries in Register:** The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

- **Place, Preservation and Custody of Register:**
  - the register shall be kept at the registered office of the company and
  - the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per Rule 12 of Companies (Meetings of Board and Its Powers) Rules, 2014: Register

- **Authenticity of Registers:** The entries in the register (either manual or electronic) shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose.

- **Extracts from Register:** The extracts from the register maintained under Section 186(9) of Companies Act, 2013 may be furnished to **any member of the company** on payment of such fee as may be prescribed in the Articles of the company which **shall not exceed ten rupees for each page.**

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(11) of Companies Act, 2013: Non – applicability of Section 186 [except 186(1) of Companies Act, 2013] to certain transactions**:**

(a) to any loan made, any guarantee given or any security provided or any investment:

- made by a **b**anking company or an **i**nsurance company or a **h**ousing finance company in the ordinary course of its business, or
- a company established with the object of and engaged in the business of financing industrial enterprises or of providing infrastructural facilities.

(b) to any investment:

- made by an investment company;
- made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;
- made in respect of investment or lending activities by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

As per Rule 11(2) of Companies (Meetings of Board and Its Powers) Rules, 2014:

The term "business of financing industrial enterprises" used in Section 186 (11) of the Companies Act, 2013:

The expression " business of financing industrial enterprises" shall include with regard to a Non-Banking Financial Company registered with the Reserve Bank of India:

"business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".

Section 186 of the Companies Act, 2013:
LOAN AND INVESTMENT BY COMPANIES

Section 186(13) of Companies Act, 2013: Penalty for Contravention of the provisions of this Section:

If a company contravenes the provisions of this section:

- the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and
- every officer of the company who is in default shall be punishable:
  - with imprisonment for a term which may extend to two years and
  - with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Non- applicability of Section 186 of the Companies Act, 2013

Section 186 of the Companies Act , 2013 not applicable subject to the condition that the company has not committed a default in filing of its financial statement under Section 137 or annual return under Section 92 with the Registrar:

- Government Company engaged in defence production;
- Government Company other than a listed company; in case such company obtains approval of the Ministry or Department of the CG which is administratively in charge of the company, or, in case may be, the state government before making any loan or giving any guarantee or providing any security or making any investment under the Section.

Examples On Section 186 of Companies Act, 2013 read with Rule 11, 12 & 13 of Companies (Meetings of Board and Its Powers) Rules, 2014

Example1:

LT Ltd. has convened a Board Meeting on 25th May 2018. One of the items of the agenda is to approve the grant of loan of INR 20 Crore to PQ Ltd. for expansion of its business activities. At the Board Meeting, out of the six directors of the lending company; one director is not present. Out of present directors at the Board Meeting i.e. 5 directors; 4 directors approved the grant of loan of INR 20 crore to PQ Ltd. The borrowing company has taken loans from a public financial institution and also deposits from public. Examine the loan proposed with reference to the provisions of the Companies Act, 2013 ?

Examples On Section 186 of Companies Act, 2013 read with Rule 11, 12 & 13 of Companies (Meetings of Board and Its Powers) Rules, 2014

Answer1: As per Section 186 (5): Unanimous Resolution: No investment shall be made or loan or guarantee or security given by the company unless:

- the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting

and (+)

- the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

In the given example; since the approval for the grant of loan has not been sanctioned by passing of unanimous resolution at board meeting .

Therefore, the loan proposal is not in compliance with Section 186(5) of the Companies Act, 2013 as out of 5 directors only 4 directors approved the grant of loan.

Examples On Section 186 of Companies Act, 2013 read with Rule 11, 12 & 13 of Companies (Meetings of Board and Its Powers) Rules, 2014

Example 2:

ABC Ltd. has an authorised capital of INR 250 lakhs and paid-up capital of INR 200 lakhs. The free reserves are there to the tune of INR 150 lakhs.

The company has advanced a loan of INR 160 lakhs to other companies as on 30th November, 2018.

Now the company proposes the loan of INR 60 lakhs to its wholly owned subsidiary PQR Ltd.

Discuss the validity of the proposed transactions with reference to the restrictions imposed by the applicable provisions of the Companies Act, 2013 with relevant rules thereunder ?

Will your answer remain the same if PQR Ltd. is not wholly owned subsidiary of ABC Ltd ?

Examples On Section 186 of Companies Act, 2013 read with Rule 11, 12 & 13 of Companies (Meetings of Board and Its Powers) Rules, 2014

Answer 2: Refer provisions of Section 186(2) & 186 (3) of the Companies Act, 2013.

In the given example, though aggregate of proposed loan and existing loan (INR 160+ INR 60= INR 220) exceeds the 60% of aggregate of paid-up share capital and free reserve (60% of INR 350 = INR 210); special resolution is not required as the loan is provided to wholly owned subsidiary Company of ABC Ltd (i.e. PQR Ltd) .

No, the answer will not remain the same if PQR Ltd. is not wholly owned subsidiary of ABC Ltd. In this case, special resolution is required to be passed as aggregate of proposed loan and existing loan (INR 160+ INR 60= INR 220) exceeds the 60% of aggregate of paid-up share capital and free reserve (60% of INR 350 = INR 210).

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961

The inter-corporate deposit does not fall within the ambit of the expression 'loan' specified in Section 2(22)(e) of the Income Tax Act, 1961 for the purpose of treating it as deemed dividend.

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

BOMBAY OIL INDUSTRIES LTD.
V.
DEPUTY COMMISSIONER OF INCOME TAX

Facts of the Case:

The assessee company had taken unsecured loans from three closely-held companies. The AO vide a letter called for assessee's objection for treating the aforesaid unsecured loans as deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961.

Contentions of the Assessee: **The assessee submitted that :**

- **The above amounts received as unsecured loans are inter-corporate deposits placed with company and inter-corporate deposits are not 'loans' or 'advances' coming within the ambit of Section 2(22)(e) of the Income Tax Act, 1961.**
- **The assessee-company submitted the balance sheets of all the three closely-held companies and contended that the amounts received by them are in the nature of inter-corporate deposits and not loans/ advances.**

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

BOMBAY OIL INDUSTRIES LTD.
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Contentions of the Department:

The Department contended that inter-corporate deposit is only a loan instrument and same is nothing but a 'loan' or 'advance' and hence, provisions of section 2(22)(e) of the Income Tax Act, 1961 are applicable to the facts of the case.

Findings of the Income Tax Appellate Tribunal (ITAT):

- **It is a settled position that deposits cannot be equated with loans or advances.**
- **The Jurisdictional High Court in the Durga Prasad Mandelia's case has noticed the distinction between deposits and loans in the context of Section 370 of the Companies Act, 1956**.

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

BOMBAY OIL INDUSTRIES LTD.
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DEPUTY COMMISSIONER OF INCOME TAX

Findings of the Income Tax Appellate Tribunal (ITAT):

- **The Court held as under: “There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms “deposit” and “loan” may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies Ltd. constitute a loan and offend section 370 of the Companies Act,1956 there is nothing else to show that these moneys have been advanced as a “loan”.**

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

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DEPUTY COMMISSIONER OF INCOME TAX

Findings of the Income Tax Appellate Tribunal (ITAT):

In the context of the statutory provisions, the word "loan" may be used in the sense of a "loan" not amounting to a deposit. The word "loan" in Section 370 of Companies Act, 1956 must now be construed as dealing with loans not amounting to deposits because if deposit of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of section 370 of the Companies Act, 1956.

Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of section 370 of the Companies Act, 1956 must be negative. Therefore, the petitioners would well be entitled to the relief."

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

BOMBAY OIL INDUSTRIES LTD.
V.
DEPUTY COMMISSIONER OF INCOME TAX

Findings of the Income Tax Appellate Tribunal (ITAT):

- **In Raja of Venkatagiri v. Krishnayya Rao Bahadur:**

"It was observed that ordinarily and advance does not connote any idea of repayment. It is, therefore, clear that the word "advanced" used in Section 296 of Companies Act, 1956 means an advance in the nature of a loan and not merely an advance as is understood in the common parlance in the sense of payment of money beforehand and which is likely to become due at some future time."

Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement

BOMBAY OIL INDUSTRIES LTD.
V.
DEPUTY COMMISSIONER OF INCOME TAX

Final Decision of the Income Tax Appellate Tribunal (ITAT):

The ITAT held that:

- ❑ **There is a distinction between deposits vis-a-vis loans/advances.**

- ❑**The requisite condition for invoking section 2(22)(e) of the Income Tax Act,1961 is that payment must be by way of loan or advances.**

- ❑ **Since there is a clear distinction between the inter-corporate deposits vis-a-vis loans/advances. Thus, authorities were not right in treating the same as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.**

- ❑**Since we hold that Inter-Corporate Deposits do not come within the purview of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 , the alternative contention of the assessee namely by virtue of section 2(22)(e)(ii) of the Act, the unsecured loans received by the assessee is not 'dividend' is not adjudicated.**

Summary- Part II

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- Objectives behind Inter-corporate Loans.
- An Introduction - Section 186 of Companies Act, 2013: Loan and investment by company.
- Important Terms used under Section 186 of Companies Act, 2013.
- Relevant provisions under Companies Act, 2013.
- Inter-corporate Deposit and Section 2(22)(e) of Income Tax Act, 1961 - Judicial Pronouncement.

THANK YOU

(For any clarification you can contact me on: divyabajpaidb@gmail.com)