

**(2005) 11 DEL CK 0090**  
**In the Delhi High Court**  
**Case No : IT Appeal No. 690 of 2005**

Commissioner of Income Tax

APPELLANT

Vs

Hudco Ltd.

RESPONDENT

---

**Date of Decision :** 17-11-2005

**Acts Referred:**

**Citation :** (2006) 201 CTR 486 : (2006) 287 ITR 330

**Hon'ble Judges :** T.S. Thakur, J;B.N. Chaturvedi, J

**Bench :** Division Bench

**Advocate :** P.L. Bansal and Sonia Mathur, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

1. The respondent-assesses 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 superstructure in which superstructure, the assessed was entitled to secure a proportionate covered area. The cost of construction of the superstructure was to be contributed by all the member institutions of the IHC on a no profit no loss basis.

2. It is common ground that the assessed 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 assessed 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 by it with IHC. The governing council of IHC, however, declined to pay any interest on the excess amount deposited by the assessed. That decision was communicated to the assessed by IHC's letter dt. 26th June, 1992. The AO notwithstanding these facts, brought to tax a sum of Rs. 1,93,36,315 on the assumption that the said amount had accrued to the assessed by way of interest. In appeal before the CIT(A), the assessed succeeded. The CIT(A) held that the amount indicated above had been unilaterally credited as interest by the assessed without the IHC

accepting any such claim, The CIT(A) was of the view (that) since the claim made by the assessed had been rejected and the entry had since been reversed in the assessed'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-tax 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 :

We have considered the rival submissions. We do not find any ground to interfere with the order of learned CIT(A). It cannot be said that any interest accrued to the assessed. The fact that it treated interest as receivable on the surplus payments made to IHC in its books of account is not conclusive that chargeable interest had accrued to the assessed. The reliance placed by learned Counsel for the assessed on the decision of the Hon'ble Mumbai Bench of the Tribunal in the case of *Bambino Investment & Trading Co. Ltd. v. Dy. CIT* (2004) 140 Taxman 191 (bom) lays down that no assessment can be made on the basis of a mere concession by the assessed. The entry made in the books of account by the assessed 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 the assessed, by taking note of the subsequent events. We, Therefore, dismiss this appeal by the Revenue.

3. There is, in our view, no error of law or jurisdiction in the view taken by the CIT(A) 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 assessed or otherwise accrued so as to render the same taxable. In that view, Therefore, no substantial question of law arises for consideration.

This appeal fails and is hereby dismissed.