

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH SMC NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

ITA No.5531/Del/2016
Assessment Year 2009-10

Task Infotech (P) Ltd., 3rd Floor, Tower-D, Global Business Park, M.G. Road, Gurgaon. PAN: AACCT 9302R	Vs.	ITO, Ward-25(1), New Delhi.
(Appellant)		(Respondent)

Revenue by :	Ms. Bedobani Chaudhuri, Sr.D.R.
Assessee(s) by :	Shri K.V.S. Krishna, C.A.

सुनवाई की तारीख/Date of Hearing : 25/04/2017
घोषणा की तारीख /Date of Pronouncement: 28/04/2017

ORDER

This appeal of the assessee arises from the order of learned CIT(A)-33, New Delhi, vide order dated 17.08.2016 for the assessment year 2009-10. The assessee has raised the grounds of appeal as under:

1. *“The Id. CIT(A) and the AO has erred in law and on facts in taxing income of Rs.13,13,926/- being interest on FDR having source to funds borrowed by the assessee, the addition should be deleted.*
2. *The Id. CIT(A) and AO has erred on facts and on law in not appreciating that the interest on loan borrowed and the interest earned on FDR which has source to the borrowing are inextricably linked and therefore should have been set off. Thus no interest income is separately liable to be taxed.*
3. *The above grounds are independent and without prejudice to one and another. The appellant also prays to add, amend, alter or forgo any of the grounds at the time of hearing.”*

2. The brief facts of the case are as per Assessing Officer’s order at pages 1 and 2 which is reproduced for the sake of convenience as under:

“Assessee was asked to explain the detail of interest debited to Profit & loss account amounting to Rs.1,06,89,687/-. It is seen from the detail filed by the assessee that assessee has received unsecured loan of Rs.35,10,00,000/- (35 crore 10 lacs) at the rate of 4% per annum from M/s. Sweta Estate (P) Ltd. It is further observed that assessee has invested major amount of out of this in the purchase of land and an amount of Rs.4,69,95,021/-invested in the fixed deposits from which assessee has declared interest income of Rs.30,91,083/-.The business of the assessee

has not yet commenced. Therefore interest paid on loan amount for purchase of land cannot be termed as business expenditure of the assessee and it is not of revenue nature but it is of capital nature, as amount invested in purchase of land. The loan amount used for purpose of making investment in FDRs is also not the business of the assessee. Any income received from investment in FDRs cannot be treated as business income but it has to be treated as income from other sources.

I have further been observed that during the year assessee has incurred development expenses of Rs.1,06,60,789/- which has been transferred by the assessee under the head work in progress. Since the interest paid on loan taken and invested for the purpose of purchase of land has to be capitalized as cost of land, the interest paid is to be added in the value of land declared as cost of land. This has been worked out as under:

<i>Total interest debited to P&L A/c</i>	<i>Rs.1,37,51,872/-</i>
<i>(-) proportionate interest paid on fund invested in FDR amounting to Rs.43903738 and interest thereon</i>	<i><u>Rs.1756157/-</u></i>
<i>Interest amount capitalized in the value of land</i>	<i>Rs.1,19,95,715/-”</i>

3. Learned CIT(A) confirmed the action of the Assessing Officer.
4. I have heard the rival contentions and perused the facts of the case. It was argued by the Id. counsel for the assessee, Mr. K.V.S. Krishna, C.A. that interest on FDR earned is in the pre-commencement period which in fact has been declared in the P&L account and has been reduced from the pre-commencement period expenses which in fact has been capitalized, i.e., the capital cost has been reduced. I find no infirmity in the treatment given to the said interest income by the assessee. The reliance is placed upon the decision of Hon'ble High Court of Delhi in the case of NTPC Sail Power Company (P) Ltd. Vs. CIT, reported in (2012) 210 Taxman 358 (Del) (Hon'ble High Court). The relevant portion of the decision is reproduced hereinbelow:

“10. It is no doubt correct that the proviso to section 36(1)(iii) of the Income Tax Act enacts that any amount of the interest paid towards (“in respect of”) capital borrowed for acquisition of an asset or for extension of existing business regardless of its capitalization in the books or otherwise, “for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use” would not qualify as deduction. However, in all these cases, when the interest was received by the assessee towards interest paid for fixed deposits when the borrowed funds could not be immediately put to use for the purpose for which they were taken, this Court, and indeed the Supreme Court held that if the receipt is “inextricably linked” to the setting up of the project, it would be capital receipt not liable to tax but ultimately be used to reduce the cost of

the project. By the same logic, in this case too, the funds invested by the assessee company and the interest earned were inextricably linked with the setting up of the power plant. It may be added that the Tribunal has not found that the deposits made as margin monies were not limited to the construction activity connected to the expansion of the business by way of setting up of a new power generation plant.”

4.1 The reliance is also placed upon the decision of Hon’ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Ltd. vs. ITO, reported in (2009) 315 ITR 255 (Del) and the relevant portion of the decision is reproduced hereinbelow:

“It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. Since the income was earned in a period prior to commencement of business it was in the nature of capital receipt and hence was required to be set off against pre-operative expenses. In the case of Tuticorin Alkali Chemicals (supra) it was found by the authorities that the funds available with the assessee in that case were „surplus” and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as „income from other sources”. On the other hand in Bokaro Steel Ltd (supra) where the assessee had earned interest on advance paid to contractors during pre-commencement period was found to be „inextricably linked” to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses.”

5. In the facts and circumstances of the case, I find no infirmity in the treatment made by the assessee with regard to the pre-commencement period income and accordingly no addition on this account can be made and same cannot be treated as income from other sources.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this day 28th April, 2017

Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER
Dated: 28/04/2017