

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 6883/Del./2015  
Assessment Year: 2005-06**

<b>D.C.I.T., Circle 13(2), New Delhi (Appellant)</b>	<b>vs.</b>	<b>M/s. Jindal Stainless Steel Ltd., O.P. Jindal Marg, Hisar. PAN – AABCJ 1969M (Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Anshu Prakash, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. KVS R Krishna, C.A.</b>

<b>Date of Hearing</b>	<b>29.08.2017</b>
<b>Date of Pronouncement</b>	<b>07.09.2017</b>

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the Revenue against the order of Id. CIT(A) dated 19.10.2015 for assessment year 2005-06 in relation to penalty u/s. 271(1)(c) of the IT Act, on the following grounds :

- “1. *That the order of the learned CIT (Appeals) is erroneous & contrary to facts & law.*
  
2. *That on the facts and circumstances of the case, the learned CIT (Appeals) has erred in law by not appreciating that the Orissa Project had not come into production during the year under consideration, under the circumstances, how and why a sum of Rs. 1077,31 lacs has been charged to revenue account after de-capitalization of interest/other misc. income.*

3. *That on the facts & circumstances of the case, the Ld. CIT (A) is erred in law and failed to understand that in addition to interest income of Rs.6,11,95,775/- income of Rs.1,32,88,663/- on sale of investment transformed to Orissa Plant account to smiling reduce the project cost has to be charged to tax as short term gain and etc. Ld. CIT (A) vide order dated 08.02.2013 uphold the AO's action in this regard.*
4. *That on the facts and in the circumstances of the case the Ld. CIT (A) has erred in law by not appreciating that a sum of Rs.132.89 lacs de-capitalized to Orissa Projects is already assessed to tax under the head short term capital gain.*
5. *That on the fact and in the circumstances of the case the Ld. CIT (A) has erred in law by not appreciating that in the above spirit the interest income of Rs.6,11,95,775/- was also proposed to be an income to be assessed. Also, the fund raised for expansion of the Orissa Project was temporarily invested to earn interest income & capital gain.*
6. *The Ld. CIT (A) while deleting the penalty has ignored the fact that this is a case of under statement of income by an amount of Rs.6,11,95,775/-.*
7. *The Ld. CIT (A) has erred in law to appreciate that the dererrence for filing inaccurate particulars in the return of income has to be serve by imposition of penalty as imposed in the Income Tax Act, 1961."*

On the strength of the aforesaid grounds, the Revenue has challenged the deletion of penalty imposed by the Assessing Officer u/s. 271(1)(c) of the IT Act, based on the addition of Rs.6,11,95,775/- made on account of de-capitalization of interest to assessee's Orissa Project.

2. The brief facts of the case are that the assessee availed a loan of Rs.352.38 crores upto the year ending March, 2005 for its Green Field Project

at Orissa. However, since complete borrowed amount could not be applied in the project till that date, the assessee used the borrowed amount for making short term investments. The interest earned from such short term deployment of borrowed funds in investments, was, therefore, reduced from the interest payable on loans availed for Orissa Project and the net amount was capitalized with the cost of the project in the books of account. The interest earned on such short term investment stood at Rs.6,11,95,775/- which was reduced from the interest cost of Rs.21,45,47,896/- on the borrowed amount. The Assessing Officer added the interest earned on temporary deployment of borrowed funds in short term investment, as income from other sources, treating the same as sale of investment transferred to Orissa Project. The AO also imposed penalty on this addition u/s. 271(1)(c) of the Act, observing that the assessee had furnished inaccurate particulars of income. The Id. CIT(A) in appeal deleted the penalty relying on various decisions of Hon'ble Supreme Court and High Courts vide impugned order, which has been challenged by the Revenue by way of this appeal before the Tribunal.

3. Reiterating the grounds of appeal and relying on the penalty order, the Id. DR submitted that the Id. CIT(A) was not justified in deleting the penalty ignoring the fact that the assessee had furnished inaccurate particulars of its

income by reducing the interest earned on investment of borrowed funds from the interest incurred on the borrowed funds instead of treating the same as income from other sources.

4. On the other hand, the ld. AR of the assessee, relying on the submissions made before the ld. CIT(A) and observations made in the impugned order based on various judicial pronouncements, submitted, at the outset, that the ld. Assessing Officer was not justified in observing the assessee to have furnished inaccurate particulars of income, especially when the ITAT in quantum appeal of the assessee has accepted that the assessee should be given due credit for interest expenditure incurred for earning such interest income. It was submitted that once, this issue has been a debatable issue at various forums in the cases of assessee, and that the AO has taken one of the view, it can hardly be said that the assessee had furnished inaccurate particulars of income and there remains no question for imposition of penalty.

5. We have considered the rival submissions and have gone through the entire material available on record and we find no justification to interfere with the impugned order. It is notable that the fact of amounts borrowed for Orissa Project, interest cost on such borrowed amounts, their partial utilization in the project and its partial deployment in investment, the interest

earned thereon, setting off of this interest earned from the interest incurred on borrowed funds and capitalization of remaining amount of interest to the cost of Orissa Project, stand fully and truly disclosed before the Assessing Officer, as also reflected from the books of account of the assessee. The addition of interest earned amounting to Rs.6,11,95,775/- was made by the AO treating the same as income from other sources. The AO had relied on the decision of Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd. , 227 ITR 172, and the assessee relied on the decision of jurisdictional High Court in NTPC SAIL Power Company Pvt. Ltd. vs. CIT dated 17.07.2012 on the issue of this addition. The assessee has adopted the method of setting off the interest earned on borrowed funds from the interest incurred on such funds. The ld. CIT(A) in the impugned order has observed that *"from the revenue point of view, whereas income has been brought to tax by the AO during the current year, the consequential effect would be that the appellant is entitled to higher claim of depreciation in the subsequent years as the benefit of netting the interest would not be available. In my understanding, therefore, there is no loss to the revenue caused by the accounting method followed by the appellant company"*. The ITAT in the quantum appeal of the assessee for the year under consideration, on the impugned addition of

Rs.6,11,95,775/-, has also accepted the alternative plea of the assessee observing as under :

*“53. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only issue to be decided in the impugned grounds is regarding the treatment of Rs.6,11,95,775/- being interest earned on temporary funds and the income of Rs. 1,32,88,663/- on sale of investment transferred to Orissa Plant. According to the Assessing Officer, such interest income has to be brought to tax as income from other sources which has been upheld by the CIT(A) by relying on the decision of the Hon'ble Supreme Court in the case of Tuticorn Alkali Chemicals and Fertilizers Limited (supra) and various other decisions. It is the submission of the ld. counsel for the assessee that such interest income should be reduced from the capital work in progress. It is his alternative contention that if the interest income is taxed as "income from other sources" then deduction should be allowed on the interest expenditure for earning such interest income as per the provisions of section 57(iii). We find merit in the alternate contention of the ld. Counsel for the assessee. The assessee has submitted before the lower authorities that the interest received of Rs.6,11,95,775/- is on account of investment out of loan funds raised for the Orissa Project. Copy of the loan sanction letter in respect of Orissa project was also submitted during the assessment proceedings. The assessee had categorically submitted before the lower authorities that such interest expenses and the interest income as a result of apportionment of loan received on account of Orissa Project are inextricably and intrinsically linked with each other.*

*54. We find the Hon'ble Supreme Court in the case of Rajendra Prasad Mody [supra] has held that expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income is an allowable deduction. Following the above decision, we are of the considered opinion that assessee should be given due credit for interest expenditure incurred for earning such interest income. Accordingly, the alternate submission of the assessee is allowed. The Assessing Officer is directed to verify the amount of expenditure apportioned for the investment required for earning such interest income. The ground no.2 to*

*2.3 raised by the assessee are accordingly partly allowed for statistical purposes.”*

6. Besides above, the contention of the assessee before the Id. CIT(A) was also that similar disallowances were also made by the AO in A. Yrs. 2006-07 and 2007-08 against the same loan and the CIT(A) in both the case had deleted the disallowance made by AO holding that interest received on the borrowed fund exclusively for the purpose of setting up of a unit at Orissa is not taxable as interest income. Nothing is addressed by the Revenue against this contention of the assessee. In presence of all these facts and the issue being debatable at various stages, we are of the opinion that it can hardly be said that the assessee had furnished inaccurate particulars of its income. Therefore, the penalty saddled against the assessee has rightly been deleted by the Id. CIT(A). Accordingly, the appeal of the Revenue has no merits and deserves to be dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07.09.2017.

**Sd/-**  
**(I.C. Sudhir)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 07.09.2017

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