



2.1 On verification of the information submitted, the AO observed that the assessee company has earned interest income to the tune of Rs.9,85,62,240/- on fixed deposits. Further, he observed that the interest earned is made out of loans taken for business purpose, and instead of offering the said interest as income from other sources, the assessee company set off these interest receipts against the preoperative expenses incurred. According to the AO, since the interest of Rs. 9,85,62,240/- has been earned on fixed deposit which is not the regular business of the assessee company and also that the preoperative expenses do not directly relate to or have been incurred to earn such interest, the same cannot be set off against one another. The AO relying on the judgment of the Hon'ble Apex court in the case of Tutocorin Alkelic Chemicals & Fertilizers Ltd. CIT (1997) 227 ITR 172, brought the amount of Rs. 9,85,62,240/- being interest on deposit, to tax as income of the company for the year under consideration as "income from other sources".

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee filed written submissions and therein, inter-alia, stated as under:

*"We would like to submit that interest amount on mobilization of advances earned by the assessee during the pre commencement period of business is in the nature of capital receipt which is liable to be set off against pre-operative expenses. The AO should have followed the test whether the activity which is taken up for setting up of the business and the funds which are generated or inextricably connected to the setting of the plant. Therefore, as per the provisions of section 4 of the IT Act, 1961 which is the charging section states that income which arises to the assessee from the date of setting up of the business but prior to the commencement is chargeable to tax depending on whether it is of capital or revenue in nature. Since, the*

*project of the assessee for setting up of business is still under progress and there is no Profit or loss during the year under consideration, the amount of interest earned by the assessee on mobilization of advances is set off against the capital expenditure incurred for setting up of the business. The Profit & Loss el c for the relevant year is enclosed for your kind reference. Therefore, the income earned by the assessee company is of capital in nature.”*

The assessee relied on the following decisions:

1. CIT Vs. Bokaro Steel Ltd., [1999] 236 ITR 315 (SC)
2. CIT Vs. Karnataka Power Corporation [2001] 247 ITR 268 (SC)
3. NTPC Tamil Nadu Energy Co. Ltd., ITA No. 6016/Del./2013.

4. The CIT(A) after considering the submissions of the assessee, elaborately discussed the issue at length with various case law and confirmed the action of the AO by observing as under:

*"The consistent line of reasoning which emerges from the case law adverted to earlier is that the mere fact that an assessee carries on business would not result in an inference that the income which is earned by way of interest would fall for classification as business income. Where the assessee engages in an independent line activity, interest earned on deposits cannot be regarded as falling under the head of profits and gains of business or profession. Such income would fall for classification as income from other sources.*

*It is pertinent to note hear that the issue with regard to assessing the interest income earned during the period prior to commencement of a business has been a very litigious issue which has seen many turns and tribulations over the period of time. In fact, the Hon'ble Supreme Court of India in view of the dichotomous views taken by the apex court in the cases of Tuticorin Alkali (supra) and Bokaro Steel (supra) referred the matter to a larger Bench i.e., Bongaigaon Refinery and Petrochemicals (supra). The larger Bench of the Hon'ble Supreme Court came to the conclusion that income derived from house property, guest house, charges for equipment and recoveries from the contractors on account of water and electricity supply during the formation period of the business is not chargeable to tax but had to be adjusted against the project cost but*

*interest income was however considered as taxable. Thus, a larger bench of the apex Court after considering the entire case law with regard to receipts of a business prior to its commencement concluded that interest income cannot be adjusted against project cost.*

Following the conclusions in AY 2012-13, the CIT(A) dismissed the appeal in AY 2013-14 also.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal, which are common in both the appeals under consideration except the quantum of addition:

*"1. The Ld. Commissioner Of Income Tax (Appeals)-5, Hyd, has erred in both in law and on facts in passing the appellate order upholding the assessment order passed by the AO u/s 143(3) on dt. 29.07.2016*

*2. The Ld. CIT(A) erred in Upholding the addition of Rs 9,85,62,240/- made by the A.O. under the head "Income From Other Sources" towards receipt of interest on mobilisation advance*

*3. The Ld. CIT(A), ought to have appreciated the fact that Interest received during Pre-commencement period of business inextricably linked with the setting up of capital structure and it is not a revenue receipt*

*4. The Ld. CIT(A), ought to have considered the documents furnished by the Appellant to show that interest was earned during the prior period of the business.*

*5. The Ld. CIT (A), ought to have considered the submission of the appellant that interest received was in the nature of capital receipt.*

*6. The Ld. CIT(A), ought to have appreciated the fact that receipt of interest was " prior period income" which was received before commencement of business and which is in nature of capital receipt, set off of such receipt against preoperative expenses can be done*

*7. The Ld. CIT(A) , ought to have appreciated the fact that the activity of payment of mobilisation advance by*

*the appellant was taken up by the Appellant for setting up of business and the funds which were generated (i.e. interest) are inextricably connected to the setting up of the plant and are capital in nature and therefore not taxable as held by the Hon. Supreme Court of India in the case of CIT Vs. Bokaro Steel Ltd (1999) 236 ITR 315(SC) and in the case of CIT Vs. Karnataka Power Corporation (2001) 247 ITR 268 (SC) and also by number of courts and Tribunals.*

*8. The Ld. CIT(A) ought to have appreciated the fact that capital receipt are not taxable as per the provision of Section 4 of Income Tax act,1961.*

*9. The appellant may add, alter, or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of the appeal.”*

6. Before us, the Id. AR of the assessee filed a petition requesting for admission of evidence by way of Paper book containing executive summary of the company, project status report on solar thermal power agreements and other documents, serially numbered as page No. 1 to 275. He submitted that the assessee was prevented from filing the above documents before the lower authorities as the same were not readily available. Accordingly, we admit the same.

6.1 Ld. AR submitted that the assessee has made the mobilisation advance to the contractors. Since the project was under setting up stage, as per the agreement, the contractor has to pay interest on the mobilisation advances until the project is completed. This earning of interest is inextricably connected to the setting up of the plant. For this proposition, he relied on the decision in the case of Adani Power Ltd., ITA No. 2755/Ahd/2011 and in the case of Hyderabad Hi-tech Textile Park Pvt. Ltd., ITA No. 587/Hyd/2016.

7. Ld. DR relied on the orders of revenue authorities and further submitted that assessee has not submitted any

relevant document like contract agreement etc. before any lower authorities.

8. Considered the rival submissions and perused the material on record. It is noticed from the information submitted by the assessee that these advances were made to the contractor to set up the plant and earned interest income out of such advances. Assessee has filed additional information before us. We find that the AO has treated the interest income as earned from Fixed Deposits but assessee claims that it is out of mobilisation advances. These facts were not verified by any authority. Therefore, we remit the issue back to the file of AO to verify the nature of advance. In case, it is found that the nature of advance is for mobilisation advance for setting up of plant, then, this interest should be treated as capital by following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Bokaro Steel Ltd., [1999] 236 ITR 315 wherein it was held that "*Receipts from letting out quarters to employees of contractors who are engaged in construction of assessee's plant, hire charges for letting out plant and machinery to contractors, interest on amounts advanced to them and royalty received from them for allowing excavation of stones, etc. are all intrinsically connected with the construction activity and are capital receipts.*" Accordingly, this issue is remitted to the AO for verification of advance and assessee may be given proper opportunity of being heard. Thus, the grounds raised by the assessee in both the appeals under consideration are treated as allowed for statistical purposes.

9. In the result, both the appeals are allowed for statistical purposes.

Pronounced in the open court on 24<sup>th</sup> January, 2018.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Hyderabad, dated 24<sup>th</sup> January, 2018

*kv*

Copy forwarded to:

1. Diwakar Solar Projects Ltd., C/o P. Murali & Co., CAs, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad – 82
2. ITO, Ward – 17(1), , Hyderabad
3. CIT(A) - 5, Hyderabad
4. Pr. CIT – 5, Hyderabad
5. The DR, ITAT, Hyderabad
6. Guard File